

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Basil W. Akbar, Appellant,

v.

South Carolina Department of Corrections, Bill Byers,  
Martha Roof, Debrah Long, Lisia Johnson, Ann and John  
Doe, Respondents.

Appellate Case No. 2013-002306

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Appeal From Richland County  
G. Thomas Cooper, Jr., Circuit Court Judge

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Unpublished Opinion No. 2016-UP-348  
Submitted February 1, 2016 – Filed July 6, 2016

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**AFFIRMED**

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Basil W. Akbar, pro se.

Daniel R. Settana, Jr. and Brandon Paul Jones, both of  
McKay Cauthen Settana & Stublely, PA, of Columbia, for  
Respondents.

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**PER CURIAM:** Basil Akbar, an inmate serving a life sentence, appeals the circuit court's order granting Respondents' motion to dismiss and motion for summary judgment. On appeal, Akbar argues the circuit court erred in (1) denying

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S.C. SUPREME COURT

his motion to compel discovery and his request for damages, and granting Respondents' motion for summary judgment and motion to dismiss; (2) not finding Respondents unlawfully deprived him of personal property; (3) not finding Respondents' refusal to process grievances constituted default and reprisal; (4) not finding Respondents' conduct of closing his account and fraudulently appropriating his work-release escrow savings account violated his constitutional rights; and (5) not finding Respondents' conduct hindered Akbar's "ability to grieve Civil Rights and Civil liberty claims." We affirm.

Summary judgment was proper because Akbar's claims were barred by the two-year statute of limitations in the Torts Claims Act. *See Young v. S.C. Dep't of Corr.*, 333 S.C. 714, 717, 511 S.E.2d 413, 415 (Ct. App. 1999) ("Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."); *id.* at 717-18, 511 S.E.2d at 415 ("In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party."); S.C. Code Ann. § 15-78-110 (2005) (setting forth a two-year statute of limitations for claims arising under the Tort Claims Act).<sup>1</sup> Regarding any alleged misappropriation of the 1981 account, Akbar waited until January 2013 to file his complaint. Viewed in the light most favorable to Akbar, the record shows he was aware the 1981 account did not exist more than two years prior to filing the complaint. Akbar admitted in his complaint that he first became aware on February 9, 2009, that the Department of Corrections (the Department) did not have any records of the 1981 account. Additionally, the record contains a document from the Department dated April 28, 2010, informing Akbar it did not have any record of that account. Notwithstanding that, Akbar waited until January

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<sup>1</sup> We find the circuit court properly applied the two-year statute of limitations because Akbar did not submit evidence showing he filed a verified claim. *See Flateau v. Harrelson*, 355 S.C. 197, 207, 584 S.E.2d 413, 418 (Ct. App. 2003) (stating the claimant must file a verified claim pursuant to section 15-78-80 of the South Carolina Code (2005 & Supp. 2015) for the three-year statute of limitations to apply); *Pollard v. Cty. of Florence*, 314 S.C. 397, 400, 444 S.E.2d 534, 535 (Ct. App. 1994) ("[T]he 'verified claim' procedure must be strictly complied with in order to trigger the three-year limitations period."); *Flateau*, 355 S.C. at 208, 584 S.E.2d at 418 (finding the two-year statute of limitations applied when the record did not contain evidence showing the claimant filed a verified claim).

16, 2013, to file his complaint. Thus, viewed in the light most favorable to Akbar, the circuit court properly determined Akbar's claims related to the alleged misappropriation of his 1981 account were barred by the two-year statute of limitations.

Additionally, any claims arising from Respondents' alleged failure to timely respond to Akbar's requests or provide him information about the account were barred by the two-year statute of limitations. Akbar filed Step 1 grievance forms on August 18, 2009; March 19, 2010; May 4, 2010; and June 16, 2010; alleging the Department's employees were not timely responding to his requests and asserting the Department and its employees were committing a tort by refusing to provide information about the account. Thus, viewed in the light most favorable to Akbar, Akbar was aware of the facts giving rise to his allegations on August 18, 2009; March 19, 2010; May 4, 2010; and June 16, 2010; yet he waited until January 16, 2013, to file his complaint. Accordingly, any claims related to Respondents' alleged failure to timely respond to Akbar's requests or provide him information about the account were barred by the two-year statute of limitations.

Because the circuit court properly granted summary judgment on the basis that Akbar's claims were barred by the statute of limitations, it did not err in denying his motion to compel discovery on the ground the motion was moot. *See Young*, 333 S.C. at 718, 511 S.E.2d at 415 ("[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.").<sup>2</sup>

**AFFIRMED.**<sup>3</sup>

**HUFF, KONDUROS, and GEATHERS, JJ., concur.**

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<sup>2</sup> Because our finding that the circuit court properly granted summary judgment based on the two-year statute of limitations is dispositive, we do not consider Akbar's remaining arguments. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not address remaining issues when determination of a prior issue is dispositive).

<sup>3</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

REQUEST TO STAFF MEMBER

FEB 0 2009

TO: NAME: Ms. Melton, Finance Department	TITLE:	DATE: February 8, 2009	LEE CI BUSINESS OFFICE
INMATE'S NAME: Basil W. Akbar		SCDC #: 065498	
INSTITUTION: Lee County		LIVING QUARTERS: Richard C-119	

Madam: I beseech your assistance, I am currently employed in Lee C.I. West Yard Prison Industry, and respectfully seek the following information with regards to my Escrow account. If by chance you are unable to answer any or all of this requested information, then please forward this request to appropriate recipient(s), and advise/inform me as to your action.

1. Does this account draw interest, if so, what is the current rate
2. Will I receive quarterly statements ... automatically, etc..
3. Provide <sup>ME</sup> with a complete copy of instructions, as to how to access Escrow account
4. Will I be charged a service fee, if so, explain
5. Provide me with a complete copy of the Prison Industry Service Program pay deductions, and provision(s) [S.C. Code of Law] of authorization
6. In addition, provide me with a complete copy of my 1980-1981 work release Escrow Account mandatory long term saving statement... status and balance, that was never transferred to my E.H. Cooper Trust Fund Account.

Thank You.

Basil W. Akbar

DISPOSITION BY STAFF MEMBER:

Akbar: I can ensure some, but not all of your questions; therefore, you will need to send a request to: Ms. Long at Financial Accounting @ Headquarters for answers.

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DATE: 2/9/09	SIGNATURE: Ms. Melton	S.C. SUPREME COURT
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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
REQUEST TO STAFF MEMBER

APR 26 2010

TO: NAME: MS. L. JOHNSON	TITLE: LEE C.I. GRIEVANCE CLERK	DATE: April 23, 2010
INMATE'S NAME: Basil W. Akbar		SCDC #: 065498
INSTITUTION: Lee County		LIVING QUARTERS: Richland C-119

Madam:

PER your decision dated April 21, 10, not to process grievance # Lee C.I. 0813-10, I respectfully don't believe that you understand the predicate that justify grievance. Your posture suggest that I do not have a right to seek or know the status/balance of personal money earned from work release, from those appointed individuals charged to maintain/oversight said mandatory long term escrow [work release] savings account at SCDC Headquarters entrusted/commission to safekeeper, simply put a personal bank account that was never closed. I have an absolute unqualified right to within reason to access/seek complete status... at any time of my savings account managed by SCDC, there is no transparency to me, completely deny. I suspect something is wrong and I have the right to grieve at any time, and I believe foul play is involved, and I choose to grieve.

HOWEVER, it appears that you are making administrative decision here to impede and deprive me of my legal remedies to be heard, I am merely asking that you please process my grievance and let matters take its own course, and not become an actor in my complaint, please inform me as to whether I should resubmit my grievance,

DISPOSITION BY STAFF MEMBER:  
I/n Akbar,  
You do indeed have the right to inquire about the status of your account. However, you must adhere to policy/procedure. Policy 14-01.12 mandates that you have fifteen days of an incident/injury to file a grievance. You have exceeded that time frame.

DATE: 4/27/10	SIGNATURE: C. James
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SECOND URGENT REQUEST :

\*EXHIBIT-#2

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
REQUEST TO STAFF MEMBER

TO: NAME: MS. BOOF, Financial Business Office	TITLE: 54	DATE: December 6, 2008
INMATE'S NAME: Basil W. Akbar	SCDC #: 065498	
INSTITUTION: Lee County	LIVING QUARTERS: Richard C-119	

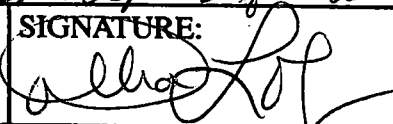
Madam: HOWEVER, RESPECTFUL during this slow process as to attain requested information I have been patiently waiting. I initially wrote you Oct. 22, 2008, and has not received a reply to my legitimate & genuine concerns, thus, resubmits as verbatim: I beseech your assistance, I am currently employed in Lee C.I., West Yard Prison Industry, and respectfully seeks the following information with regards to my Escrow account(s):

1. Does this account draw interest, if so, what is the current rate
2. Will I receive quarterly statements... automatically, etc....
3. Provide me with a complete copy of instructions, as to how to access escrow account.
4. Will I be charged a service fee, if so, explain.
5. Provide me with a complete copy of the Prison Industry Service Program pay deductions, and provision(s) [S.C. Code of Law] of authorization.
6. In addition, include a separate statement of my 1980 & 1981 work release escrow account mandatory long term savings... status and balance... that were never transferred to my E.H. COOPER Trust Fund Account.

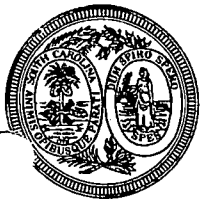
Thank You

DISPOSITION BY STAFF MEMBER:

- 1) The account does earn interest see attached
- 2) statements are not issued on long term "P" accounts for service however if your account earns more than 10% interest per year you will receive a 1099.
- 3) you do not have access to your escrow account until your release
- 4) no
- 5) we do not provide copies of policy or Code of Law. you will need to go to the law library for the code of law. Policies should be available at the institution
- 6) statements from '80 + '81 are not available. According to our records you received a copper deposit for Liveoak Unit 119 on 3/30/94

DATE: 6/18/09	SIGNATURE: 
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\*EXHIBIT #3



# south carolina department of corrections

P.O. BOX 21787/4444 BROAD RIVER ROAD/COLUMBIA, SOUTH CAROLINA 29221-1787  
TELEPHONE (803) 896-8555  
PARKER EVATT, Commissioner

July 1, 1994

Mr. Basil Akbar  
SCDC No. 65498  
Lieber Correctional Institution

Re: Grievance No. LCI-030-94

Dear Mr. Akbar:

This is to inform you that the Inmates' Personal Property Review Committee met on June 27, 1994, and reached a decision regarding your personal property reimbursement claim.

The Committee recommended that you be reimbursed \$7.00 for your confiscated items. I concur with the Committee's decision. Therefore, by copy of this letter, I am requesting that Warden Montgomery implement reimbursement procedures in accordance with SCDC Policy No. 1500.30, Inmates' Personal Property, Page 2.

Sincerely,

A handwritten signature in cursive script that reads "William D. Catoe".

William D. Catoe  
Deputy Director for Operations

WDC:dh

cc: Mr. Blake E. Taylor, Jr.  
Mr. L. J. Allen  
Mr. Benjamin Montgomery (for necessary action)  
Ms. Susanne Reich, Financial Accounting  
Mr. Stacy L. Ford, Grievance Clerk, Lieber

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**S.C. SUPREME COURT**

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
REQUEST TO STAFF MEMBER

TO: NAME: MS. Long / MS. Roof, Financial Accounting Dept.	TITLE:	DATE: July 7, 2009
INMATE'S NAME: Basil W. Akbar	SCDC #: 065498	
INSTITUTION: Lee County	LIVING QUARTERS: Richland C-19	

I am in receipt of your Disposition... dated June 18, 09, as to my December 1, 2008, Request to Staff Member addressed to Ms. Roof... HOWEVER, with regards to my Question #6, "In addition, include a separate statement of my 1980 & 1981, Work Release Escrow Account mandatory Long Term Savings... Status and balance... that was NEVER transferred to my E.H. COOPER Trust Fund Account,"... Your reply was... "statements from 80 & 81 are not available.. According to our record you received a Cooper deposit from Livesay Wak Center on 3/30/94.

To the contrary, in 1994 I was located at Lieber Inst, the only SCDC deposit should have been a reimbursement for lost property [GA # 65-030-94], MS. SUZANNE REICH, Chief Accounting Branch. On 3/15/94 (\$2723) & 3/25/94 (\$500) both cash deposits was from me... only deposits in March. MOREOVER, said account [Basil W. Akbar, a.k.a. MELVIN T. BROWN, 065498] was NEVER closed.

I am respectfully requesting under F.O.I.A. SC Code §§30-4-10 thru 30-4-110, that you access your records that may be archived/reduced to Micro Fiche for information pertaining to above referenced account, and I would appreciate a prompt response, as the Regulation stipulate. Thank you in advance.

DISPOSITION BY STAFF MEMBER:

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
Debrah Long  
South Carolina Dept. of Corr.  
Financial Accounting Dept.  
4414 Broad River Rd  
Columbia, SC 29210

DATE: \_\_\_\_\_ SIG: \_\_\_\_\_

COMPLETE THIS SECTION ON DELIVERY

A. Signature: *[Signature]*

B. Received by (Printed Name): Amos Ackerman

C. Date of Delivery: 7-23-09

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

Certified Mail  Express Mail

Registered  Return Receipt for Merchandise

Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 1

INMATE NAME: Basil W. Akbar  
SCDC NUMBER: 065498  
INSTITUTION: Lee County AUG 18 2009  
HOUSING UNIT: Richard C-119 PR  
WORK ASSIGNMENT: West Yard P.I.

Office Use Only  
Grievance No. Lee CI #2323-09  
Code: General my  
Policy 5  
Disc. Hear. \_\_\_\_\_  
Class. \_\_\_\_\_  
Date Received 8/19/09  
IGC Initials AG

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) ON Oct. 22, 08, it was initially called to the attention of Ms. Roof Financial Accounting Branch, Questions Related to My [1979-1981] Work Release Mandatory Long Term Escrow Savings Account, status and balance that was not release to me upon Parole April 1981, nor transferred to my account. ON July 7, 2009, I wrote Ms. Long via certified Mail [2007-3020-0003-0159-6440] Received by Amos Ackerman 7/23/09, to no avail. Failure to Return Property upon Release denied due PROCESS, Money is Property. There is no question that the funds in My Prison Account is a Protected Property Interest, and that I am Proud to know the balance and Status of said Account. It appears that a Tort has occurred regarding said Account from a breach of legal duties, and an attempt to conceal the wrong.

ACTION REQUESTED: (1) That I be promptly informed of the balance in My Work Release Mandatory Long Term Escrow Savings Account. That balance be transferred to My E. H. Cooper Account with Interest.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Wrote: Ms. Roof, Financial Account Branch Headquarters, Oct. 22, 08 & Dec. 1, 08, No Reply  
Ms. Melton, Lee C.I. Financial Office, Feb. 8, 09 & April 9, 09  
Ms. Long, Financial Account Branch Headquarters, March 2, 09 & June 18, 09  
\* Family Member Made Numerous Phone calls from February thru August 2009. No Return calls.

Basil W. Akbar Aug 17 2009  
Grievant Signature Date

ACTION TAKEN BY IGC:

This grievance is being returned to you unprocessed. You have exceeded the appropriate time frame to file a grievance on this issue. According to Agency Policy/Procedure GA-01.12, you have (15) fifteen days from the date of the alleged incident to file a grievance on this issue. Your grievance is being returned to you with no action taken.

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L. Johnson 10/5/09  
IGC Signature Date

I accept the action taken by the IGC and this matter closed.  
 I do not accept the action taken and wish to appeal.

\_\_\_\_\_  
Grievant Signature Date

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 1

INMATE NAME: Basil W. Akbar  
SCDC NUMBER: 065498  
INSTITUTION: Lee County  
HOUSING UNIT: Richland C-119  
WORK ASSIGNMENT: Horticulture

Office Use Only  
Grievance No. Lee CI 0270-10  
Code: General my  
Policy \_\_\_\_\_  
Disc. Hear. \_\_\_\_\_  
Class. \_\_\_\_\_  
Date Received 5/5/10  
IGC Initials RJ

MAY 04 2010

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) Upon Submitting a Request to Staff Member [dated April 23, 2010 and returned April 28, 2010] to Ms. Melton in Lee Co. Business Office, at suggestion of Ms. L. Johnson Lee Co. Grievance Clerk, April 21, 2010, I was taken by surprise and advised that, Quote: "According to the system, you do not have an account of work center funds. That account was probably closed and archived when you were release in 1981." said work release escrow account was never closed, and Trust Account employee(s)/official(s) in the course of their duties, has either oversighted, or did fraudulent appropriated to use of property (money) in his/her possession owed by Grievant without consent over a thousand dollars constituting embezzlement and larceny.

ACTION REQUESTED:  
That work release escrow account be made transparent and accountable of funds with interest, and/or arrest warrant issued if funds are missing from account, and make copy of escrow archived record available.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:  
Wrote: Ms. Melton Business office April 23, 2010

Basil W. Akbar 4/29/2010  
Grievant Signature Date

ACTION TAKEN BY IGC:  
This is a duplicate of grievance LEE CI #0813-10, filed on 03/17/10. I did advise you to submit a request to staff to Ms. Melton to address your concerns, however this is still the same issue as Lee CI 0813-10 that was returned to you on 04-21-10. This grievance is being returned to you with no action taken.

I accept the action taken by the IGC and consider the matter closed.  
 I do not accept the action taken and wish to appeal.

L. Johnson 5/26/10  
IGC Signature Date

\_\_\_\_\_  
Grievant Signature Date



\*EXHIBIT-# 7

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
REQUEST TO STAFF MEMBER**

<b>TO: NAME:</b> Ms. Melton	<b>TITLE:</b> Business Office	<b>DATE:</b> April 23, 2010
<b>INMATE'S NAME:</b> Basil W. Akbar	<b>SCDC #:</b> 065498	
<b>INSTITUTION:</b> Lee County	<b>LIVING QUARTERS:</b> Richland C-119	

Madam:

PER MS. L. Johnson Grievance Clerk disposition dated 4/21/10, she suggested that I submit a Request to Staff to you with regards to the status and balance of my 1979-1981 April 8, Work Release Long Term Escrow Savings Account that was NEVER closed.

I am Requesting a chronicle narrative of said account with interest.

Thank You.

**DISPOSITION BY STAFF MEMBER:**

Akbar: According to the system, you do not have an account of "Work Center" funds. That account was probably closed and archived when you were released in 1981.

At the present you have \$56.76 in your PI mandatory savings account.

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**S.C. SUPREME COURT**

<b>DATE:</b> 4/28/10	<b>SIGNATURE:</b> Ms. Melton
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AKBAR, BASIL WALI FBI # 237638H SID# SCE0000675 SCDC # 65498 (CONTINUED)

10/ 1/99	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
1/ 5/99	LEE	INCARCERATED	RETURN FROM COURT
1/ 5/99	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
6/ 7/95	LEE	INCARCERATED	ADMINISTRATIVE
11/30/94	EVANS	INCARCERATED	ADMINISTRATIVE
10/14/94	LIEBER R&E	INCARCERATED	LOCKUP-INVESTIGATION
10/14/94	LIEBER	INCARCERATED	ADMINISTRATIVE
8/24/94	LIEBER R&E	INCARCERATED	LOCKUP-INVESTIGATION
4/ 6/94	LIEBER	INCARCERATED	RETURN FROM COURT
4/ 6/94	BEAUFORT CO	AUTH ABSENCE (AWL)	TO COURT
3/18/94	LIEBER	INCARCERATED	RETURN FROM COURT
3/18/94	LEXINGTON CO	AUTH ABSENCE (AWL)	TO COURT
2/17/94	LIEBER	INCARCERATED	ADMINISTRATIVE
1/19/94	LIEBER R&E	INCARCERATED	ADMINISTRATIVE
1/18/94	CENTRAL	INCARCERATED	ADMINISTRATIVE
1/ 7/93	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
11/15/92	BROAD RIVER R&E	INCARCERATED	LOCKUP-INVESTIGATION
9/ 2/92	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
7/ 3/91	KIRKLAND	INCARCERATED	ADMINISTRATIVE
2/ 5/91	MCCORMICK	INCARCERATED	ADMINISTRATIVE
7/21/89	CENTRAL	INCARCERATED	ADMINISTRATIVE
7/14/89	PERRY	INCARCERATED	ADMINISTRATIVE
7/11/89	MCCORMICK	INCARCERATED	LOCKUP-INVESTIGATION
4/12/89	MCCORMICK	INCARCERATED	ADMINISTRATIVE
4/ 4/89	MCCORMICK	INCARCERATED	LOCKUP-INVESTIGATION
2/16/89	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/28/88	PERRY	INCARCERATED	ADMINISTRATIVE
11/24/88	PERRY R&E	INCARCERATED	DISCIPLINARY
8/ 5/88	PERRY	INCARCERATED	ADMINISTRATIVE
5/22/85	CENTRAL	INCARCERATED	ADMINISTRATIVE
5/ 9/85	MIDLANDS R&E	INCARCERATED	PAROLE VIOLATOR
4/ 8/81	RICHLAND CO	PAROLE	PAROLE BOARD ACTION
3/21/80	SCDC FACILITY -	WORK-RELEASE	WORK PROGRAM
6/26/79	SCDC FACILITY-U	INCARCERATED	EMPLOYMENT PROGRAM
6/26/79	SCDC FACILITY -	INCARCERATED	ADMINISTRATIVE
12/ 9/75	CENTRAL	INCARCERATED	RETURN FROM ESCAPE
11/ 5/75	ESCAPES	ESCAPED-AWOL	AWOL-WALK AWAY
9/15/75	SCDC FACILITY-U	INCARCERATED	ADMINISTRATIVE
9/ 7/75	CENTRAL	INCARCERATED	ADMINISTRATIVE
4/17/75	GOV MANSN	INCARCERATED	ADMINISTRATIVE
9/16/71	CENTRAL	INCARCERATED	ADMINISTRATIVE
9/ 9/71	MIDLANDS R&E	INCARCERATED	ADMINISTRATIVE

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
CUSTODIAN HELPER	09/25/12	0/ 0/ 0		3F5
CUSTODIAL WORKER	05/03/10	10/20/11	INSTIT TRANSFER	3F5
MACHINE OPERATOR	10/15/09	5/ 2/10	LATERAL TRANSFER	3F5
MATERIAL HANDLING EQ	08/26/08	10/14/ 9	LATERAL TRANSFER	3F5
CUSTODIAL WORKER	02/09/06	8/25/ 8	LATERAL TRANSFER	3F5
CUSTODIAL WORKER	07/03/03	2/ 8/ 6	INMATE REQUEST	3F5
CUSTODIAL WORKER	10/30/02	5/29/ 3	INSTIT TRANSFER	3F5
CUSTODIAL WORKER	03/21/00	10/29/ 2	INSTIT TRANSFER	3F5
WARDKEEPER ASSISTANT	10/12/99	3/20/ 0	INSTIT TRANSFER	3F5
MATERIAL HANDLING EQ	04/18/97	10/11/99	UNSAT JOB PERFORM	3F5
MATERIAL HANDLING EQ	04/07/97	4/17/97	CUSTODY REVIEW	5F5
WARDKEEPER ASSISTANT	03/11/97	4/ 6/97	INMATE REQUEST	5F7
WARDKEEPER ASSISTANT	05/22/96	3/10/97	LATERAL TRANSFER	5F7

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Basil W. Akbar, #065498 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 South Carolina Department of Corrections, )  
 Bill Byers, Martha Roof, Debrah Long, )  
 Lisia Johnson, Ann and John Doe, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 C/A No: 2013-CP-40-0301

**AFFIDAVIT OF NOEL HEBERT**

PERSONALLY APPEARED before me, Noel Hebert, who first being duly sworn deposes and avers the following:

- 1) I am currently employed by the State of South Carolina and the South Carolina Department of Corrections (SCDC) as an Accounting Manager. I have held this position since November 2011.
- 2) I have reviewed the employment and financial records for Inmate Basil W. Akbar, #065498, which are maintained by the South Carolina Department of Corrections in the normal course of business.
- 3) These records reflect that Inmate Akbar was employed in an SCDC work program from in or around March 1980 until in or around April 1981, when he was released on parole.
- 4) If Inmate Akbar had any funds remaining from his work program, it would be contained within a work center account with the SCDC. Inmate Akbar's records reflect that Inmate Akbar does not have any funds in a work center account with the SCDC. In fact, Inmate

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**S.C. SUPREME COURT**

Akbar does not have a work center account with the SCDC, and has not had one since at least 1994.

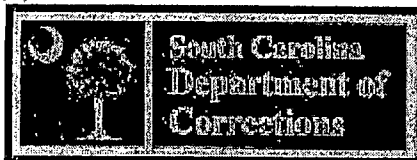
FURTHER THE AFFIANT SAYETH NOT.

Noel Hebert

Noel Hebert

SWORN TO AND SUBSCRIBED before me  
This 23 day of July, 2013.

Carla Spivey  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: June 16, 2021



## SCDC POLICY/PROCEDURE

NUMBER: ADM-15.10

TITLE: WORK RELEASE ACCOUNTING

ISSUE DATE: SEPTEMBER 1, 2011

RESPONSIBLE AUTHORITY: DIVISION OF FINANCE

OPERATIONS MANUAL: ADMINISTRATION

SUPERSEDES: ADM-15.10 (February 1, 2007); (June 1, 2001)

RELEVANT SCDC FORMS/SUPPLIES: 13-50, 19-11, 27-5, 27-38, 27-53, 27-49

ACA/CAC STANDARDS: 4-ACRS-7D-16, 4-ACRS-7D-17, 4-ACRS-7D-21, 4-ACRS-7D-22, 4-ACRS-7D-24, 4-ACRS-7D-31, 4-ACRS-7D-32, 4-ACRS-7D-33

STATE/FEDERAL STATUTES: South Carolina Code of Laws, Section 24-3-40, as amended; South Carolina Proviso 51.21 authorized under Part 1B of the 2011-2012 South Carolina Appropriations Act.

NOTE: This policy/procedure applies only to inmates who are assigned to SCDC work release programs institutions and who work at paid employment in the community.

**THE LANGUAGE USED IN THIS POLICY/PROCEDURE DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS POLICY/PROCEDURE DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY/PROCEDURE, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.**

PURPOSE: To establish guidelines for the management of financial transactions for those inmates assigned to the work release program.

POLICY STATEMENT: Financial transactions for those inmates assigned to the work release program will be maintained in the computer via CRT data entry. These funds will be receipted, safeguarded, disbursed, and recorded in strict compliance with applicable state statutes, regulations, guidelines, and accepted accounting practices. (4-ACRS-7D-21, 4-ACRS-7D-31)

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SPECIFIC PROCEDURES:

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## 1. RESPONSIBILITIES:

1.1 The Division Director of Finance, will be responsible for the administration of financial accounting procedures for those inmates participating in the work release program. The Director of Finance and the Division of Resource and Information Management will publish and distribute specific instructions for the work release program accounting data entry to the appropriate employees on an as-needed basis. (4-ACRS-7D-17)

1.2 Wardens of institutions with the work release program will designate an employee and at least one alternate who will be responsible for work release inmates' financial transactions. The alternate will assume the work release program accounting responsibilities when necessary. The Division Director of Finance, will provide training to the designee/alternate as needed. The Warden may request this training from the *Division Of Finance*.

The Warden/designee will:

- ensure that all financial transactions are entered into the computer via the CRT within 48 hours after the actual receipt of funds to the accounting technician/designee;
- review work release program accounts at least monthly and document review; and
- verify bank deposit receipts against the total shown on work center Accounting Deposit Register. (4-ACRS-7D-16)

1.3 The Audit Section will be responsible for auditing work release accounts at least once every three (3) years. Wardens of institutions with work release programs may request an audit if s/he deems necessary. This request will be sent through the Division Director of Operations to the Audit Section. (4-ACRS-7D-24)

1.4 The Division of Resource and Information Management will provide access to work release accounts to designated center employees. The automated SCDC Form 13-50, "CRT User Access Report Form," will be completed and submitted to RIM. Entry capabilities of designated center employees will be limited to inmates assigned to the center. The designated center employee will contact the *Division of Finance* to access the account of an inmate who has been transferred to another work center.

## 2. ACTIVATING/MAINTAINING INMATE WORK RELEASE ACCOUNTS:

2.1 When an inmate becomes active in a work release program, the accounting technician will establish a new account. Thereafter, each financial transaction, such as pay amounts and deductions, will be recorded in the inmate's automated Work Release Program Account. All E. H. Cooper balances in excess of **\$125.00 or the established canteen limit** for work release inmates will be transferred to the inmate's work release account. *Exceptions may be granted for the purchase of canteen personal equipment, seasonal packages and other withdrawals as listed in paragraph 2.9.4 below.*

2.2 Every effort should be made to *ensure* the inmate *has sufficient funds to ensure financial stability upon release*. Each inmate, with assistance from the accounting technician, will prepare a personal budget, SCDC 27-5, "Personalized Budget Plan/Deductions," upon employment *to maximize the inmate's understanding of finances and financial disbursement*. If the inmate is removed from the work program, any expenses incurred while on the program, which cannot be paid from available savings, will remain the responsibility of the inmate to pay the owed party.

2.3 All earnings, to include tips, for all inmates, less standard payroll deductions required by law and those deductions authorized by the Warden/designee, e.g., work uniforms, must be surrendered to the work release center. This will include any income which is considered in or utilized for program maintenance including, but not limited to, Workers'/Unemployment Compensation, Veterans Assistance, disability checks, income tax refunds, etc. Inmate payroll checks may be mailed to the center, picked up by center personnel, or delivered to the center by the employer. Inmates will not be permitted to receive his/her check at the job site or from his/her employer. For clarification with regard to Social Security benefits for inmates, the Social Security Administration will not

consider an imprisoned felon for benefits of any kind (e.g., disability benefits, survivor's benefits, old age benefits, retirement benefits, parent's benefits, etc.). It should also be noted that this law does not apply to misdemeanants who may apply for benefits and be considered with regard to their incarcerated status. Clarification of felon versus misdemeanant should be obtained at the local Social Security office. ***The inmate's check will be stamped "For Deposit Only," and deposited.*** Check stubs will be ***retained and*** closely monitored by the accounting technician and compared with the center's time cards to ensure that all hours worked are accurate and accounted for. With regard to employment involving tips, while it may be impossible to ensure that all tips are turned in, such will be closely monitored with the employer in order to determine averages for that particular job as a way to monitor the amount the inmate is turning in to the employee.

2.4 The accounting technician will ensure that every possible effort is made to collect inmate payrolls as a result of bad checks presented by employers. Those efforts will include taking necessary action via written correspondence from the General Counsel that provides ample written notification to the employer (at least one week) that, if not paid, the matter will be turned over to the Magistrate or Labor Board.

2.5 **Individual Accounts:** Each inmate's total payroll information and financial data will be maintained under an automated system as prescribed by procedures of the ***Division of Finance***.

2.6 **Interest:** Interest will be paid to all inmates with monthly average balances of greater than \$10.00. Upon receipt of an interest deposit from the State Treasurer's Office, interest will be distributed to individual inmate accounts.

2.7 **Deductions Required by Law:** Deductions will be made by the accounting technician as required by law and will be documented on SCDC Form 27-5, "Personalized Budget Plan/Deductions." Inmates will be responsible for notifying SCDC of all open victim restitution orders, child support orders, dependents, and other financial obligations.

2.7.1 **Victims:** Twenty percent (20%) of the inmate's gross wages will be deducted for victims. Court ordered victim restitution will be distributed as ordered. If no court ordered victim restitution exists or if the restitution order(s) is satisfied, ***5% must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404, and 15% must be retained by the SCDC to support services provided by the SCDC to victims of the incarcerated population.***

2.7.2 **Child Support/Room and Board/E.H. Cooper Trust Fund:** Thirty-five percent (35%) of the inmate's gross wages will be deducted for child support. If court ordered child support exists, 35% will be paid totally for the combination of all orders. SCDC Form 27-23 "Verification of Dependents" will be used to document each inmate's dependent children. If no court order(s) exist or if all orders have been satisfied, then allotments at 35% will be made by law, followed by the agreement of the inmate. If the inmate has no children or if the order(s) has been satisfied, then the 35% will be distributed at a rate of twenty-five percent (25%) to the South Carolina General Fund for Room and Board and ten percent (10%) to the inmate's individual Fund account. (4-ACRS-7D-32, 4-ACRS-7D-33)

2.7.3 **DNA Fee:** If the inmate is subject to DNA testing and the associated \$250.00 testing fee, up to 5% of the inmate's wages will be deducted to pay the DNA fee. The DNA fee will be deducted after all other deductions required by law and after the mandatory savings have been met.

2.8 **Escrow Savings:** Ten percent (10%) of the inmate's gross wages must be retained until the inmate's release, death, parole, probation, or release to community supervision programs in an interest bearing escrow account. The ten percent (10%) will be retained in the work release program account and tracked as the mandatory savings amount. The difference between the inmate's account balance and the mandatory savings (escrow funds) will be referred to as the available balance in the inmate's account.

2.9 **Other Deductions:** The following other deductions will be permitted from the inmate's work release account; however, mandatory savings funds will not be available for payment of these deductions. Special requests for these

deductions will be evaluated and approved by the Warden.

**2.9.1 Allowances:** Each inmate may receive a combination of cash withdrawal or transfer to Cooper Trust Fund as an allowance each week. Cash withdrawals are limited to \$25.00, in \$5.00 increments, per week. Inmates assigned to the work release program may have no more than an accumulation of cash allowances of \$40.00 in their possession. The maximum allowance (cash and/or Cooper) is determined by the following available account balances after withdrawal.

Available Balance	Maximum Allowance
\$0	(Newly employed inmates) \$15.00*
\$0 - \$100	\$20.00
\$100 - \$250	\$30.00
above \$250	\$50.00

\*A maximum of three allowances may be issued prior to receipt and posting of first payroll. (4-ACRS-7D-31)

Unemployed work release inmates who have available funds in excess of mandatory savings will continue to receive weekly allowances of \$20.00 until available funds are exhausted.

**2.9.2 Medical/Dental Expenses:** Work release inmates are responsible for all medical costs incurred after employment has been secured. Payment of these bills will be documented on SCDC Form 27-49, "Payment of Medical Accounts." Work release inmates will be returned to an SCDC medical facility for non-emergency treatment; applicable medical co-pays will apply. Inmates will sign up for sick call as outlined in SCDC HS-18.05, "Sick Call and Dental Health." Emergency Care will be handled as outlined in SCDC HS-18.02, "Emergency Care". If the work program has outside insurance provided by the employer, the insurance card will be provided at the time of any outside medical service.

**2.9.3 Community Services Welfare Donations:** Contributions to the Community Services Welfare Fund, not to exceed \$50.00 per infraction, will be made as soon as possible. For documentation purposes, such contributions will be reported on SCDC Form 27-38, Acknowledgement of Contribution to Community Services/Restitution Welfare Fund," as:

- Contraband/Abuse
- Employment Violation
- Center Violation
- Privilege Abuse General

**2.9.4 Withdrawals:** All withdrawals will be closely scrutinized and approved only *if determined absolutely necessary and justified* by the Warden *or their* designee *in their absence* **NOTE: The designee can not be the accounting technician.** The Warden/designee may not approve an emergency withdrawal that reduces the account balance below the mandatory savings. Withdrawals will be authorized only for the following:

- Household *needs*
- Family *needs*
- Education expenses
- Legal expenses
- Employment needs
- Other personal needs

Requests for withdrawals will be submitted to the Warden/designee on SCDC Form 19-11, "Request to Staff Member," for approval. Verification of expenditures, i.e., receipts where applicable, will be required of the inmate for withdrawals. (4-ACRS-7D-31)

**2.9.5 Personal Checking/Savings Accounts:** The SCDC will not provide assistance in maintaining individual/personal accounts of any type.

**2.9.6 Transportation Fees:** The approval for the collection of a transportation fee to participants in the work release program whose transportation is provided by the Department of Corrections was granted during legislative session of the South Carolina General Assembly. Work program participants will be assessed \$4.00 per day to offset the cost of transportation to and from the job site. Deductions will be made from all Work Program inmate's work release accounts commensurate to each inmate's pay cycle.

**2.9.7 Initial Loans:** Work release program inmates may be given initial loans upon assignment to the work program and/or obtaining verified employment. The following guidelines will apply:

- The loan will only be applied toward the purchase of incidentals necessary to begin work. *Any funds remaining after the purchase of incidentals should be deposited back into the inmate's work release account.*
- Loans will be granted only to inmates who have not had the opportunity to receive their initial payroll.
- Loans will not exceed a maximum of \$50.00 and applications will be initiated by the inmate utilizing SCDC Form 27-53, "Work Program Initial Loan," and must be approved by the Warden/designee.
- Loans will be granted from the consolidated work program account and repaid by the inmate as soon as possible through deductions from the inmate's payroll. Any available funds remaining after the required deductions and allowance will be deducted from the inmate's account and applied to the repayment of the debt.
- If the inmate is removed from the program prior to the loan repayment, the balance will be deducted from any outstanding payroll funds and/or inmate's center account. If sufficient funds are not available from these sources, the *Division of Finance* will reimburse the center's account through the Welfare Fund. The inmate will be responsible for repayment of the loan. A record of this debt will be maintained in the SCDC inmate restitution system. Funds will be deducted, as available, from the inmate's E. H. Cooper Trust Fund Account until the debt is paid in full.

**2.9.8 Laundry Expenses:** Work program inmate's E. H. Cooper account(s) will be debited an additional \$2.00 for every box of detergent they purchase from the Canteen to offset the cost, repair and utilities associated with the washers and dryers they will be using to wash/dry their clothes.

### 3. CLOSING INMATE WORK RELEASE PROGRAM ACCOUNTS:

**3.1 Outstanding Medical Bills and Initial Loans:** Prior to closing any account, the available funds will be used to pay any outstanding medical bills and initial program loan obligations of the inmate incurred while in the program. Per the work program policy/procedure and agreement, inmates are required to pay all fees and deductions from all wages earned while in the work release program. Center personnel will ensure that outstanding payroll earnings are immediately picked up by the designated staff and deposited to the account.

**3.2 Removal From Work Release Program and Transfer From Pre-Release Center:** Inmates removed from the work release program and center who will not be returned to the program will have funds in excess of the mandatory savings and all outstanding obligations transferred to their Cooper Trust Fund account.

**3.3 Release:** On their day of release from SCDC custody, inmates will receive a check for their account balance.

**3.4 Parole, Probation, or Other Community Supervision Early Release Programs Under Operation of the S.C. Department Of Probation, Parole and Pardon Services (SCDPPS):** Inmates released under these programs will receive (1) any available funds in excess of the mandatory savings and (2) the first \$200 of mandatory savings. All mandatory savings in excess of the \$200 received by the inmate will be sent to SCDPPS.

**NOTE: Labor Crew Rollback From Work Release Program:** Inmates who are removed from the work release employment program, but who remain in the labor crew program, will still have their funds retained in the work release program account. Inmates may have their available funds (funds in excess of mandatory savings) transferred to their Cooper Trust Fund account at rate of \$20 per week, provided that all outstanding medical obligations have been paid.

#### 4. RECEIPTS AND DEPOSITS:

4.1 When a program inmate's check is submitted, the center employee accepting the monies will issue an original pre-numbered receipt to the inmate immediately. The center accounting technician will not be involved in the receipting process. All checks will be stamped "For Deposit Only to Community Services" on the reverse side. The copy will remain in the receipt book and the monies will be submitted to the employee responsible for work center accounts. Receipt books may be obtained from the *Division of Finance*.

4.2 Each center will deposit inmate funds to the consolidated Community Services bank account at least weekly. A carbon copy of the bank validated deposit slip will be submitted to the Division of Finance no later than Monday of each week for the previous week's receipts.

4.3 All monies collected at the center will be placed daily in an officially designated and secure location. (4-ACRS-7D-21)

#### 5. DEFINITIONS: NONE

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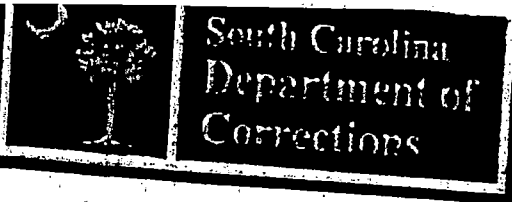
s/ Robert E. Ward, Acting Director

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT.

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**S.C. SUPREME COURT**



\*EXHIBIT #8

# SCDC POLICY/PROCEDURE

LEE CORRECTIONAL INST,  
LIBRARY SERVICE

**NUMBER:** ADM-15.12

**TITLE:** E.H. COOPER TRUST FUND

**ISSUE DATE:** March 1, 2006

**RESPONSIBLE AUTHORITY:** DIVISION OF BUDGET AND RESOURCE MANAGEMENT  
**OPERATIONS MANUAL:** ADMINISTRATION

**SUPERSEDES:** ADM-15.12 (December 1, 2002)

**RELEVANT SCDC FORMS/SUPPLIES:** 10-7, 10-14, 15-1, 15-14, 15-15, 15-20, 18-15, 19-11

**CA/CAC STANDARDS:** 4-ACRS-7D-17, 4-ACRS-7D-22, 4-4041, 4-4033, 4-4044, 4-4045, 4-4046, 4-4047

**STATE/FEDERAL STATUTES:** S.C. State Unclaimed Property Laws

**NOTE:** INMATES WILL BE RESPONSIBLE FOR NOTIFYING THEIR FAMILIES, FRIENDS, AND CORRESPONDENTS OF THIS POLICY/PROCEDURE.

**NOTE:** For security reasons, additional procedures and instructions are included separately in ADM-15.12B, which is a RESTRICTED policy/procedure.

**PURPOSE:** To establish guidelines for the deposit, withdrawal, and administration of inmates' personal funds held in the Agency's trust fund entitled E.H. Cooper Trust Fund (also referred to as Cooper Trust Fund or EHC).

**POLICY STATEMENT:** Inmates will be afforded the opportunity to deposit personal funds in, and to make withdrawals from, the E.H. Cooper Trust Fund. Designated SCDC personnel will deposit, withdraw, and safeguard these monies in strict compliance with applicable Agency policies/procedures; with state statutes, regulations, and guidelines; and according to generally accepted accounting principles. (4-ACRS-7D-17, 4-ACRS-7D-22, 4-4031, 4-4045)

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**SPECIFIC PROCEDURES:**

**1 RESPONSIBLE AUTHORITY:**

- 1.1 The Chief, Financial Accounting Branch, will administer the E.H. Cooper Trust Fund, herein referred to as the Cooper Trust Fund.
- 1.2 The Warden of each institution will be responsible for designating at least two (2) employees to be responsible for making Cooper Trust Fund data entries.

**2 CASH DEPOSITS: (NOTE: Refer to SCDC Policy/Procedure ADM-15.12B for additional deposit instructions and information.)**

2.1 Cash deposits will be made for new admissions, re-admissions, or inmates re-entering SCDC from other correctional jurisdictions, *provided* these funds *are* not considered contraband in accordance with SCDC Policy/Procedure *OP-22.35, "Contraband Control."* The following will apply:

- 2.1.1 Only U.S. coins and currency will be acceptable for cash deposit.
- 2.1.2 For allowable cash deposits, the inmate will be issued an SCDC Form 15-15, "E.H. Cooper Trust Fund Receipt."

- 2.2 No cash or other funds will be accepted by any SCDC employee from a visitor for deposit.
- 2.3 No cash received through the mail for an inmate will be accepted for deposit to an inmate's account. Cash received through the mail will be processed in accordance with SCDC Policy/Procedure PS-10.08, "Inmate Correspondence Privileges."

2.4 **Coin:** No damaged (unusable) or contaminated coin will be accepted by the banking system for deposit; therefore, the SCDC will refuse to accept any of these coins for deposit.

2.5 **Currency:** Contaminated paper currency must be sealed in a clear plastic bag with an enclosed deposit slip for the amount of these items only. The serial number of each bill must be listed on the deposit slip. The bank will process currency subject to verification of the Federal Reserve depository. Damaged bills which are unusable will not be accepted by the SCDC for deposit. Any currency returned by the bank will result in a debit of the applicable account.

**3 MONEY ORDER DEPOSITS:**

3.1 **Accepted Types:** U.S. Postal Service, Western Union, and Canadian Postal Service (ONLY if

Other type of money order will be accepted for deposit to the Cooper Trust Fund. If any money order is received for an inmate, the money order will be returned to sender in accordance with SCDC Policy/Procedure PS-10.08, "Inmate Correspondence Privileges."

3.2 Money orders will only be accepted for deposit when mailed to the below post office box address: (Note: Money orders mailed to an institution will be returned to the sender with the postage cost charged to the inmate, pursuant to SCDC Policy/Procedure PS-10.08.)

SCDC COOPER TRUST FUND  
POST OFFICE BOX 102111  
COLUMBIA, SC 29221-5011

3.3 Completion of Money Order : To ensure accurate processing of a money order, the sender must follow all instructions, below:

3.3.1 The sender must make the money order payable to "Cooper Trust Fund for Inmate # \_\_\_\_\_."

3.3.2 The sender must forward a properly completed SCDC Form 15-14, "Cooper Trust Fund," with the money order.

3.3.3 No other items (such as letters, birthday cards, etc.) may be included with the money order. If other items are included, the entire contents will be returned to sender at the inmate's expense.

3.3.4 Notice of Return: Inmates whose mail has been returned to the sender by the Financial Accounting Branch will receive a "Notice of Returned Items-Central *Cooper Receipting* Returns Report." This report will include all returns by the Financial Accounting Branch. The institutional Cooper Trust Fund designee will print the reports for weekly distribution to inmates having returned mail from the Financial Accounting Branch in lieu of SCDC Form 10-7, "Notice of Rejected Incoming/Outgoing Correspondence," and SCDC Form 10-14, "Agreement to Debit E.H. Cooper Account." However, if the cost of mailing the returned item(s) exceeds the minimum first-class postage fee, the Financial Accounting Branch will send the inmate an SCDC Form 10-14 noting the extra cost. Reports will be produced weekly (on Wednesday) for the previous week. Institutions must print the reports and distribute them prior to the following Wednesday.

3.4 Posting the Money Order: An inmate will receive notification of each money order credited to the Cooper Trust Fund account.

(Note: Reports will be produced daily, Monday - Friday, excluding *weekends and* holidays. Institutional Cooper Trust Fund designee(s) must print this report daily since files will be overwritten with each daily run.

4 CHECKS ACCEPTED FOR DEPOSIT: Unless specifically provided for in these procedures, no checks to include personal checks will be accepted for deposit to an inmate's Cooper Trust Fund account.

4.1 Government Checks: Checks issued by other correctional jurisdictions, counties, states, or federal agencies to inmates will be accepted by the institution for deposit. The institutional Cooper Trust Fund designee at the inmate's institution will issue a SCDC Form 15-15, "E.H. Cooper Fund," as a receipt to the inmate. A check issued to an inmate (instead of being issued to the Cooper Trust Fund for the inmate) must be endorsed by the inmate for deposit to the SCDC Cooper Trust Fund. The inmate must endorse/sign the check exactly as his/her name is printed on the front of the check.

On basis, other checks will be accepted, subject to the approval of the Financial Accounting Branch, with the provision that a two (2) week freeze (account hold for amount of deposit) will apply from the date of bank deposit. Check types usually accepted include insurance claim settlements issued by insurance companies, legal settlements issued by attorneys, bank cashier checks, and vendor refunds for purchases paid by Cooper Trust Fund check. The SCDC may limit, restrict, or refuse acceptance of these checks for deposit to the Cooper Trust Fund account.

**4.3 Payee Identification:** Checks must identify the inmate by SCDC inmate name and SCDC number by social security number. If no identification information is provided by the sender/issuer of the check which matches SCDC records, the item will be returned to the sender. The SCDC will **NOT** accept the item for deposit. The payor (issuer) of a check may issue a check payable to the inmate. The following will apply:

**4.3.1** The check must be sent to the inmate at his/her institutional address so that the inmate may endorse the check for deposit to the SCDC Cooper Trust Fund.

**4.3.2** The inmate must sign (endorse) the check exactly as printed on the front of the check.

**4.3.3** The institutional Cooper Trust Fund designee will issue the inmate an SCDC Form 15-15, "E.H. Cooper Trust Fund."

**4.4** Checks issued payable to the SCDC Cooper Trust Fund for an inmate may be sent to the institution for deposit or directly to the Financial Accounting Branch. The check or supporting information must identify the inmate by inmate name and SCDC number (or social security number). These checks do not require the inmate's signature for endorsement. The employee responsible for Cooper Trust Fund at the inmate's institution will issue an SCDC Form 15-15, "E.H. Cooper Trust Fund," to the inmate for checks received by the institution. For checks received by the Financial Accounting Branch, the inmate will ONLY receive the "Notice Report, E.H. Cooper Deposit and Money Order," printed by the institution.

**5 ELECTRONIC CASH AND CREDIT CARD TRANSFERS:** Inmates may receive deposits to their Cooper Trust Accounts by the following additional sources:

**5.1** Money may be sent from nearly 45, 000 Western Union Agent locations nationwide via the Quick Collect Method. This service is available online at [www.westernunion.com](http://www.westernunion.com) or Credit/Debit Card money transfers may be used by phone (1-800-634-3422). Completion of the blue Quick Collect Form will include the following information from the sender:

- Pay to: South Carolina Department of Corrections
- Code City/State: SCDOC/SC
- Account number: SCDC Inmate number, last name, first name

**5.2 JPAY:** Money may be sent via the Internet at [www.jpays.com](http://www.jpays.com) or credit/debit cards are accepted by telephone at 1-800-574-JPAY (574-5729).

**6 VOID DEPOSIT:** If the check received for deposit is denied and/or returned to SCDC, the inmate's Cooper Trust Fund account will be immediately debited for the amount of receipt.

**7 WITHDRAWALS:**

**7.1** An inmate may utilize the Cooper Trust Fund to purchase goods and services from the SCDC, as permitted or restricted by the SCDC, through the use of his/her inmate identification card. A deduction for the total will be posted to the inmate's account at the time of purchase.

requesting issuance of checks from their accounts must pay a processing fee for each check. The SCDC will supply the envelope and postage to mail the check. This fee will be automatically deducted from an inmate's Cooper Trust Fund account at the time of the check request. An inmate must have funds available for the requested check amount and the full processing fee in order to have a check request completed. The fee, set by the Agency Director, will be posted in each institution, and may be modified at any time. The fee is non-refundable and will not be waived except for entry errors. No fee will be charged for the following check types which are not mailed:

7.2.1 A check payable to an inmate prior to his/her release which is returned to the institution for delivery to the inmate prior to release (i.e., RL transaction type); and

7.2.2 A check issued to the SCDC for reimbursements, etc. (i.e., RI transaction type).

**7.3 Requests for Checks:** An inmate may request a check payable to an individual or vendor (business) by completing SCDC Form 15-1, "Cooper Trust Fund Withdrawal," except as limited or prohibited by this or other applicable SCDC policies/procedures. An inmate must complete all information requested on SCDC Form 15-1, to include the inmate's full name and SCDC number, amount of check request, payee's name, and mailing address. The payee will be designated as either an individual or vendor.

**7.4 Checks to Vendors:** If the payee is a vendor, an invoice, payment form, order form, or remittance advice bearing the vendor's name and address and showing the item for which payment is made must be attached to SCDC Form 15-1. The inmate must mark the "yes" block. Financial Accounting personnel will process the check request and mail the attachment with the check to the vendor.

7.4.1 Institutional mailroom personnel or the Cooper designee will staple the attachment to the BACK of the original (white copy) of SCDC Form 15-1.

7.4.2 The inmate will be responsible for including the correct billing account number, payment number, case number, item order number, or other information needed by the vendor to process the check payment.

7.4.3 If an inmate is ordering goods to be mailed to him/her at SCDC, then s/he must provide the mailing address of his/her current institutional location. Any orders sent by a vendor to SCDC Headquarters will be returned by Financial Accounting to the vendor at the inmate's expense.

**Note:** It is the inmate's responsibility to ensure that the items which s/he is ordering are not contraband or unauthorized property.

**7.5 Checks to Financial Institutions:** If the payee is a financial institution, appropriate bank documentation must be on file with the Financial Accounting Branch Cooper Trust fund office. Checks will only be issued where the inmate's name is the same as the account holder. Initially, the inmate must request that the financial institution mail documentation to him/her at the institution. The institutional Cooper designee will forward this documentation to the Financial Accounting Branch with the inmate's first check request. For subsequent withdrawals, the inmate must attach a sheet of paper showing the account name and the account number. The Financial Accounting Branch will maintain a file of all inmates' bank documentation and will compare this documentation to any requests for checks to be sent to a financial institution. The name of the financial institution should be entered in the "Vendor/Business" Payee Information area of SCDC Form 15-1.

**7.6 Checks to Religious or Charitable Organizations:** If the payee is a religious or charitable organization, the payee must be recognized by the United States Internal Revenue Service as a charitable or religious organization meeting the requirements of Section 501(c)(3) of the Tax Code. (The name of

... should be entered in the "Vendor/Business" Payee Information  
area of the SCDC Form 15-1.) Attachments are optional. Mark "yes" or "no" as appropriate.

77 **Checks to Individuals:** If the payee is an individual, the individual must be an immediate family member currently on the inmate's approved visiting list. Exceptions to the above must be approved in writing by the Warden and then only upon compelling circumstances. Checks may only be mailed to the address listed for the family member as it is shown on the inmate's approved visiting list. The Cooper designee will verify the address listed on the SCDC Form 15-1 by checking the approved visiting list. Requests that are not properly addressed will not be processed.

78 **Checks Required by State or Federal Orders:** Payments as directed by state or federal court orders will be honored.

79 The use of a form, sheet, or enclosure attachment is ONLY permitted when mailing with a check to a business/vendor. Absolutely NO letters, cards, etc., will be accepted for mailing with checks to individuals. Inmates must mail any personal letters separately.

710 The SCDC has the right to require the inmate to verify the identity of any payee. If the inmate is unable or refuses to comply, the check request will be denied.

### 8 VERIFICATION OF SCDC FORM 15-1, "COOPER TRUST FUND WITHDRAWALS:

81 An employee(s) designated by the Warden will witness the completion and signing of SCDC Form 15-1 by the inmate. The employee will verify the identity of the inmate completing the form as the account holder, by comparing the inmate's SCDC photograph on his/her identification card to the inmate physically completing the form. Additionally, the employee will perform or witness the fingerprinting of the inmate as required for completion of the form.

82 The employee will acknowledge completion of the identification process by signing SCDC Form 15-1 where indicated.

83 The institution's Cooper Trust Fund designee will review all information on SCDC Form 15-1, ensuring that the information is printed clearly and legible. If SCDC Form 15-1 cannot be read clearly, the form will not be accepted, and a new form must be prepared by the inmate.

84 SCDC Form 15-1 will be separated. The last copy will be given to the inmate. The second (yellow) copy will be retained by the institutional Cooper Trust Fund designee for *four (4) years* for *management review* documentation. The original will be forwarded to the Financial Accounting Branch.

85 The institution's Cooper Trust designee will enter the check request into the Cooper Trust Fund system. The employee keying the transaction will be responsible for ensuring that ALL information is properly entered and reviewed prior to completion of the check request entry.

86 Once entered, the Cooper Trust Fund designee will batch the "Cooper Trust Fund Withdrawals" by date keyed. Within the date's batch, they will be sorted in inmate number order. The Cooper Trust Fund designee should separately batch the forms by date of entry and forward to the Financial Accounting Branch, Cooper Trust Fund. Forms must be delivered by use of the accounting blue bag and bus/mail transportation system OR be hand carried to the Financial Accounting Branch, Cooper Trust Fund.

### CHECK ISSUE SCHEDULE:

An inmate should generally allow one (1) - two (2) weeks from the date that the completed SCDC

... withdrawal, is turned in to the institution's Cooper Trust Fund assignee until the date the check will be issued.

2 Upon receipt by Financial Accounting of properly completed and entered single check (checks mailed to individuals and vendors) withdrawal forms, requests will be verified by inmate name, SCDC number, payee, entry type, and amount. Upon verification, the requests will process with the next weekly check run.

\* 3 Checks payable to an inmate pending release (RL type) or payable to SCDC for return to institution (RI type) will be issued within two (2) working days of receipt of properly completed withdrawal forms. The institution must allow additional time for the form to travel to the Financial Accounting Branch and return to the institution.

#### **10. CHECK VOIDED:**

10.1 If a check is returned to the Financial Accounting Branch to be voided, a credit will be posted to the inmate's account and the check will be physically voided. No fee will apply.

\* 10.2 **Stale Dated Checks:** Outstanding checks will no longer be honored by the bank when they are deemed old (stale dated). The stale dating of checks does not apply to any check that has been paid or previously voided. The process required by the bank and SCDC normally requires 8-12 months to complete from the check issue date. Once a check becomes stale dated, SCDC will credit the inmate's Cooper Trust Fund account for the amount of the check.

#### **11. STOP PAYMENT:**

11.1 When an inmate has completed and signed SCDC Form 15-1, the inmate may NOT withdraw the request nor request stop payment of a check.

#### **12. INMATE TO INMATE TRANSACTIONS/WITHDRAWALS:**

12.1 All inmate to inmate transactions must be approved by the respective Warden. (4-4047)

12.2 The inmate-sender must complete SCDC Form 15-1, "Cooper Trust Fund Withdrawal," and include the following:

- **Payee Name:** Name of inmate receiving the check;
- **Payee Address (line 1):** Receiving inmate SCDC identification number and institution name;
- **Payee Address (line 2):** Mailing address of receiving institution;
- **City, State, & Zip:** Mailing address of receiving institution.

12.3 The Warden of the sender's institution must indicate his/her approval on SCDC Form 15-1.

12.4 Approved forms will be sent to Financial Accounting for processing. Transfers will be completed according to the check issue schedule, as outlined in Section Nine (9).

12.5 See SCDC Policy/Procedure PS-10.06, "Inmate Hobbycraft Program," for information on inmate-employee and/or others sales of hobbycraft items.

#### **13. CLOSEOUT OF INMATE ACCOUNTS:**

13.1 Checks Requested for Delivery by an institution to inmate Prior to Release:

... release may request a check for the balance of his/her account or a LESSER amount prior to release by using SCDC Form 15-1, "Cooper Trust Fund Withdrawal." These checks will be issued and returned to the institutional Cooper Trust Fund designee. The institutional Cooper Trust Fund designee must maintain these checks in a secure location until the time of the inmate's release.

13.1.2 The institutional Cooper Trust Fund designee should enter these withdrawals using the release type (RL) of check request transaction. The inmate's name will be automatically stored in the payee field.

13.1.3 These transactions should be combined in one batch with other SK and RI types keyed that day. Sort the day's batch in inmate number order and forward to Financial Accounting.

13.1.4 NO release checks will be automatically cut by Financial Accounting Branch personnel for any institution. **INMATES ARE RESPONSIBLE FOR REQUESTING THEIR FUNDS AT LEAST TWO (2) WEEKS PRIOR TO RELEASE.** Institutions should work with inmates scheduled for max-out and other release programs in processing their checks in a timely manner.

### 13.2 Inmate Requests to Mail Release Checks to Outside Address After Release:

13.2.1 An inmate must complete SCDC Form 15-1, "Cooper Trust Fund Withdrawal," providing his/her name, SCDC number, and a forwarding (outside) address where the check is to be mailed after release. (Inmates eligible for hourly construction inmate pay, hourly industries inmate pay, or industries private sector pay generally receive pay after their release; therefore, they should complete SCDC Form 15-1 with the forwarding address.)

13.2.2 The institutional Cooper Trust Fund designee will key the transaction using the single check (SK) transaction type and forward the completed SCDC Form 15-1 to Financial Accounting for processing.

13.2.3 If the check cannot be requested until after the inmate is released (out of the institutional count), the institutional Cooper Trust Fund designee must forward the completed SCDC Form 15-1 to Financial Accounting for entry.

13.2.4 Accounting personnel will mail the check to the inmate at the address provided on SCDC Form 15-1.

13.2.5 Inmates released from SCDC custody who did not request their funds prior to release must mail a written request to the Financial Accounting Branch to receive his/her funds. Requests should be mailed to the following address:

SC Department of Corrections  
Financial Accounting - Cooper Trust  
PO Box 21787  
Columbia, SC 29221-1787

13.2.6 Adequate verification of identity will be required. At a minimum, the inmate must include: his/her name, inmate number, social security number, date of birth, and his/her signature. The inmate must also include the address where the check is to be mailed. **NO WALK-IN PICKUPS OF CHECKS WILL BE PERMITTED.** All checks will be issued with the next scheduled check run.

### 13.3 EMPLOYEES ARE PROHIBITED FROM CASHING CHECKS ISSUED TO INMATES.

TRANSACTION TYPE): An inmate may request a check to reimburse the SCDC (e.g., payment of elective outside medical transportation costs, etc.). The inmate must complete SCDC Form 15-1, "Cooper Trust Fund Withdrawal." The following will apply:

- The Payee name should be "SCDC."
- Payee Address (inmate should leave this section blank.).
- The institutional Cooper Trust Fund designee at the inmate's institution may use the address line to notify the SCDC of the accounting codes and other necessary information for posting of payment. Other memos or notes may be attached as necessary to explain the transaction.
- The computer system will not capture address data for this type of entry (address field blanks); therefore, address information does not need to be keyed.

4.1 The institutional Cooper Trust Fund designee at the inmate's institution will enter the check request using the return to institution (RI) transaction type.

4.2 The Financial Accounting Branch will issue a check and receipt if sufficient information for posting is provided. Otherwise, the check will be returned to the institutional Cooper Trust Fund designee at the inmate's institution for re-processing.

5. **INTEREST:** In accordance with Internal Revenue Service requirements, interest payments will only be made to those inmates providing a valid social security number which has been recorded in the automated inmate record at the time of interest-posting. Funds of the Cooper Trust Fund will be invested and managed by the State of South Carolina on behalf of the SCDC. Interest will be paid to all inmates having a monthly average balance of more than \$10.00 for the monthly earning period. The interest rate will be comparable to rates paid for similar accounts and services at local financial institutions. Interest will no longer accrue for inmates who escape, complete their sentence, are released to community supervision, or are deceased. Interest earned notices will be issued to account holders in accordance with Internal Revenue Service (IRS) requirements. Information will also be reported to the IRS as required by the IRS. (4-4044, 4-4046)

6. **IDENTIFICATION (ID) CARD USE AS COOPER TRUST FUND DEBIT INSTRUMENT:** SCDC inmate ID cards enables an inmate having sufficient funds in the Cooper Trust Fund to purchase goods and services from SCDC by use of his/her ID card as a debit card. A debit (deduction) will be posted to the inmate's Cooper Trust Fund account at the time of purchase. Inmates and SCDC staff are responsible for knowledge of related information contained in SCDC Policy/Procedure OP-21.06, "Inmate Identification Card."

15.1 The inmate is responsible for security of his/her ID card at all times.

15.2 The inmate is responsible for all purchases and charges made to his/her account by use of the ID card.

15.3 The cardholder is responsible for reporting any known or suspected problems with his/her account.

15.4 If an SCDC employee removes the ID card from an inmate's possession, this action will be documented in accordance with SCDC Policy/Procedure OP-21.06, "Inmate Identification Card."

15.5 **Lost/Stolen ID Card:** Inmates are responsible for reporting any loss, theft, abuse, or damage (ID no longer usable) to the designated institution staff immediately. Refer to SCDC Policy/Procedure OP-21.06, "Inmate Identification Card" for additional information.

7. **ACCOUNT INFORMATION :**

...purchase, a sales receipt will be issued to the purchaser (inmate, purchaser should retain this receipt. The canteen receipt will show the weekly spending limit available to the inmate for the remainder of the week. This amount will be the lesser of the available cash balance in the account OR the inmate's spending limit minus all cashless purchases (canteen, special fund, copy, and postage transactions) made during the weekly period.

## **17.2 Account Balance:**

**17.2.1** The inmate will be sent a "Notice of Receipt" upon receipt of a money order or other deposit item. In addition to information regarding the deposit, the inmate's current account balance after posting of a money order or other deposit will also be shown. This notice will be printed prior to any restitution deductions; therefore, the balance would not reflect the restitution deductions, if any.

**17.2.2** No other information will be provided regarding account balances except as obtained by written request for the monthly account statement.

**17.2.3** SCDC staff must not disclose information regarding an inmate's account balance or transactions to other inmates, family, or non-SCDC parties. Exceptions will only be made in cases where the inmate has provided the institutional designee or the Financial Accounting Branch with written permission to release information to a specified party. Information will also be provided as directed upon receipt of a court order or subpoena.

## **17.3 Account Statement:**

**17.3.1** Inmates may request a monthly statement listing all account transactions for the period upon submission of an SCDC Form 19-11, "Request to Staff Member," to the institution's Cooper Trust Fund designee.

**17.3.2** The inmate must turn in the request by the fifth (5th) calendar day of each month to receive a statement for the prior month. If the request is not made by this deadline, no statement for the prior month will be issued.

**17.3.3** The institutional Cooper Trust Fund designee will provide an account statement to the inmate by the 10th calendar day of the month.

**17.4 Reporting of Mistake in Account:** If an inmate thinks a mistake has been made with his/her account, an SCDC Form 19-11, "Inmate Request to Staff Member," must be completed and turned in to the institutional Cooper Trust Fund designee no later than 75 calendar days following the end of the month in which the mistake was made.

**17.4.1 Example:** Inmate thinks a mistake happened on May 10. Inmate must complete and turn in SCDC Form 19-11 by August 15. (End of month with error is May 31. Seventy-five (75) days after May 31 is August 15, making the deadline August 15.)

**17.4.2** On this form, the inmate must list his/her name, SCDC number, date of suspected mistake, amount in question, and a description of the mistake/error/problem.

**17.4.3 SCDC Investigation of Report of Account Mistake:** The institutional Cooper Trust Fund designee will give the inmate the results of its review or correct the error within ten (10) working days. If the problem cannot be resolved within this period, the Financial Accounting Branch will notify the inmate in writing within ten (10) working days that the investigation is continuing.

explain why the account is correct and record the necessary adjustments to the account.

**17.5 Transaction Posting Errors:** The Financial Accounting Branch may debit or credit an inmate's account to correct identified transaction posting errors. The inmate will be notified of these adjustments. Account balance computation errors will be corrected as noted.

## **18. EMPLOYEE ACCOUNTS:**

**18.1 Deposits:** Upon issue of SCDC identification card, employees, to include temporary, and contract vendors who work in SCDC institutions may establish a Cooper Trust Fund account for the purpose of using the SCDC Canteen.

**18.1.1 Cash, U.S. Postal Service, and Western Union Money Orders, or personal checks will be accepted for deposit. NO third-party checks will be accepted.**

**18.1.2 Deposits will be in the amount of at least \$5.00 per deposit, but will not exceed \$50.00. The account balance may not exceed \$55.00 at any time.**

**18.1.3 The institutional Cooper Trust Fund designee will accept the funds and issue SCDC Form 15-15, "E.H. Cooper Trust Fund." The institutional Cooper Trust Fund designees will process separate bank deposits for employees (i.e., employee deposits will not be combined with inmate deposits). The validated bank deposit slip and SCDC Form 15-15 will be forwarded to the Financial Accounting Branch for posting.**

**18.2 Withdrawals:** No withdrawals will be permitted except for canteen purchases of items to be consumed on SCDC property. Accounts may be closed by submitting a written request to the Financial Accounting Branch, which will issue a check upon verification of request.

**18.3 If an employee resigns or is terminated from SCDC employment and does not close his/her account, the account will *be maintained* for six (6) months. After six (6) months, the account will be considered abandoned. Any account with a balance of less than ten dollars (\$10.00) will be closed and funds transferred to offset operating costs of the Cooper Trust Fund. Abandoned funds will be handled in accordance with the South Carolina State Unclaimed Property Laws.**

**19. WORK RELEASE PROGRAM INMATES:** For additional information regarding funds earned by Work Release Program Inmates, see SCDC policies/procedures relating to Community Services Work Release Program Accounting.

**20. UNCLAIMED ACCOUNTS:** Pursuant to S.C. State Abandoned Property Laws and Statutes At Large, General and Permanent Laws - 2002, Proviso 37.8, any account remaining dormant for a period of five (5) years shall be deposited into the Cooper Special Projects Fund. A letter will be sent to the last known address of the account holder whose balance is \$50.00 or greater.

**21. ESCAPED INMATES:** Inmates who escape from SCDC will have their accounts frozen. No withdrawals will be permitted upon an inmate's return until completion of related disciplinary action(s) and assessment of restitution charges.

**22. DECEASED INMATES:** Funds remaining in a deceased inmate's account in excess of \$25.00 will require receipt of a written Probate Court Order directing distribution of the funds prior to their release.

**23. DNA FEE:** DNA tests are required for inmates convicted of certain charges. See SCDC Policy/Procedure OP-21.09, "Inmate Records Plan," for an explanation of DNA legislation.

NIKKI R. HALEY, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

INSURANCE RESERVE FUND

POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211  
(803) 737-0020  
FAX: (803) 737-0042

\*EXHIBIT- #9

HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE  
CHAIRMAN, HOUSE WAYS AND MEANS

ELEANOR KITZMAN  
EXECUTIVE DIRECTOR

July 22, 2011

Basil Akbar  
990 Wisacky Highway  
Bishopville, SC 29010

RE: Our Insured: SCDC  
IRF Claim Number: 75046

Dear Mr. Akbar:

We have carefully examined the facts and circumstances of your claim concerning a financial account from your participation in a work release program between 1979 and 1981. After reviewing all available information, it has been determined that there is no action that we can take regarding this situation.

Sincerely,

  
Tony Chapman  
Senior Claims Representative

CC:

INMATE GRIEVANCE FOR  
**RECEIVED**  
STEP 1

INMATE NAME: Basil W. Akbar JUN 16 2010  
SCDC NUMBER: 065498 INMATE GRIEVANCE  
INSTITUTION: Lee County  
HOUSING UNIT: Richland C-119 JUN 09 2010  
WORK ASSIGNMENT: Horticulture

Office Use Only  
Grievance No. Lee C.I. 1598-10  
Code: General IP  
Policy \_\_\_\_\_  
Disc. Hear. \_\_\_\_\_  
Class. \_\_\_\_\_  
Date Received 6/10/10  
IGC Initials \_\_\_\_\_

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) Grievance Clerk  
L. Johnson's Reckless indiscretion and conspiracy against my Civil Rights. Where Grievant  
Sought to have his E.H. COOPER WORK RELEASE MANDATORY LONG TERM ESCROW SAVINGS ACCOUNT  
Made transparent to him, as to status & balance which Head Quarters FINANCIAL BRANCH  
fail to do, lead to REASONS to believe that funds from my account #065498 was missing or  
UNJUSTLY SEIZED WITHOUT NOTICE OR CONSENT, DEPRIVING ME OF PROPERTY IN VIOLATION OF 4<sup>th</sup> and  
14<sup>th</sup> Amend. State & Federal Const. Grievant has attempted to use grievance system to remedy  
Complaint [ Lee C.I. # 2323-09; Lee C.I. # 0813-10; Lee C.I. # 1270-10 ], L. JOHNSON has repeatedly and erroneously  
denied me access to system upon insufficient reasoning. My interest to funds in my  
PERSONAL ACCOUNT is a PROTECTED PROPERTY INTEREST. \* CONTINUE ON ATTACHED SHEET \*

ACTION REQUESTED: (1) That WORK RELEASE ACCOUNT #065498 be made transparent to me.  
(2) That Grievances # Lee C.I. 2323-09; # Lee C.I. 0813-10; & Lee C.I. 1270-10 be processed. (3) That  
L. JOHNSON and C. JAMES be Reprimanded and Replaced.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:  
Wrote: L. Johnson April 23, 10 ... C. James disposition Reply April 23, 2010  
M. Roof & D. Long February 26, 2010 ... Reply pending

Basil W. Akbar June 2, 2010  
Grievant Signature Date

ACTION TAKEN BY IGC:  
In Accordance with Agency Policy, GA 01.12, "Inmate Grievance System", 17.3 A grievance concerning the performance of any Institutional IGC/IGA shall be referred to the Chief/Designee, Inmate Grievance Branch, for investigation and response. Grievance forwarded on 06/10/10. lmj

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

IGC Signature Date

Grievant Signature Date  
EXHIBITS ATTACHED 6 pages

\*CONTINUE FROM STEP 1 FORM:

THERE IS NO STATUTE OF LIMITATION TO SEEK STATUS / BALANCE IN AN ACCOUNT. GRIEDANT HAS A ABSOLUTE UNQUALIFIED RIGHT TO ACCESS AND SEEK STATUS OF ANY AND ALL PERSONAL SAVINGS ACCOUNT MANAGED BY SCDC, SUCH INQUIRY DOES NOT DEPEND ON WHETHER AN INCIDENT HAS OCCURRED AS L. JOHNSON HAS ALLUDED ON EACH GRIEDANCE, HOWEVER NO INCIDENT EXIST UNTIL GRIEDANT IS MADE AWARE OF WRONG, OR DEPRIVED OF AN INVESTED RIGHT, AND/OR IMPENDING THREAT TO PERSON / PROPERTY. SUSPICION WAS AROUSE AUGUST 2009, SEE EX #1 REQUEST TO STAFF DISPOSITION DATED JUNE 18, 2009, RECEIVED BY GRIEDANT JULY 6, 09. ON JULY 7, 09 GRIEDANT REFUSED D. LONG'S ACCOUNT VIA CERTIFIED REQUEST TO STAFF, CURRENTLY PENDING REPLY. SEE EX #2

ON AUGUST 17, 09 INITIAL GRIEDANCE WAS PROPERLY FILED. MOREOVER, GRIEDANT WAS NOT OFFICIALLY INFORMED OF SEIZURE OF HIS ACCOUNT OR DISCLOSED TO GRIEDANT UNTIL APRIL 28, 10, SEE EX #3, AND GRIEDANCE WAS PROMPTLY AND PROPERLY FILED. NO FAIR NOTICE WAS GIVEN PRIOR TO SAID DATE, THEREFORE GRIEDANT SHOULD NOT HAVE BEEN SANCTIONED WITH A TIME FRAME.

L. JOHNSON HAS IMPOSED A ILLEGAL BURDEN ON ME, AND IMPEDED LEGAL RIGHTS TO INQUIRE AND SEEK RELIEF, OR EXHAUST ADMINISTRATIVE INFORMAL RESOLUTION THROUGH STEPS IN GRIEDANCE PROCEDURE, AND SHE HAS EXCEEDED HER AUTHORITY AND RESPONSIBILITY BY WEIGHING THE MERITS OF COMPLAINT AND MAKING ADMINISTRATIVE DETERMINATION. MY PERSONAL ACCOUNT DOES NOT LIE UPON THE WHIM OF A GRIEDANCE CLERK.

L. JOHNSON IS CLEARLY OBLIVIOUS OF HER DUTY OWED TO ME / GENERAL POPULATION IN A UNBIAS MANNER, AND IS INSENSITIVE TO RECOGNIZE OR ACKNOWLEDGE WRONG AND ABUSIVE TREATMENT, DUE TO HER OBLIGATION / INVESTED INTEREST TO RESOLVE DISPUTES IN FAVOR OF AGENCY, STAFF AND EMPLOYEES. L. JOHNSON'S ACTION AND OMISSION ARE KNOWINGLY, INTENTIONAL AND CALCULATED TO DENY JUST RELIEF, AND TO IMPLY THAT I HAVE NO RIGHT TO KNOW ABOUT MY PERSONAL PROPERTY (MONEY'S), OR DEMAND INFORMATION FROM THE ENTITY (SCDC) CHARGED WITH THE FIDUCIARY DUTY / OBLIGATION TO ME THE BENEFICIARY OF SAID TRUST, APPARENTLY THIS OBLIGATION HAS BEEN BREACHED AND L. JOHNSON IS CONSPIRING WITH RESPONSIBLE OFFICIALS TO FURTHER THE CAUSE.

IT IS ALSO APPARENT THAT THE GRIEDANCE SYSTEM IS INEFFECTIVE, DISCRIMINATORY AND FUTILE, AND SERVES MERELY AS A PRELIMINARY STEP TOWARD LEGAL ACTION. L. JOHNSON'S OMISSION / CONDUCT IS VERY SERIOUS AND MAY CONSTITUTE A FELONY CONSPIRACY AGAINST CIVIL RIGHTS, OBSTRUCTION OF JUSTICE, ETC., FOR FAILURE TO ACT AFTER BEING ALERTED OF POSSIBLE CRIMINAL MISCONDUCT.

CC: CORR & PENALOGY

SLED

FILE

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 2

INMATE NAME: Basil Akbar  
SCDC NUMBER: 065498  
INSTITUTION: Lee CI  
HOUSING UNIT: Rich 119B  
WORK ASSIGNMENT: \_\_\_\_\_

Office Use Only  
Grievance No. Lee CI 1598-10  
Code: General IP  
Policy \_\_\_\_\_  
Disc. Hear. \_\_\_\_\_  
Class. \_\_\_\_\_  
Date Received 4/14/11  
IGC Initials \_\_\_\_\_

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

In accordance with SCDC Policy GA-01.12, "Inmate Grievance System," 17.3, "A grievance concerning the performance of any Institutional Inmate Grievance Coordinator shall be referred to the Chief/Designee, Inmate Grievance Branch, for investigation and response." Therefore your grievance has been forwarded to Central Office for a response.

RECEIVED

JAN 05 2017

S.C. SUPREME COURT

for M. White 3/28/11  
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your grievance. Documentation provided reveals grievance(s) Lee CI 2323-09 and Lee CI 0813-10 were returned to you unprocessed for exceeding the appropriate timeframe by Ms. Johnson, Lee Institutional Grievance Coordinator on October 5, 2009 and April 21, 2010. In accordance with Agency Policy GA-01.12, "Inmate Grievance System," you have fifteen (15) days from the date of an incident to file a grievance. Agency records indicate grievance Lee CI 1270-10 was returned to you unprocessed as a duplicate to Lee CI 0813-10. The allegations you have raised against IGC Johnson cannot be substantiated.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

*I'm refusing to sign stating "it's not a lawsuit and I will be waiving my rights due to order". This is the 2nd attempt to get IGC to sign*

*Witness: [Signature] 4/26/11 4/26/11 C. Jones*

*[Signature]* 4/8/11  
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature \_\_\_\_\_ Date \_\_\_\_\_

*[Signature]* 4/20/11  
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

*I'm Refusing to participate, Refused to*

Raymond SANDERS, Respondent,

v.

Ellis MacDOUGALL, Director, Board of Corrections, State Penitentiary, South Carolina, Appellant.

No. 18198.

Supreme Court of South Carolina.

April 15, 1964.

From an order of the Richland County Court, General Sessions, John A. Mason, J., the state appealed. The Supreme Court, Brailsford, J., held that where the suspended portion of petitioner's sentence had never been put in execution by a court of competent jurisdiction, and the unsuspended portion had been duly served, the petitioner was entitled to release, though the Probation, Parole and Pardon Board had directed that he be returned to the penitentiary to serve the remainder of the original sentence imposed by the court.

Affirmed.

1. Pardon and Parole § 14.3

Prisoner upon release on parole continues to serve sentence outside prison walls. Code 1962, §§ 55-614, 55-616.

2. Pardon and Parole § 1

"Parole" is used in contradistinction to suspended sentence and means leave of absence from prison, during which prisoner remains in legal custody until expiration of sentence. Code 1962, §§ 55-614, 55-616.

See publication Words and Phrases for other judicial constructions and definitions.

3. Pardon and Parole § 14.16

Probation, Parole and Pardon Board is sole judge of whether or not prisoner has violated his parole, and is authorized to cancel any order for parole. Code 1962, §§ 55-614, 55-616.

4. Criminal Law § 982.3(2)

In imposing sentence of imprisonment, court may require service of portion of term and suspend execution for remainder thereof, placing defendant on probation. Code 1962, § 55-591.

5. Criminal Law § 982.9

Probation, Parole and Pardon Board has no jurisdiction to revoke suspension of sentence and place it in execution. Code 1962, § 55-595.

6. Criminal Law § 982.9

Revocation of suspension of execution of sentence involves exercise of judicial discretion and can be done only by court of competent jurisdiction. Code 1962, § 55-595.

7. Criminal Law § 982.8

Where suspended portion of petitioner's sentence had never been put in execution by court of competent jurisdiction, and unsuspended portion had been duly served, petitioner was entitled to release, though Probation, Parole and Pardon Board had directed that he be returned to penitentiary to serve remainder of original sentence imposed by court. Code 1962, §§ 55-591, 55-614, 55-616.

Daniel R. McLeod, Atty. Gen., Edward B. Latimer, Asst. Atty. Gen., Columbia, for appellant.

Robert E. Kneece, Columbia, for respondent.

BRAILSFORD, Justice.

This is an appeal by the State from an order of the Richland County Court directing that the petitioner, Raymond Sanders, be released from imprisonment in the State Penitentiary.

On March 24, 1959, petitioner commenced the service of a sentence theretofore imposed upon him. This sentence was for a

term of five (5) years provided that upon the expiration of the sentence he be and that the same be placed on probation for a term of five (5) years \* \* \*

After being confined until December 1, 1959, petitioner was granted a parole by the Probation, Parole and Pardon Board. The conditions of the parole specified that petitioner be paroled effective 1st of January, 1960, \* \* \* until the expiration of the minimum sentence, to which he was sentenced. The conditions of the parole were set back of this certificate of parole, and he was confined pending the subject to the conditions

On September 4, 1960, petitioner sought an order purporting to grant him a parole and directing that he be released from the "South Carolina Penitentiary" for the remainder of the term of his sentence. The petitioner sought a Writ of Habeas Corpus to set aside the order appealed from. The Board had refused to grant the petitioner reimprisonment for the three year term of his sentence required him to serve the remainder of his sentence, unless otherwise ordered by the Court.

[1-3] A prisoner who continues to serve his sentence outside prison walls. The word "parole" in contradistinction to "suspended sentence" and means a leave of absence from prison during which the prisoner remains in legal custody until the expiration of his sentence. Crooks v. Sanders, 128 S.C. 760, 28 A.L.R. 940; 191 Or. 409, 229 P.2d 1051. Every prisoner who remains in the legal custody of the State may at any time be in

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5-591.

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2.9

suspension of execution  
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1962, §§ 55-591, 55-

Atty. Gen., Edward  
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SANDERS v. MacDOUGALL

Cite as 135 S.E.2d 836

S. C. 837

term of five (5) years, "\* \* \* pro-  
vided that upon the service of three (3)  
years that the balance of the aforesaid  
sentence be and the same is hereby suspend-  
ed and that the said defendant is hereby  
placed on probation for a period of five (5)  
years \* \* \*"

After being confined under this sentence  
until December 1, 1960, petitioner was  
granted a parole by the Probation, Parole  
and Pardon Board. The "Certificate of  
Parole" specified that the prisoner "be  
paroled effective 1st day of December, 1960,

\* \* \* until the expiration of his max-  
imum sentence, to wit March 24, 1964."  
The conditions of parole, printed on the  
back of this certificate, were accepted by  
petitioner, and he was released from con-  
finement pending good behavior and sub-  
ject to the conditions of parole.

On September 4, 1963, the Board issued  
an order purporting to revoke petitioner's  
parole and directing that he be returned to  
the "South Carolina Penitentiary to serve  
the remainder of the original sentence im-  
posed by the Court \* \* \*." Thereupon,  
the petitioner sought and was granted a  
Writ of Habeas Corpus, which resulted in  
the order appealed from. The Court held  
that the Board had no authority to order  
petitioner reimprisoned after the expiration  
of the three year term which his sentence  
required him to serve and while he was en-  
titled to freedom under a suspended sen-  
tence, unless otherwise ordered by the  
Court.

[1-3] A prisoner upon release on parole  
continues to serve his sentence outside the  
prison walls. The word parole is used in  
contra-distinction to suspended sentence  
and means a leave of absence from prison  
during which the prisoner remains in legal  
custody until the expiration of his sentence.  
Crooks v. Sanders, 123 S.C. 28, 115 S.E.  
760, 28 A.L.R. 940; Ex Parte Anderson,  
191 Or. 409, 229 P.2d 633, 230 P.2d 770, 29  
A.L.R.2d 1051. Every paroled prisoner re-  
mains in the legal custody of the Board and  
may at any time be imprisoned on its or-

der. Section 55-614, Code of 1962. The  
Board is the sole judge of whether or not  
a prisoner has violated his parole, and is  
authorized to cancel any order for parole,  
whereupon the prisoner shall "have the  
status of an escaped convict, be arrested  
without warrant and be required to serve  
the part of the sentence that remains un-  
served." Section 55-616, Code of 1962.  
There is no statutory requirement that no-  
tice be given or a hearing held on the ques-  
tion of parole revocation.

[4-6] Under Section 55-591, Code of  
1962, any court of record with criminal  
jurisdiction is authorized to suspend the  
execution of a sentence, in whole or in  
part, and place the defendant on probation.  
In imposing a sentence of imprisonment, the  
court may require the service of a portion  
of the term and suspend the execution of  
the remainder thereof, placing the defend-  
ant on probation. Moore v. Patterson, 203  
S.C. 90, 26 S.E.2d 319, 147 A.L.R. 653. The  
Probation, Parole and Pardon Board has  
no jurisdiction to revoke the suspension of  
a sentence and place it in execution. This  
can be done only by a court of competent  
jurisdiction before which the defendant has  
been taken on a warrant charging a viola-  
tion of the conditions of probation. Sec-  
tion 55-595, Code of 1962. The revocation  
of the suspension of the execution of a  
sentence involves the exercise of judicial  
discretion. State v. White, 218 S.C. 130, 61  
S.E.2d 754.

The unsuspended portion of petitioner's  
sentence expired not later than March 24,  
1962. Had he never been paroled, he would  
have been entitled to a discharge by that  
date. An order revoking parole simply  
restores a defendant to the status he would  
have occupied had this form of leniency  
never been extended to him. The effect of  
such a revocation "does not exceed or  
transcend the effect of the original sen-  
tence." Johnson v. Walls, 185 Ga. 177, 194  
S.E. 380.

Petitioner's parole necessarily expired  
with the expiration of the unsuspended por-

tion of his sentence, because, thereafter, there was no sentence in execution which could be served outside the prison walls, or which required his confinement when the Board revoked its prior action.

[7] The suspended portion of petitioner's sentence never having been put in execution by a court of competent jurisdiction, and the unsuspended portion of said sentence having been duly served, the Court properly ordered that petitioner be discharged from custody.

Affirmed.

TAYLOR, C. J., and MOSS, LEWIS and BUSSEY, JJ., concur.



Watson H. CAMPBELL, Sr., Respondent,

v.

SOUTH CAROLINA STATE HIGHWAY DEPARTMENT, Appellant.

No. 18203.

Supreme Court of South Carolina.

April 17, 1964.

Action for injuries allegedly sustained by motorcyclist as result of negligent maintenance of highways by state highway department. The Common Pleas Court, Greenville County, James H. Price, J., entered judgment for plaintiff and refused defendant's motions for judgment n. o. v. and for new trial and highway department appealed. The Supreme Court, Taylor, C. J., held that whether motorcyclist was guilty of contributory negligence when he crossed to left rut of one lane road to avoid apparent danger and was injured when highway caved in beneath him was jury question.

Affirmed.

### 1. States ⇨191(1.16)

State highway department may be sued for damages only upon terms and conditions of enabling statute. Code 1962, §§ 33-229, 33-232.

### 2. Automobiles ⇨306(2, 7, 8)

In order for motorcyclist to recover from state highway department for injuries allegedly caused by negligence in maintenance of highway, he must prove by preponderance of evidence that highway department was guilty of acts of negligence, or one or more of them, charged against it, and that such acts of negligence were proximate cause of his injuries and that he was not guilty of contributory negligence. Code 1962, §§ 33-229, 33-232.

### 3. Appeal and Error ⇨930(1)

On appeal from judgment for motorcyclist allegedly injured as result of negligent maintenance of highway by state highway department, evidence must be viewed in light most favorable to motorcyclist in considering whether department negligently failed to repair, inspect or warn traveling public of alleged defect in highway. Code 1962, §§ 33-229, 33-232.

### 4. Highways ⇨188

Although highway department is not insurer of safety of travelers over its highways, it has duty to keep highways in reasonably safe condition for travel and to erect and maintain sufficient signs, guardrails and warnings, as may enable users of highways, exercising ordinary care and prudence, to avoid injury to themselves and others.

### 5. Highways ⇨193

Highway department is liable for injuries caused by defects or obstructions in highways only where it has actual or constructive notice thereof. Code 1962, §§ 33-229, 33-232.

### 6. Automobiles ⇨308(7)

Whether highway department had constructive notice of defect in unimproved

mountain road was for injuries sustained traveling in roadbed way caved in. Co 232.

### 7. Automobiles ⇨30

Whether motorcyclist contributory negligent left rut of one lane danger and was caved in beneath him action against highway department for injuries sustained. Co 232.

Daniel R. McLeod Patterson, Asst. At & Pyle, Greenville

Younts & Spenshott, Greenville

TAYLOR, Chief Justice.

This is an action for personal injuries sustained as a result of negligence of South Carolina State Highway Department. The Supreme Court Judge overruled the defendant for non-joinder. The jury returned a verdict for the plaintiff; thereafter judgment n. o. v. for a new trial was granted. Appeal followed.

On June 16, 1964, the plaintiff's son, was operating a motorcyclist northerly direction on a narrow dirt road, for one lane, leading over the North Carolina line. The plaintiff reveals that plaintiff's son riding a motorcyclist on the son riding between 10 and 15 miles per hour on a "wet spot" in the road he was traveling to

\*EXHIBIT-# 13

## SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

## MEMORANDUM

**TO:** All Policy Manual Holders

**FROM:** Mr. William R. Byars, Jr., Director

**SUBJECT:** CHANGE 2 to GA-01.12, "INMATE GRIEVANCE SYSTEM"

**DATE:** March 19, 2013

RECEIVED

This change is effective immediately:

JAN 05 2017

Section 8.3, amended as follows:

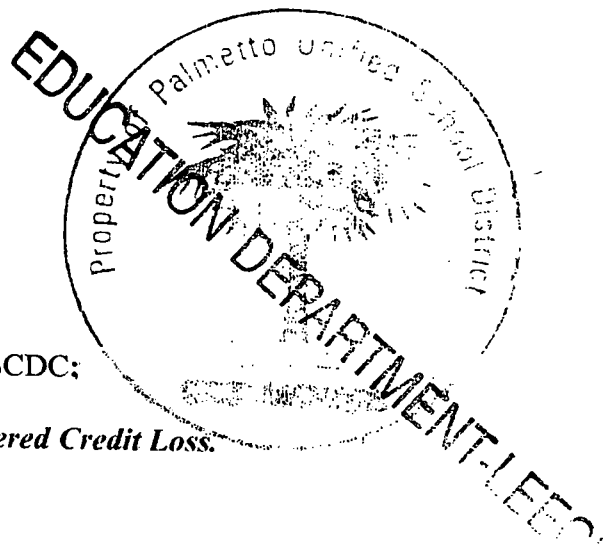
S.C. SUPREME COURT

8.3 The disposition of any Department disciplinary proceeding (Disciplinary Hearing, Administrative Hearing) which resulted from a guilty plea by the inmate; ~~if the inmate is convicted of 601, Court Order Credit Loss~~; or if the inmate accepted Informal or Administrative Resolution, unless the sanction imposed was excessive in relationship to the rule violation; and

Section 8.4, amended as follows:

8.4 Any issue outside of the control of the Department:

- 8.4.1 State and federal court decisions;
- 8.4.2 State and federal laws and regulations;
- 8.4.3 Parole Board decisions;
- 8.4.4 Any other matters outside the control of the SCDC;
- 8.4.5 *If the inmate is convicted of 601, Court Ordered Credit Loss.*



Section 8, new section, #8.5 added as follows:

8.5 *Inmates can not file a grievance on the following issues:*

- 8.5.1 *Unprocessed grievance(s);*
- 8.5.2 *Against an Inmate Grievance Coordinator for un-processing a grievance;*
- 8.5.3 *The disposition on another grievance;*
- 8.5.4 *On an affidavit presented to the court by an employee;*
- 8.5.5 *The status of a pending grievance.*

**Section 11, amended as follows:**

11. RESPONSES: Each grievance will be answered in writing at each level of decision using the applicable SCDC Form (either form 10-5 or 10-5a) and will be served by the Inmate Grievance Coordinator to the inmate personally. ~~Exceptions to this procedure will be required to be approved by the Chief, Inmate Grievance Branch. The response will state the reasons for the decision reached and inform the grievant of his/her rights of appeal.~~ Time limits at each step in the procedure are contained herein; but in most instances, grievances will be processed from initiation to final disposition within ~~125~~ 171 days, except when the Branch Chief/Designee, Inmate Grievance Branch, specifically agrees to a request for an extension. If an extension is granted, the Inmate Grievance Coordinator will notify the inmate in writing (*The extension is at the Step 1 level only. No extension is required at the Step 2 level.*) (NOTE: The maximum extension that may be given is 90 days. Under certain circumstances the grievance process may exceed ~~215~~ 261 days.) (Also see Procedures #13 and #14.)

**Section 13, amended as follows:**

*13.1 Inmates will be allowed to file five (5) grievances per month, which shall include all grievances that are returned unprocessed. After the five (5) grievances have been accepted, all others will be returned unprocessed, with the exception of a disciplinary conviction appeal or a classification reduction in custody level review. Grievances alleging criminal activity will be forwarded to the Division of Investigation (DOI), and if found to be without merit by DOI, will be returned unprocessed if the inmate has already had five (5) grievances accepted for the month. Emergency grievances will be considered on a case by case basis by the Branch Chief of the Inmate Grievance Branch.*

~~13.1~~ 13.2 Inmates must make an effort to informally resolve a grievance by either submitting a Request to Staff Member Form ~~or by discussing their complaint with~~ to the appropriate supervisor/staff. However, in certain cases, informal resolution may not be appropriate or possible (e.g., when the matter concerns staff not working at the institution, or when the matter involves allegations of criminal activity). An informal resolution is not necessary when appealing a disciplinary conviction or a custody reduction. If informal resolution is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, i.e., living areas, libraries, etc. and will ~~submit~~ place the form to an ~~employee in a~~ designated by the Warden (not the Inmate Grievance Coordinator) grievance drop box within ~~15~~ five (5) days of the alleged incident. Requests to hear disciplinary ~~tapes recordings~~ must be submitted to the Major, utilizing a Request to Staff Member form within 15 days of their disciplinary conviction. The Institutional Inmate Grievance Coordinator will be notified of this request, as well as the date the hearing ~~tape recording~~ was played for the inmate, through CRT message/memorandum. *Any information obtained from a review of the recording may be included in the Step 2 grievance appeal.* If an inmate needs additional space to complete their grievance, only one additional, one sided page will be permitted. An inmate will submit a grievance within the time frames established in the policy. (NOTE: Allegations involving sexual conduct between inmates and staff constitute criminal activity. When an inmate alleges that sexual activity/conduct has occurred between an inmate(s) and a staff member(s), that grievance must be processed as criminal activity.) See Procedure 15., below, for more information on processing a grievance alleging criminal activity. (NOTE: Only one [1] disciplinary conviction can be appealed on a grievance form. Example: If an inmate has three [3] disciplinary convictions for one [1] incident, each conviction must be filed separately.) (4-ACRS-6C-03)

(The only exceptions are listed at Procedure(s) #13.7 and 14.) The grievance form must contain information about how, *with whom*, and when attempts were made to resolve the problem informally *within five (5) days of the signature date on the SCDC Form 19-11, " Inmate Request To Staff Member," (RTSM)*, a brief statement of the circumstances of the grievance, to include date and time; why the grievant believes s/he is entitled to relief, and a brief statement of the action(s) requested for

which relief may be available through the grievance procedure. (NOTE: A copy of the RTSM must be attached to the Step 1 grievance form.) No inmate or employee (other than those specified in this policy/procedure) will be given a copy of a grievance. Exceptions to policy must be requested, and approved through the Chief, Inmate Grievance Branch. Inmates will only be allowed to submit one grievance per incident or circumstance.

## EDUCATION DEPARTMENT-LEECI

~~13.2~~ 13.3 All grievances will be picked up on a daily basis, during normal working hours, by an employee designated by the Warden (not the Grievance Coordinator). All grievances will be numbered and entered into the automated system (regardless of whether the issue is grievable or non-grievable) within ~~ten (10)~~ **three (3)** working days by an employee designated by the Warden (not the Inmate Grievance Coordinator). The employee designated by the Warden will give the grievances to the Inmate Grievance Coordinator after the grievance has been entered into the automated system. Upon receipt of a grievance, the Institutional Inmate Grievance Coordinator will, within ~~ten (10)~~ **three (3)** working days, complete the additional text for the grievance into the CRT screen and will then attempt to resolve the matter informally by whatever means are appropriate and/or practical, and enter the grievance information in the grievance log book. The time frame for responding to the grievance will begin once the text for the grievance has been entered into the OMS system. This may include interviewing affected employees and inmates (only exceptions are emergency grievances or appeals of disciplinary hearings results) or scheduling appropriate mediation between involved parties. If the problem cannot be resolved by this informal method, the Institutional Inmate Grievance Coordinator will conduct an complete investigation (i.e., Talking with the appropriate staff and/or inmate(s), reviewing all documents and/or reports, etc.) into the situation and will make recommendations to the Warden concerning disposition of the matter. No employee involved or addressed in a grievance will be assigned to conduct any investigation regarding the same. If the Inmate Grievance Coordinator determines that the grievance will not be processed, the IGC will note this on the SCDC Form 10-5, Step 1, under "Action Taken by the IGC," maintain the original for the inmate grievance file, enter "non-grievable" into the automated system, and mail a copy of the SCDC Form 10-5, Step 1, to the inmate in a sealed envelope. **Unprocessed grievances may be appealed, utilizing SCDC Form 19-11, "Inmate Request To Staff Member," (RTSM) to the Branch Chief within ten (10) days of the grievance being returned to the inmate. The inmate must provide a copy of the unprocessed grievance with the RTSM. The inmate can not file a grievance against the IGC for un-processing the grievance. If the inmate has failed to provide necessary information, or has not signed and dated the grievance, s/he will be given five (5) calendar days to re-file a completed properly filled out grievance; this will be noted on the Step 1 form with a due back date included. This information will also be entered into the CRT narrative when the grievance is closed as unprocessed. Unprocessed grievances that have been given five (5) days to re-file cannot be appealed to the Branch Chief. (Changes in BLUE: Amended by Change 1, dated August 2, 2012.) (Changes in RED: Amended by Change 2, dated March 18, 2013.)**

~~13.4~~ 13.5 The Warden will respond to the grievant in writing (in the space provided on SCDC Form 10-5, Step 1), indicating in detail the rationale for the decision rendered and any recommended remedies. The grievant will also be informed of his/her rights to appeal to the next level. The Warden will respond to the grievant no later than ~~40~~ **45** days from the date the grievance was formally entered into the OMS system by the Institutional Grievance Coordinator. ~~(with the exception of a disciplinary hearing appeal, which will be responded to within 30 days).~~ The response will be served by the Institutional Inmate Grievance Coordinator to the grievant, within ~~five (5) working days,~~ **ten (10) calendar days**, and the grievant will sign and date the response acknowledging receipt. The Inmate Grievance Coordinator will maintain the original grievance for the inmate's grievance file and a copy will be given to the inmate.

~~13.6~~ 13.7 **Appeal Process:** The grievant may appeal by completing the SCDC Form 10-5a, Step 2, and submitting this form, as well as the completed copies of Step 1, to the Institutional Inmate Grievance Coordinator within five (5) calendar days of the receipt of the response by the grievant, *by placing the*

*Step 2 form in the designated institutional grievance box.* If an inmate needs additional space to complete their Step 2 grievance, only one (1) additional one-sided page will be permitted. ~~The grievant will not write on the back of any Step 1 or Step 2 form.~~ The Institutional Inmate Grievance Coordinator will forward the original Step 2, ~~the original~~ *a clear copy of the Step 1 grievance*, and copies of necessary documentation to the Inmate Grievance Branch within five (5) calendar days. The Inmate Grievance Branch will confirm receipt of the appeal, conduct any further investigation necessary, prepare a report, and present all available information to the responsible official. The responsible official will render the final decision on the grievance within ~~60~~ *90* days from the date that the Institutional Inmate Grievance Coordinator received the appeal of the Warden's decision. The responsible official's decision will be returned to the Institutional Inmate Grievance Coordinator. The Institutional Inmate Grievance Coordinator will then serve the response to the grievant within ~~five (5)~~ *ten (10)* working days and have him/her sign and date it acknowledging receipt. The Inmate Grievance Coordinator will maintain the original grievance for the inmate's grievance file and a copy will be given to the inmate. The response of the responsible official will be the Department's final response in the matter. Any action required to implement the Department's final response will require no additional signatures/approval. ~~The Department's final response implies the Department Director's approval.~~

~~13.9~~ *13.10* Exceptions to the ~~15~~ *five (5)* day time limit requirement will be made for grievances concerning policies/procedures. Exceptions may also be made for incident grievances, provided that the inmate can show reasonable cause, i.e., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. *All exceptions will be determined by the Branch Chief/Designee of the Inmate Grievance Branch.*

**Section 17, amended as follows:**

~~17.2~~ Each Inmate Grievance Coordinator will be required to submit to their assigned Inmate Grievance Administrator a monthly report summarizing the number and types of grievances which have been received at their institution during the month. This report will be due by the 5th of each month to the Inmate Grievance Branch Administrator. Prior to submitting the report, the Inmate Grievance Coordinator will ensure their Warden has reviewed the information contained therein.

~~17.3~~ *17.2* With the exception of the non-grievable, grievance issues noted in Section 8.5, ~~A~~ and any grievance concerning the performance of any Institutional Inmate Grievance Coordinator/Inmate Grievance Administrator ~~shall~~ *must be advanced to the Step 2 level and* referred to the Chief/ Designee, Inmate Grievance Branch, for investigation and response. *Time frames for responses are the same as for any Step 2 grievance. A copy of the grievance will be forwarded to the inmate, informing him/her that the grievance has been advanced to the Step 2 level, and forwarded to the Inmate Grievance Branch.*

**Section 18, amended as follows:**

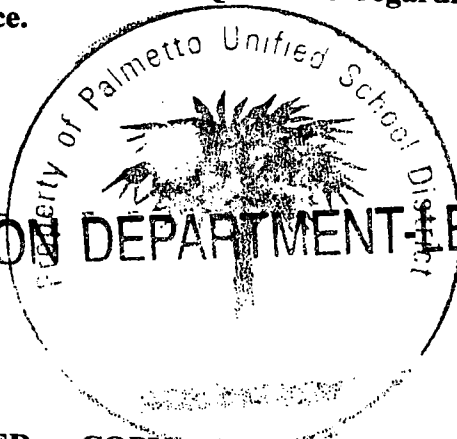
**18.2** If a grievant is transferred from one SCDC institution to another while a grievance is in progress, the Institutional Inmate Grievance Coordinator at the losing institution will forward the inmate's grievance file via confidential, inter-departmental mail to the Institutional Inmate Grievance Coordinator at the gaining institution within ~~five (5)~~ *ten (10)* working days of the inmate's transfer.

**18.3** All grievances that are transferred from one institution to another to be served to the grievant will retain their original grievance numbers. ~~For clarification and reference purposes, the Institutional Inmate Grievance Coordinator at the gaining institution will add the three (3) or four (4) letter institutional prefix in parentheses at the end of the original grievance number when referring to the grievance in future correspondence, appeals, etc. Once the grievance reaches the gaining institution, the Inmate Grievance Coordinator has ten (10) working days to serve the Warden's response. The Inmate Grievance~~

*Coordinator must update the text in the CRT, and notify the Inmate Grievance Coordinator at the losing institution of the status of their pending grievance(s) via e-mail or CRT. However, it will still be the responsibility of the Inmate Grievance Coordinator at the losing institution to monitor the status of all transferred grievance(s), to ensure the grievance(s) have either been served and closed out in the automated system, or appealed to the Step 2 level.*

~~18.4 If a grievant is transferred while the grievance is in the "Informal Resolution" stage, then the grievance will be forwarded to the next level in the procedure and will receive a Warden's response from the losing institution.~~

Policy Manual Holders should make the above changes to the Policy and place this memo immediately in front of SCDC Policy GA-01.12, "Inmate Grievance System," in each of the General Administration Manuals. Questions regarding this change should be directed to the General Counsel Office.



EDUCATION DEPARTMENT - EECI

SIGNATURE ON FILE

William R. Byars, Jr., Director

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT

RECEIVED

JAN 01 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Basil W. Akbar, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 South Carolina Department of Probation, )  
 Parole, and Pardon Services, Kela E. )  
 Thomas, Director, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 C/A No: 2012-CP-40-1471

ORDER

RICHLAND COUNTY  
 FILED  
 2012 SEP -6 AM 9:05  
 JEANETTE W. MCBRIDE  
 C.C.P. & G.S.

This matter came before me on August 9, 2012 for a hearing on a Motion to Dismiss South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe. Present at the hearing was *pro se* Plaintiff, Basil Akbar, Erin Farrell Farthing, counsel for South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe, and Tommy Evans, Jr., counsel for Defendants South Carolina Department of Probation Parole and Pardon Services and Kela E. Thomas.

The Plaintiff filed his Complaint in this case on February 21, 2012, in which he named the South Carolina Department of Probation, Parole, and Pardon Services and Kela E. Thomas as Defendants. Since that time, Plaintiff has filed documents with this Court in this case that appear to concern a purported lawsuit against South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe. However, the Complaint in this supposed suit has never been filed with this Court, nor has the Plaintiff properly served any Summons and Complaint on any of the purported Defendants named in that suit. Furthermore, the South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long,

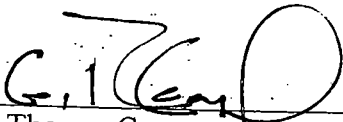
Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe are not named as Defendants in the above-captioned lawsuit, and are not proper Defendants to the above-captioned suit.

Plaintiff is granted leave to proceed *in forma pauperis* in his purported lawsuit against South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe. Plaintiff must file and commence this lawsuit with the Court in compliance with the South Carolina Rules of Civil Procedure. Plaintiff must also serve all Defendants to that lawsuit in accordance with these Rules. Plaintiff is further directed to not file any further documents with this Court in the above-captioned case which relate to his purported suit against South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe as these individuals are not parties to this action.

NOW, THEREFORE, IT IS ORDERED:

- 1) Plaintiff is granted leave to proceed in his lawsuit against South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe *in forma pauperis*
- 2) Plaintiff must file and commence his lawsuit with the Court in compliance with the South Carolina Rules of Civil Procedure.
- 3) Plaintiff must also serve all Defendants to that lawsuit in accordance with these Rules.

IT IS SO ORDERED.

  
G. Thomas Cooper  
Presiding Circuit Judge  
Fifth Judicial Circuit

Columbia, South Carolina  
~~SEPTEMBER~~ 4, 2012

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Basil W. Akbar, )

Plaintiff, )

v. )

South Carolina Department of Probation, )  
Parole, and Pardon Services, Kela E. )  
Thomas, Director, )

Defendant. )

IN THE COURT OF COMMON PLEAS

C/A No: 2012-CP-40-1471

**ORDER**

RICHLAND COUNTY  
FILED  
2013 FEB 28 AM 9:30  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

This matter came before me on January 16, 2013 for a hearing on a Motion to Dismiss South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe. Present at the hearing was *pro se* Plaintiff, Basil Akbar, Erin Farrell Farthing, counsel for South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe, and Tommy Evans, Jr., counsel for Defendants South Carolina Department of Probation Parole and Pardon Services and Kela E. Thomas.

The Plaintiff filed his Complaint in this case on February 21, 2012, in which he named the South Carolina Department of Probation, Parole, and Pardon Services and Kela E. Thomas as Defendants. Since that time, Plaintiff has filed documents with this Court in this case that appear to concern a purported lawsuit against South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe. However, the Complaint in this supposed suit was never previously filed with this Court, nor had the Plaintiff properly served any Summons and Complaint on any of the purported Defendants named in that suit. Furthermore, the South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long,

Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe are not named as Defendants in the above-captioned lawsuit, and are not proper Defendants to the above-captioned suit.

Plaintiff was granted leave by the Honorable G. Thomas Cooper to proceed *in forma pauperis* in his purported lawsuit against South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe. Plaintiff was ordered to file and commence this lawsuit with the Court in compliance with the South Carolina Rules of Civil Procedure. Plaintiff was also advised that he must serve all Defendants to that lawsuit in accordance with these Rules. Plaintiff was further directed to not file any further documents with this Court in the above-captioned case which relate to his purported suit against South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe as these individuals are not parties to this action.

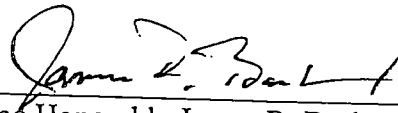
Rather than properly commence his action against South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe, it appears that Plaintiff attempted to serve the Summons and Complaint in the above-referenced case on one or more of these individuals. South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe filed a Motion to Dismiss out of an abundance of caution seeking an Order that these individuals are not proper parties to the present action.

Based on my review of all pleadings of record and the statements of Plaintiff and Defense counsel at the January 16, 2013 hearing, it is clear that South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe are not now and have never been parties to the above-captioned action. Plaintiff is once again directed not to file any further documents with this Court in the above-captioned case which

relate to his purported suit against South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe as these individuals are not parties to this action.

NOW, THEREFORE, IT IS ORDERED that South Carolina Department of Corrections, Bill Byars, Martha Roof, Debrah Long, Lisa Johnson, Anthony Padula, Leon Visintaner, Larry Clutter, and Ann and John Doe Motion to Dismiss is granted as these individuals are not now and have never been parties to this action

IT IS SO ORDERED.



The Honorable James R. Barber, III  
Presiding Circuit Judge  
Fifth Judicial Circuit

Columbia, South Carolina  
2/25, 2013

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Basil W. Akbar, #310671, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 South Carolina Department of Corrections, )  
 Bill Byers, Martha Roof, Debrah Long, )  
 Lisia Johnson, Ann and John Doe, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT

C/A No: 2013-CP-40-0301

**ORDER**

RICHLAND COUNTY  
 FILED  
 2013 SEP 26 AM 10:36  
 JEANETTE W. HODSON  
 C.C.P. & G.S.

This matter came before me on August 7, 2013, for hearings on Defendants' Motion to Dismiss/Strike Punitive Damages; Defendants' Motion to Dismiss and for Summary Judgment; Defendants' Motion for Protective Order and to Stay Discovery; Plaintiff's Motion to File a Supplemental Complaint; Plaintiff's Motion for Appointment of Counsel; and Plaintiff's Motion to Compel. Present at the hearings were *pro se* Plaintiff, Basil W. Akbar, #310671, and counsel for Defendants, Erin Farrell Farthing.

Defendants moved to dismiss, and to strike, Plaintiff's prayer for punitive damages against all Defendants pursuant to Rule 12(b)(6) and 56, SCRPC, and pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-170(b).

Defendants also moved to dismiss this action and for summary judgment pursuant to Rules 12(b)(1), (2), (4), (5), and (6), and Rule 56, SCRPC, on the grounds of lack of subject matter jurisdiction, lack of jurisdiction over the person, insufficiency of process and insufficiency of service of process, and that the claims fail to state a cause of action upon which relief can be granted. Specifically, Defendants moved to dismiss Plaintiff's Complaint and for summary judgment as Plaintiff failed to state a cause of action and that there is no genuine issue as to any material fact and that the Complaint does not state a claim upon which relief can be granted. Furthermore, Defendants moved to dismiss Plaintiff's Complaint on the grounds that Plaintiff failed to properly serve the Defendants and other necessary parties pursuant to Rule 4, SCRPC. Also, Defendants move to dismiss Plaintiff's Complaint on the grounds Plaintiff improperly named as Defendants individual employees of a governmental entity pursuant to S.C.

CODE ANN. § 15-78-70 and 15-78-200, in that any individually named Defendants must be dismissed from the suit pursuant to S.C. CODE ANN. § 15-78-70(c). Defendants also move to dismiss Plaintiff's Complaint on the grounds that Plaintiff's claims are barred by the applicable statutes of limitations.

Defendants also moved for a protective order and to stay discovery in this case pursuant to Rule 26, SCRPC.

Plaintiff moved to file a supplemental Complaint. Plaintiff also moved for appointment of counsel and moved to compel discovery responses from Defendants.

Having reviewed the materials on file in this case, and the arguments of the parties, the Court finds that (1) Defendants' Motion to Dismiss/Strike Punitive Damages should be granted; (2) Defendants' Motion to Dismiss and for Summary Judgment should be granted; (3) that all other pending Motions should be denied as moot; and (4) Plaintiff's Complaint and this action should be dismissed with prejudice.

#### APPLICABLE LAW AND FINDINGS OF FACT

Plaintiff, Basil W. Akbar, #310671 ("Plaintiff"), is presently confined to the Lee Correctional Institution of the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Clerk of Court for Richland County. Plaintiff was convicted of murder September 1971. Plaintiff received a life sentence, but is eligible for parole. Plaintiff was released on parole in or around April 1981. Plaintiff was arrested for a number of drug offenses, and his parole was revoked in 1985. At that time, Plaintiff was returned to the custody of the SCDC, where he has been held since that time, and is currently serving the remainder of his life sentence.

Broadly construed, Plaintiff's Complaint alleges that he was employed in an SCDC Work Release Program from July 1979 through April 1981, and that, during that time weekly deductions were taken for "Mandatory Long Term Escrow Savings Account" and for room and board. Plaintiff contends that, at the time of his release on parole in 1981, the balance of his escrow account was not released.

While Plaintiff was returned to the custody of the SCDC in 1985, Plaintiff apparently did not inquire regarding the funds he alleges he did not receive until October 2008. Plaintiff filed three separate grievances regarding these alleged funds in 2009 and 2010, but each were unprocessed as untimely. Plaintiff appealed the decision from one of these grievances to the

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South Carolina Administrative Law Court, but his appeal was dismissed by Order dated April 28, 2011 based on Plaintiff's failure to exhaust his administrative remedies. There is no indication that the Plaintiff appealed that decision.

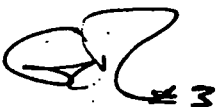
Plaintiff filed the present action on January 16, 2013. Defendants filed a Motion to Dismiss on February 27, 2013, as well as a Motion to Dismiss/Strike Plaintiff's claims for punitive damages under S.C. CODE ANN. § 15-78-120(b). In addition to the Motion to Dismiss, Defendants also filed a Motion for Summary Judgment on all allegations within Plaintiff's Complaint. Defendants contend that Plaintiff failed to file his Complaint within the statutorily prescribed period of time, and therefore should be barred by the applicable statute of limitations, and that Plaintiff has failed to set forth a claim against Defendants upon which relief can be granted.

Under the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10 *et seq.*, a claimant must commence an action for damages within two (2) years after the date the loss was or should have been discovered. S.C. CODE ANN. § 15-78-110. According to the statute, "loss" is defined as "bodily injury, disease, death, or damage to tangible property, **including lost wages and economic loss** to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm." S.C. CODE ANN. § 15-78-30(f) (emphasis added).

Under the discovery rule, "the statute of limitations does not run from the date of the negligent act, but from the date when the *injury* resulting from the wrongful conduct either is discovered or *may be* discovered by the exercise of reasonable diligence." *McClain v. Jarrard, M.D.*, 354 S.C. 218, 220, 580 S.E. 2d 763, 764 (Ct. App. 2003) (citing *Wilson v. Shannon*, 299 S.C. 512, 513, 386 S.E.2d 257, 258 (Ct. App. 1989)).

The date on which discovery should be made is an objective, not subjective question. *Kreutner v. David*, 320 S.C. 283, 465 S.E.2d 88 (1995). In other words,

whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.



*Young v. South Carolina Dep't of Corr.*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999). The fact that the injured party does not comprehend the full extent of his injuries is immaterial. *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996). "The statute of limitations is not tolled during the period of time in which a plaintiff is merely unaware of the extent of an actionable injury." *Young* 333 S.C. at 720, 511 S.E.2d at 416.

In applying this reasonable diligence analysis under the discovery rule, the Court has stated, "an injured party must act with some promptness where facts and circumstances of the injury would put a person of common knowledge and experience on notice that some right of his had been invaded or that some claim against another party might exist." *McClain*, 354 S.C. 218, 580 S.E. 2d 763. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery is developed. *Id.*

In the present case, Plaintiff contends that a portion of the wages he earned from 1979-1981 were withheld by the SCDC in an escrow account. Plaintiff further contends that the funds contained in this account should have been disbursed to him upon his release on parole in 1981, but that they were not. It appears Plaintiff did not file the present lawsuit until January 16, 2013, more than 30 years after any cause of action he may have arising out of his allegations accrued.

Furthermore, while Plaintiff contends that he was only informed "for the first time 'February 9, 2009'" that he did not have a "Work Center" funds account, it appears that Plaintiff has not accounted for why he waited 27 years after he was released on parole, and 23 years after he was placed back into the custody of the SCDC to inquire into these funds. Also, it appears that Plaintiff did not file the present lawsuit until almost four years after he was informed that he did not have a "Work Center" funds account.

Therefore, this Court finds that any cause of action Plaintiff might have had, based on the allegations set forth in his Complaint, arose more than two years prior to the commencement of the lawsuit. Therefore, this Court finds that Plaintiff's claims are barred by the applicable statute of limitations.

Additionally, this Court finds that Plaintiff's legal basis for his belief that a portion of his wages from 1979 through 1981 was withheld and maintained in an escrow account to be distributed to him on his release appears to be S.C. CODE ANN. § 24-3-40. Section 24-3-40 dictates the disposition of wages of prisoners allowed to work at paid employment. Specifically, § 24-3-40(A) as currently written sets forth that the wages are to be paid directly to the Director

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of the SCDC, who shall make certain deductions from the prisoner's gross wages, including restitution, victim assistance programs, child support, etc. Section 24-3-40(5) as currently written provides that "[t]en percent must be held in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B), as currently written sets forth how the funds maintained in a prisoner's escrow is to be returned to the prisoner.

It appears Plaintiff has provided no evidence that the above provision, or any similar law, was in effect at the time Plaintiff allegedly earned his wages in 1979 to 1981. Further, the version of § 24-3-40 enacted in 1994 did not include any provision regarding withholding any amount of a prisoner's wages for an escrow account. The 1994 version provided that:

Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. The Director of the Department of Corrections shall withhold five percent of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404'. The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner. No prisoner who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public Law 90-351 is eligible for unemployment compensation upon termination from the program.<sup>1</sup>

Therefore, it appears there was not any statutory requirement for SCDC to make such withholding.

This Court also finds that Plaintiff has failed to establish that Defendants, or any other employees of the SCDC, withheld or misappropriated any of Plaintiff's wages. Therefore, the Court finds that Plaintiff's claims should be dismissed.

Additionally, this Court finds that the individual Defendants should be dismissed from the case pursuant to the provisions of the South Carolina Tort Claims Act. Under S.C. CODE ANN. §§ 15-78-70 and 200, all individually named defendants must be dismissed from this suit

<sup>1</sup> The version of § 24-3-40 enacted in 1996 also did not include any requirement that any portion of a prisoner's wages be withheld in an escrow account. It appears that the first version of § 24-3-40 to include a requirement that a portion of a prisoner's wages be withheld in an escrow account was in the version enacted in 1999.

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and the agency substituted in their place for all actions taken by defendants "while acting within the scope of the employee's official duty." *Faile v. South Carolina Dep't. of Juvenile Justice*, 566 S.E.2d 536 (2002).

Upon review of Plaintiff's Complaint, this Court finds that the present action is brought pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10, *et seq.* This Court further finds that the individually named Defendants in the present action were acting as agents and employees of the SCDC at all times relevant herein, and therefore, the proper entity to defend this matter is the SCDC pursuant to S.C. CODE ANN. § 15-78-70(c). Therefore, this Court finds the appropriate party defendant to this action is the SCDC, and that Defendants Bill Byers, Martha Roof, Debrah Long, Lisia Johnson, and Ann and John Doe should be dismissed from this case.

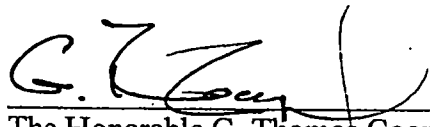
As to Defendants' Motion to Dismiss/Strike Punitive Damages, Defendants argue that the any claim of Plaintiff for punitive damages is barred by S.C. CODE ANN. §15-78-120(b). S.C. CODE ANN. §15-78-120(b) provides that, "[n]o award for damages under this Chapter shall include punitive or exemplary damages or interest prior to judgment." Upon review of Plaintiff's Complaint, this Court finds that the present action is brought pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10, *et seq.* Therefore, as a matter of law, this Court finds that the Plaintiff's claim for punitive damages must be dismissed.

NOW, THEREFORE, IT IS ORDERED:

1. Defendants' Motion to Dismiss and for Summary Judgment is granted;
2. All requests or prayers for damages are dismissed and stricken from Plaintiff's Complaint;
3. Plaintiff's Complaint fails to state a cause of action against all Defendants upon which relief can be granted and fails to state facts sufficient to constitute a cause of action;
4. This action is dismissed with prejudice; and
5. All other pending Motions are denied as moot, including Plaintiff's Motion to file a Supplemental Complaint, Motion to Compel, and Motion for Appointment of Counsel, as well as Defendants' Motion for Protective Order and to Stay Discovery.

G. J. 6

AND IT IS SO ORDERED.



The Honorable G. Thomas Cooper, Jr.  
Presiding Circuit Judge  
Fifth Judicial Circuit

Cowman, South Carolina  
9.26., 2013

ENTER-DEPARTMENTAL MAIL SYSTEM

Ross W. Akbar, 065498, F-6 B, 2213  
Lee County Institution  
990 Wisbeck Highway  
Bishopville, S.C. 29010

THE SUPREME COURT OF SOUTH CAROLINA  
DANIEL E. SHEAROUSE, CLERK OF COURT  
POST OFFICE BOX 11330  
COLUMBIA, S.C. 29211

**RECEIVED**

JAN 05 2017

S.C. SUPREME COURT

ENTER-DEPARTMENTAL MAIL SYSTEM

**RECEIVED**

DEC 31 21 1968

LEGISLATIVE ROOM