No. 22-210

In The
Supreme Court of the United States

NEIL DUPREE,

Petitioner,

v.

KEVIN YOUNGER,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

JOINT APPENDIX

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[(Nov. 18, 2019)
(ECF No. 186-1)]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

KEVIN YOUNGER,	*	
Plaintiff,	*	Case No.: 1:16-cv-03269-RDB
v.	*	
JEMIAH GREEN, ET AL.,	*	
Defendants.	*	

* * * * * * * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF DEFENDANT DUPREE'S MOTION FOR SUMMARY JUDGMENT

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November 18, 2019

INTRODUCTION

In his amended complaint (ECF No. 140), Plaintiff Kevin Younger brings four causes of action against Defendants Tyrone Crowder, Neil Dupree, and Wallace Singletary: one under 42 U.S.C. § 1983 (Count One), one under Article 24 of the Maryland Declaration of Rights (Count Four), and two sounding in negligence (Counts Eight and Nine). At the end of August, the three Defendants moved to dismiss these claims, and their respective requests remain pending before the Court. In the meantime, the parties proceeded into discovery, which concluded in October.

Mr. Dupree, like Messrs. Crowder and Singletary in separate papers, now requests that summary judgment be entered in his favor as to all of Mr. Younger's claims. As described in detail below, Mr. Dupree is entitled to this relief because:

(i) the claims are barred by the doctrine of res judicata;

(ii) the claims are barred because former Division of Correction ("DOC") prisoner Younger failed to properly exhaust his available administrative remedies, as required by the Prisoner Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e;

(iii) the claims are barred by principles of judicial estoppel; and

(iv) former DOC prisoner Younger may not bring an excessive force claim under Article 24 of the Maryland Declaration of Rights.

As before, in the interest of brevity and to avoid redundancy among the papers submitted by the parties, Mr. Dupree, whenever appropriate, will adopt and incorporate by reference herein his prior arguments, as well as those advanced by Messrs. Crowder and Singletary in their memoranda in support of their respective summary judgment requests.

PROCEDURAL BACKGROUND

Mr. Dupree hereby adopts and incorporates by reference, as if fully set forth herein, the "Procedural Background" and "Summary of the Amended Complaint" set forth in his memorandum in support of his motion to dismiss. ECF No. 156-1 at 3-6.

UNDISPUTED FACTS RELATING TO THE ASSAULT

Mr. Dupree hereby adopts and incorporates by reference, as if fully set forth herein, the "Statement of Undisputed Facts" provided by Mr. Crowder in his memorandum (ECF No. 185-1 at 1-9),[1] but supplements that summary with the undisputed facts that Mr. Dupree "was not physically and personally present in [Mr. Younger's] cell on September 30, 2013," and "did not physically and personally attack [Mr. Younger] on September 30, 2013." (Ex. 1, p. 2 – Responses to Requests for Admissions Nos. 4 and 5.)

[1] The page citations to the memorandum are the pages of the original document.

LEGAL STANDARD

Mr. Dupree hereby adopts and incorporates by reference the description of the applicable "Legal Standard" in Mr. Crowder's memorandum (ECF No. 185-1 at 11) as if fully set forth herein.

ARGUMENT

I. Mr. Younger's Prior Judgment Against the State Precludes Him from Relitigating Claims That Were or Could Have Been Pursued in the State-Court Case.

For the reasons fully set forth in Mr. Dupree's memoranda in support of his pending dismissal request (ECF No. 156-1 at 5-6; ECF No. 181), the doctrine of res judicata bars Mr. Younger's claims against him. Mr. Dupree reasserts and incorporates those arguments as if fully set forth herein. Again, Mr. Younger's suit against only the State in the prior state-court lawsuit bars this action against Mr. Dupree. Consequently, Mr. Dupree is entitled to judgment as a matter of law.

II. Mr. Younger's Claims Are Barred Because He Failed To Properly Exhaust His Available Administrative Remedies.

Mr. Younger's claims against Mr. Dupree should be dismissed and judgment entered in Mr. Dupree's favor because it is undisputed that Mr. Younger failed to exhaust his available administrative remedies, as required by the PLRA.

A. The Exhaustion Mandate:

The PLRA requires inmates to exhaust available administrative remedies prior to filing suit against prison officials. The PLRA provides, in pertinent part:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a).[2] Exhaustion under the PLRA is "mandatory," and "a court may not excuse a failure to exhaust." *Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016) (holding a court has no discretion to excuse a prisoner's failure to exhaust); *see Gilbert v. R. Stott*, CO II, ELH-18-1219, 2019 WL 2162740, at *6 (D. Md. May 17, 2019) ("a [prisoner's] claim that has not been exhausted may not be considered by this court").

"The PLRA exhaustion requirement requires proper exhaustion." *Woodford v. Ngo*, 548 U.S. 81, 93 (2006). "Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules." *Id.* at 91; *see Moore v. Bennette*, 517 F.3d 717, 725 (4th Cir. 2008) ("to be entitled to bring suit in federal court, a prisoner must have utilized all available remedies 'in accordance with the applicable procedural rules' ") (quoting *Woodford*, 548 U.S.

[2] "[P]rison conditions" as it appears in the PLRA encompasses "all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002).

at 88). "The PLRA's exhaustion requirement is designed so that prisoners pursue administrative grievances until they receive a final denial of the claims, appealing through all available stages in the administrative process." *Minton v. Childers*, 113 F. Supp. 3d 796, 801 (D. Md. 2015). "A prisoner's claims are not exhausted until he has not only appealed to the extent the agency permits but also received a final denial of his claims on the merits at the agency's appellate level." *Harris v. Sgt. Schmitt*, No. PWG-15-1335, 2016 WL 4890715, at *5 (D. Md. Sept. 15, 2016).

B. The Exhaustion Process:

"In Maryland, a prisoner must generally pass through three steps before filing in federal court." *Germain v. Shearin*, 653 Fed. App'x 231, 233 (4th Cir. 2016). The first two occur within the DOC's own internal grievance process, the Administrative Remedy Procedure ("ARP").[3] The third happens before the Inmate Grievance Office ("IGO"), which is an agency in the Department of Public Safety and Correctional Services ("DPSCS") that was created by the Maryland General Assembly to administratively handle

[3] As verified by the attached Declaration of DOC Case Management Supervisor Jennifer L. Schmitt, "[i]n 2013 through 2014, the ARP process was governed by DOC Directives ('DCDs') 185-001, 185-002, 185-003, and 185-004." (Ex. 2, ¶ 4.) True and accurate copies of the versions of these four DCDs that were in effect during the indicated time frame are attached to Ms. Schmitt's declaration. (Ex. 2, ¶ 5.) These DCDs define the ARP as "a mechanism for the resolution of inmate complaints for inmates housed within the [DOC]," DCD 185-001 § IV.A, and "the procedure established by the Commissioner of Correction for inmate complaint resolution," DCD 185-003 § IV.

and resolve inmate complaints against DOC employees and officials. Md. Code Ann., Corr. Servs. §§ 10-202 (establishing IGO) and 10-206(a) (authorizing IGO grievances by inmates) (LexisNexis 2017).

The first step is initiated by an inmate's filing of a request for administrative remedy with the prison's warden.[4] DCD 185-002 § V.B.1; *see also* DCD 185-003 (governing warden's handling of ARP requests). Should the inmate be unsatisfied with the warden's response to the request, the inmate may then move to the second step: an appeal to the Commissioner of Correction. DCD 185-002 § V.B.2; s*ee also* DCD 185-004 (governing Commissioner's handling of ARP appeals). The Commissioner's response to the appeal then concludes the ARP process, and "[a]n inmate not satisfied with the outcome . . . may seek further administrative review in accordance with regulations of the [IGO]." DCD 185-002 § V.C.

When an inmate files a grievance with the IGO, that agency, upon receipt, conducts a "preliminary review" of the submission. Corr. Servs. § 10-207(a); Code of Maryland Regulations ("COMAR") 12.07.01.06A. "[I]f the complaint is determined to be wholly lacking in merit on its face, . . . the IGO may dismiss the complaint without a hearing or specific findings of fact." Corr. Servs. § 10-207(b)(1); *see* COMAR 12.07.01.06B (setting forth reasons for dismissal on preliminary review). If it is not, the IGO must refer the matter to the Maryland Office of

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[4] Certain claims are exempt from the ARP, DCD 185-002 § VI.B., but a claim relating to correctional staff's use of force is not one of them, DCD 185-002 § VI.A.6.

Administrative Hearings, where the merits of the grievance are presented before and heard by an impartial administrative law judge ("ALJ"). Corr. Servs § 10-207(c); COMAR 12.07.01.07A.

Following that proceeding, the ALJ must generate a written decision describing the "disposition" of the claim and its supportive "findings of fact" and "conclusions of law." Corr. Servs. § 10-209(a). If the ALJ dismisses the grievance, that decision is final and the matter is over at the administrative level. Corr. Servs. § 10-209(b)(1). If, however, the ALJ "concludes that the complaint is wholly or partially meritorious," the decision is sent as a proposal to the DPSCS Secretary, Corr. Servs. § 10-209(b)(2), who may affirm, reverse, or modify the decision or remand the matter to the ALJ, Corr. Servs. § 10-209(c)(2).[5] "Unless the complaint is remanded, the Secretary's order constitutes the final [administrative] decision." Corr. Servs. § 10-209(c)(3)(ii). The inmate may seek judicial review of this decision, as well as of the IGO's decision to dismiss on preliminary review and the ALJ's decision to dismiss. Corr. Serv. § 10-210(b)(1). The "inmate need not, however, seek judicial review in State court to satisfy the PLRA's administrative exhaustion requirement."[6] *Rodriguez v. Kopp*, No. RDB-17-3827, 2019 WL 568877, at *8 (D. Md. Feb. 12,

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[5] "The Secretary may take any action the Secretary considers appropriate in light of the [ALJ's] findings." Corr. Serv. 10-209(c)(2).

[6] Under State law, in most circumstances "[j]udicial review following administrative consideration shall be the exclusive judicial remedy for any grievance or complaint within the scope of the administrative process." Md. Code Ann., Cts. & Jud. Proc. Art. § 5-1003(a)(3) (LexisNexis 2013).

2019) (citing *Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002)).

C. Mr. Younger Did Not Properly Exhaust His Claims:[7]

F. Todd Taylor is the Executive Director of the IGO. (Ex. 3, ¶ 2.) In his attached Declaration, Executive Director Taylor states that the agency's records reflect that while Mr. Younger administratively sought relief regarding the September 30, 2013 assault, his grievance with the IGO ultimately was dismissed on preliminary review. Executive Director Taylor avers:

> I have reviewed the IGO's records to discern whether they reflect a grievance by Mr. Younger that relates to the alleged September 30, 2013 assault. Based on this review, I have determined that the IGO's records contain one such grievance: IGO No. 2014-0698. According to the records of that grievance, complete copies of which are attached, Mr. Younger filed a grievance regarding the September 30, 2013 assault on March 28, 2014, and the IGO administratively dismissed the grievance on November 25, 2014. [ ] There is no indication in the records that Mr. Younger sought judicial review of the IGO's decision.

(Ex. 3 at ¶ 5.)

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[7] "[F]ailure to exhaust available administrative remedies is an affirmative defense, not a jurisdictional requirement, and thus inmates need not plead exhaustion, nor do they bear the burden of proving it." *Moore*, 517 F.3d at 725 (citing *Jones v. Bock*, 549 U.S. 199 (2007)).

The records of the grievance identified by Executive Director Taylor reflect two reasons why Mr. Younger's grievance did not survive the IGO's preliminary review: (i) Mr. Younger neither demonstrated that he properly had exhausted the ARP process before resorting to the IGO nor "provided a basis for waiving the ARP exhaustion requirement"; and (ii) the IGO itself could not independently verify exhaustion. (Ex. 2, Attach. 1 at 31.) *See* COMAR 12.07.01.02D ("If the [ARP] applies to a particular occurrence, the grievant shall properly exhaust the [ARP] before filing a grievance") and 12.07.01.06B(4) (requiring dismissal where "grievant did not properly exhaust remedies available under the [ARP]"). The following records specifically show the following exchanges and correspondence:

3/28/14: The IGO received the grievance. (Ex. 2, Attach. 1 at 1-10.) Included in the submission was an ARP complaint receipt that identified an apparently unrelated "complaint dated 2/6/14" that was dismissed on 3/10/14 because "inmates may not seek relief through the Administrative Remedy Procedure on Maryland Parole Commission procedures and decisions." (Ex. 3, Attach. 1 at 6.)

5/15/14: The IGO advised Mr. Younger that based on its preliminary review of the grievance, it was "unable to ascertain the precise nature and scope of [the] original ARP complaint because [Mr. Younger] . . . failed to provide a copy." (Ex. 3, Attach. 1 at 17.) The IGO, therefore, requested that Mr.

Younger provide "all related ARP paperwork" so that it could "determine whether [Mr. Younger] ha[d] properly exhausted an available ARP remedy, . . . timely filed [his] grievance,[8] . . . and stated a claim upon which administrative relief can and should be granted."[9] (Ex. 3, Attach. 1 at 17.)

5/29/14: The IGO received a response from Mr. Younger that included a copy of a request for administrative remedy. (Ex. 3, Attach. 1 at 19-21.) The request appears to have been signed by Mr. Younger on 12/6/13, and then again on 12/24/13,[10] and an unidentified correctional officer also appears to have signed the request on 12/26/13. (Ex. 3, Attach. 1 at 20-21.)

8/4/14: The IGO responded to Mr. Younger's submission, acknowledging receipt of the ARP complaint, but again requesting "all related ARP paperwork" so that it could fulfill its

[8] When the ARP is involved, a grievance must be filed "within 30 days of the date that the (1) [g]rievant received the Commissioner's response concerning the appeal; or (2) Commissioner's response to the appeal was due to the grievant." COMAR 12.07.01.05B.

[9] When a grievance emanates from the ARP, the inmate-grievant is required to provide the IGO with "a copy of all related paperwork, including the: (i) [r]equest for administrative remedy; (ii) [w]arden's response and receipt of the warden's response; (iii) [a]ppeal; and (iv) Commissioner's response and receipt of the Commissioner's response." COMAR 12.07.01.04B.(9)(a). Inmates are advised of this obligation in the "Instructions to Inmates for an Appeal to the [IGO]" section of the form provided to them in Appendix 6 of DCD 185-002.

[10] These dates indicate that Mr. Younger's request was untimely. DCD 185-002 § VI.L.3.a. (requiring filing of request within 30 days of occurrence).

preliminary review obligations, as described in its 5/15/14 letter. (Ex. 3, Attach. 1 at 24-25.) The IGO further advised Mr. Younger that his grievance would be dismissed if he did not provide the requested paperwork within 30 days. (Ex. 3, Attach. 1 at 25.)

8/26/14: The IGO received two letters from Mr. Younger. (Ex. 3, Attach. 1 at 26-28.) In one, he stated that he "put in ARPs at MRDCC and Roxbury[and that o]nly one manage (sic) to get to the warden at Roxbury and I was sent a receipt." (Ex. 3, Attach. 1 at 27.) In the other, he opined that case law had "eliminated the burden of proof on a prisoner to plead and prove exhaustion of administrative remedies under the [PLRA]." (Ex. 3, Attach. 1 at 26.) With neither letter did he enclose the requested paperwork relating to his ARP.

10/8/14: The DOC's ARP unit responded to an IGO inquiry and advised that it had no record of an appeal to the Commissioner in relation to an ARP concerning the 9/30/13 assault. (Ex. 3, Attach. 1 at 29.)

11/25/14: The IGO dismissed the grievance as wholly lacking in merit for the reasons described above. (Ex. 3, Attach. 1 at 30-31.)

"A prisoner must complete the administrative review process in accordance with applicable procedural rules, including deadlines, as a precondition to bringing suit in federal court." *Minton*, 113 F. Supp. 3d at 801-02. Based on

the records of the IGO, which are uncontroverted, Mr. Younger did not complete the necessary steps within the administrative process with respect to his claims arising from the September 30, 2013 assault. Those claims, therefore, must be dismissed pursuant to the PLRA. *See Rodriguez v. Kopp*, No. RDB-17-3827, 2019 WL 568877, at *9-10 (D. Md. Feb. 12, 2019) (finding inmate did not "properly exhaust" where IGO dismissed grievance after inmate failed to respond to IGO's request that she "clarify the multiple issues in her grievances and provide supporting documentation"); *McMillian v. Caple*, No. DKC-15- 1882, 2016 WL 4269054, at *2 (D. Md. Aug. 15, 2016) (finding failure to exhaust where IGO dismissed underlying grievance "due to Plaintiff's failure to respond to a letter from the IGO requesting Plaintiff provide supporting documents and advising that failure to respond would result in dismissal of his grievance without further notice").

D. Administrative Remedies Were "Available" to Mr. Younger:

There is "one significant qualifier" [to the exhaustion requirement]: the remedies must indeed be 'available' to the prisoner." *Ross*, 136 S. Ct. at 1856. For an administrative remedy to be "available" under the PLRA, it must, as a threshold matter, be " 'capable of use' to obtain 'some relief for the action complained of.' " *Id.*, at 1859 (quoting *Booth v. Churner*, 532 U.S. 731, 738 (2001)). As the Court of Appeals for the Fourth Circuit has explained:

> Because the PLRA does not define the term ["available"], courts have generally afforded it its common meaning; thus, an administrative

> remedy is not considered to have been available if a prisoner, through no fault of his own, was prevented from availing himself of it. Conversely, a prisoner does not exhaust all available remedies simply by failing to follow the required steps so that remedies that once were available to him no longer are.

Moore, 517 F.3d at 725 (4th Cir. 2008) (internal citations omitted).

More recently in *Ross*, the Supreme Court identified three scenarios where, "although officially on the books," an administrative remedy may be incapable of use and, therefore, unavailable. *Id.* at 1859-60. The Court stated that an administrative remedy may be unavailable when:

(i) "it operates as a simple dead end – with officers unable or are consistently unwilling to provide any relief to aggrieved inmates";

(ii) "the administrative scheme [is] so opaque that it becomes, practically speaking, incapable of use"; or

(iii) "prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation."

Id. at 1859-60.The undisputed facts in this case, however, implicate none of these scenarios.

First, proceedings in the IGO do not function as "dead-ends" for claims arising out of correctional staff's alleged improper use of force. For example, inmate Raymond Lee, who, like Mr. Younger, was assaulted by staff

at MRDCC on September 30, 2013, properly pursued his claims in the IGO and obtained a $5,000.00 award by the DPSCS Secretary. Executive Director Tayler avers:

> I have also reviewed the IGO's records to discern whether they reflect a grievance by Mr. Lee that relates to injuries he may have sustained as a result of the alleged September 30, 2013 assault by officers Green, Hanna, and Ramsey. The IGO's records show that:
>
> (i) on November 13, 2013, after exhausting the administrative remedy process, Mr. Lee filed a grievance regarding the September 30, 2013 assault;
>
> (ii) Mr. Lee's grievance (No. 2013-1996) subsequently went before an administrative law judge ("ALJ"), who, following a hearing, issued a Proposed Decision on January 28, 2015, wherein she found the grievance to be meritorious and recommended to the Department's Secretary that Mr. Lee be awarded $5,000 for his injuries; and
>
> (iii) on March 13, 2017, the Department's Secretary issued an Order affirming the ALJ's Proposed Decision.

(Ex. 3, ¶ 6.)

Second, the three step administrative process described above was not so unclear as to render it incapable of use. Certainly, Mr. Younger, a self-described "old convict" familiar with the "system" and its "paperwork," and of course Mr. Lee, evidenced no confusion as to what

needed to be done to advance their respective administrative claims. (Ex. 3, ¶ 6; Ex. 4 (excerpt of transcript of Mr. Younger's October 3, 2019 deposition) at 154-61.) Further, the forms utilized in each step provided clear and express instructions as to how to proceed. DCD 185-002, App'x 3 and App'x 6.

Nevertheless, on at least two prior occasions after *Ross*, this Court, under similar circumstances (an improper use of force, immediately followed by an investigation by the Internal Investigation Unit ("IIU")) and under the same administrative regime, has found remedies unavailable as a matter of law. *See Brightwell v. Hershberger*, No. DKC-11- 3278, 2016 WL 4537766, at *7-9 (D. Md. Aug. 31, 2016); *Oakes v. DPSCS*, No. GLR-14-2002, 2016 WL 6822470, at *4-5 (D. Md. Nov. 18, 2016). The primary basis for these decisions appears to have been the perceived lack of clarity of the process, inasmuch as the Court itself found it confusing and thus within the scope of the second scenario articulated by *Ross*.[11]

Specifically, the DCD governing the warden's handling of administrative remedy requests directs the warden to dismiss the "request for procedural reasons when it has been determined that the basis of the complaint is the same basis of an investigation under the authority of the Internal Investigative Unit (IIU)," with the additional

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[11] The Court reached the same result in *Carmichael v. Buss*, No. TDC-14-3037, 2017 WL 2537225, at *4-6 (D. Md. June 9, 2017), but the outcome in that case appears to have been substantially dependent on certain verbal guidance provided to the inmate by correctional staff, thereby placing it within the scope of the third scenario articulated by *Ross*.

instruction that the warden state in the dismissal that "[s]ince this case shall be investigated by IIU, no further action shall be taken within the ARP process." DCD 185-003 § VI.N.4. This, the Court interpreted, "shut down" not just the ARP, but also the necessity for proceedings in the IGO, opining in *Brightwell*:

> Where the relevant administrative rules provide clear grounds for a procedural dismissal of the complaint, it seems disingenuous to suggest that a prisoner ought to appeal such a dismissal even if he knows it was rightly decided and has no legal or factual arguments that the complaint was inappropriately dismissed. At best, this process would be "so confusing that . . . no reasonable prisoner can use [it]." At worst, this is the type of "game-playing" that "thwarts the effective invocation of the administrative process."

Brightwell at *9 (omitting internal citations); *see Oakes* at 5.

The *Brightwell* and *Oakes* decisions are fundamentally flawed. In each, the inmate-plaintiff proceeded through the administrative process reaching the IGO unhindered by any confusion caused by the structure of the administrative regime. For instance, in *Brightwell*, the inmate-plaintiff proceeded through the process to the IGO, where it cleared preliminary review and went to a hearing on the merits before an ALJ.[12] *Brightwell*, 2016 WL 4537766, at *2-3. In *Oakes*, the inmate "appealed the dismissal of his . . . ARP to the IGO," which later dismissed

[12] The plaintiff then abandoned his claim due to the unavailability of witnesses he wished to examine. *Id.*

the grievance because the inmate "never responded to the IGO's request for required paperwork." *Oakes*, 2016 WL 6822470, at *5. Thus, in each case, the administrative remedies were demonstrably capable of use and, therefore, available. What is more, the process was used by each of the inmates.

Indeed, this Court, on at least one occasion, and in a case with a virtually identical fact pattern as here, has found to the contrary. *Mitchell v. Williams*, No. WMN-14-1781, 2016 WL 3753726 (D. Md. July 7, 2016). In *Mitchell*, the inmate filed two grievances with the IGO alleging an October 4, 2013 improper use of force by staff. *Id.* at *1. As to the first, the IGO corresponded with the inmate seeking the paperwork that would demonstrate exhaustion of the ARP process. *Id.* The inmate responded that he had pursued the ARP but "he had not received a response to his ARP from the Warden or the Commissioner of Correction." *Id.* The IGO then inquired "whether an ARP appeal was filed," and when it learned that it had not been filed, "concluded that Plaintiff failed to exhaust the ARP process . . . and dismissed the case." *Id.* As to the second grievance, it was "dismissed for failure to respond to the request for additional information" after the inmate had been "directed to provide a copy of all related ARP paperwork." *Id.* at *2. In his subsequent filing with this Court, the inmate asserted proper exhaustion on the ground that his ARP complaint had been dismissed because "the assault was being investigated by . . . IIU, and no further action could be taken through the ARP process" *Id.* at *1. Accounting for and considering *Ross*, the Court then refused to excuse the

inmate's failure to exhaust and dismissed the case under the PLRA. *Id.* at *3-4.

Brightwell and *Oakes*, but not *Mitchell*, were wrongly decided and should not be followed. The Court in *Ross* equates "opaque" in the availability analysis to "unknowable," advising that "[w]hen an administrative process is susceptible of multiple reasonable interpretations, Congress has determined that the inmate should err on the side of exhaustion." *Ross*, 136 S.Ct. at 1859. *Brightwell* and *Oakes* run afoul of this basic principle and, consequently, reflect an exercise of discretion not permitted under the PLRA. *Id.* (" 'Exhaustion is no longer left to the discretion of the district court' ") (quoting *Woodford*, 548 U.S. at 85).

Finally, because there is no evidence that anyone within the correctional system acted to thwart Mr. Younger's utilization of administrative remedies, those remedies were "available" to him, and his failure to properly exhaust them requires dismissal of his claims under the PLRA.

III. MR. YOUNGER'S CLAIMS ARE BARRED BY PRINCIPLES OF JUDICIAL ESTOPPEL.

Mr. Dupree hereby adopts and incorporates by reference, as if fully set forth herein, the representations and arguments made by Mr. Crowder in support of his assertion that Mr. Younger's claims are barred by judicial estoppel (ECF No. 185-1 at 28- 32).

IV. The Amended Complaint Fails to State a Claim Against Mr. Dupree Under Article 24 of the Maryland Declaration Of Rights.

Mr. Dupree hereby adopts and incorporates by reference, as if fully set forth herein, the arguments made by him in support of his assertion (ECF No. 156-1 at 17) that the amended complaint, in Count Four (Am. Compl. ¶¶ 132-37), fails to state a claim under Article 24 of the Maryland Declaration of Rights. Mr. Dupree, however, now supplements those arguments with reference to the declaration of the Deputy Director of the DOC's Commitment Office, which was provided to this Court by Mr. Crowder on October 18, 2019 (ECF No. 178-1), and confirms that Mr. Younger was a sentenced prisoner within the DOC at the time of the assault.

CONCLUSION

For the foregoing reasons, the Court should enter judgment in favor of Mr. Dupree as to all claims asserted against him in this case.[13]

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[13] The amended complaint also implies that Mr. Dupree may have been deliberately indifferent to Mr. Younger's medical needs after the attack. *See* Am. Compl. ¶ 113(d). However, Mr. Younger "received initial medical care on the morning of September 30, 2013," *id.* at 64, and Mr. Younger does not otherwise allege, and no facts have been adduced during discovery, that Mr. Dupree interfered with his medical care or "tacitly authorized or w[as] indifferent to the prison physicians' constitutional violations.' " *Barnes v. Wilson*, 110 F. Supp. 3d 624, 631-32 (D. Md. 2015) (quoting *Miltier v. Beorn*, 896 F.2d 848, 854 (4th Cir. 1990)). Thus, this theory of § 1983 liability, to the extent it is even asserted, also fails.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

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Attorneys for Defendant Neil Dupree

November 18, 2019

[Memorandum in Support of Defendant's
Motion for Summary Judgment
(Nov. 14, 2019)
(ECF No. 186-3)]

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

KEVIN YOUNGER,	*	
Plaintiff,	*	Case No.:
v.	*	1:16-cv-03269-RDB
JEMIAH L. GREEN, ET AL.,	*	
Defendants.	*	

* * * * * * * * * * * * * * * * *

<u>DECLARATION</u>

I, Jennifer L. Schmitt, attest and affirm as follows:

1. I am more than 18 years of age and am competent to testify, upon personal knowledge, to the matters stated herein.

2. I am currently employed as a Case Management Supervisor by the Division of Correction ("DOC") of the Maryland Department of Public Safety and Correctional Services ("the Department"). I presently supervise the unit within the DOC that manages and oversees the DOC's administrative remedy procedure ("ARP") process.

3. I am familiar with the above-captioned matter, in which I understand former DOC inmate Kevin Younger (DOC #239-743) sues various correctional officers and

their supervisors for injuries he purportedly sustained while an inmate at the DOC's Maryland Reception, Diagnostic & Classification Center on September 30, 2013.

4. In 2013 through December 11, 2014, the ARP process was governed by DOC Directives ("DCDs") 185-001, 185-002, 185-003, and 185-004. Copies of the versions of these DCDs that were in effect during that time frame, and which, therefore, would have governed any inmate claim arising on or about September 30, 2013, are attached.

5. The documents attached to this Declaration are true and accurate copies of records prepared and maintained in the ordinary course of business of the Department. They are also true and accurate copies of public records that set forth both the activities of the Department and matters observed pursuant to a duty imposed by law.

I AFFIRM AND DECLARE, UNDER PENALTY OF PERJURY AND UPON PERSONAL KNOWLEDGE, THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT.

11/13/19 /s/ Jennifer L. Schmitt
DATE JENNIFER L. SCHMITT

DCD 185-001

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

[SEAL] **DIVISION OF CORRECTION DIRECTIVE**	**PROGRAM:**	**ADMINISTRATIVE REMEDY PROCEDURES**
	DCD #:	**185-001**
	TITLE:	**Definitions**
	ISSUED:	**August 4, 2008**
	EFFECTIVE:	**August 27, 2008**
	AUTHORITY:	**/s/ Paul O'Flaherty** **Paul O'Flaherty** **ASSISTANT COMMISSIONER**
	APPROVED:	**/s/ J. Michael Stouffer** **J. Michael Stouffer** **COMMISSIONER**

I. References: DCD 185-002; 185-003; 185-004

II. Applicable to: Division of Correction Inmates housed in Division of Correction institutions and facilities and Division of Correction staff.

III. Purpose: The purpose of this directive is to defile terms as used throughout this series of directives as they apply to the Administrative Remedy Procedure.

IV. Definitions:

A. "Administrative Remedy Procedure" means: a mechanism for the resolution of inmate complaints for inmates housed within Division of Correction facilities.

B. "Administrative Remedy Coordinator" (ARC) means: an employee designated by the Commissioner or Warden or their designee to receive, acknowledge, and direct the investigation of complaints and to maintain all records relating to the procedure.

C. "Appeal" means:

1. To bring from a lower level to a higher level for consideration or judgment;

2. The second step of the formal complaint resolution process or Administrative Remedy Procedure; or

3. Headquarters Appeal of Administrative Remedy Response, Appendix 5 to DCD 185-002.

D. "Appeal of No Response" means: an appeal sent to the commissioner due to the warden's failure to issue a response to a Request of Administrative Remedy. This type of appeal will be considered an appeal on the merits of the issue and will be answered in accordance with the policy as stated in 185-002.

E. "ARP" means: an Administrative Remedy Procedure.

F. "ARP Process" means: the process and/ or policy as stated in 185-002. The process that must

be followed from the time an incident occurs through the time the Commissioner issues a decision in relation to that incident. The ARP process is ended after the appeal to the Commissioner is closed.

H. "Cross-Over Case" means: a case that is indexed by the housing institution, but for which a previous institution is responsible for investigating and responding. (Ex. An inmate is transferred from JCI to NBCI. The inmate arrives at NBCI and files an ARP claiming that his property was damaged as a result of negligence perpetrated by the JCI property officer. The case will be indexed at NBCI, but the investigation will be conducted by JCI staff and the response will be signed by JC1's Warden.) Both institutions will be responsible for keeping a complete ARP file.

I. "Department Liaison" means: an institutional departmental supervisor designated by the warden to serve as an investigator of administrative remedy requests and/or to delegate such investigations to departmental staff.

J. "Dismiss" means: to find without merit; to deny based on the issues.

K. "Dismissal for Procedural Reasons" means: a disposition of a request or appeal for procedural reasons (such as timeliness, sufficiency of information, completeness, or a determination that the complaint is frivolous or malicious) without consideration of the merit of the complaint.

L. "Emergency Request" means: an. administrative remedy request submitted due to an unforeseen combination of circumstances which may pose a continued threat to the health, safety, or welfare of an inmate and which calls for immediate action.

M. "Exhaust" means: to take complete advantage of; to use up completely.

N. "Extension" means: the Warden's or Commissioner's increase in the length of response time as described in DCD 185-002.

O. "Formal resolution" means: to seek a written judgment or decision and relief from the warden or commissioner regarding an institutionally related complaint.

P. "Frivolous" means: a complaint, which is not serious or practical in content or form; a complaint submitted for mere purposes of delay and/or embarrassment.

Q. "Informal Resolution" means: to seek a written/ or verbal judgment or decision and relief directly from institutional staff regarding an institutionally related complaint.

R. "Malicious" means: a complaint characterized by wicked, spiteful, or mischievous intentions or motives; a complaint submitted to accomplish some end, which the administrative remedy process was not designed to accomplish and does not arise from a regular use of the process. This includes complaints that utilize obscene or racially biased language or which make threats regarding the safety of other persons.

S. "Meritorious" means: the basis of the complaint is substantiated and the relief requested is appropriate.

T. "Meritorious in Part" means: the complaint is substantiated in whole or part and/or the relief requested is appropriate in whole or part.

U. "Misdirect" means: to address incorrectly; to send to the wrong person or place.

V. "Moot" means: had been resolved or no longer capable of resolution.

W. "Relief" means: only what is deemed by the Division of Correction to be the proper corrective action to a complaint that is found to be meritorious or meritorious in part.

X. "Reprisal" means: any action taken by inmate or staff either out of spite or in retaliation for submitting a complaint through the Administrative Remedy Procedure.

Y. "Request" means:

1. The initial step of the formal complaint resolution process; or

2. Administrative Remedy Request, Appendix 3 to DCD 185-002.

V. Policy: It is the policy of the Division of Correction to define terms used throughout this series of directives as they apply to the Administrative Remedy Procedure.

VI. Procedure: None

VII. Attachment: None

VIII. Rescission: DCD 185-003, dated April 1, 1993

Distribution: A
L
S

DCD 185-002

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

[SEAL] **DIVISION OF CORRECTION DIRECTIVE**	**PROGRAM:**	**ADMINISTRATIVE REMEDY PROCEDURES**
	DCD #:	**185-002**
	TITLE:	**Administrative Remedy Policy**
	ISSUED:	**August 4, 2008**
	EFFECTIVE:	**August 27, 2008**
	AUTHORITY:	**/s/ Paul O'Flaherty** **Paul O'Flaherty** **Assistant Commissioner**
	APPROVED:	**/s/ J. Michael Stouffer** **J. Michael Stouffer** **Commissioner**

I. References:

A. Suits by Prisoners, 42 U.S.C.§ 1997e(a)

B. Correctional Services Article, §§ 10-201 through 10-210, Annotated Code of Maryland

C. Courts and Judicial Proceedings Article, §§ 5-1001 through 5-1007, Annotated Code of Maryland

D. COMAR 12.02.27 and COMAR 12.07.01.

E. DCD 175-2 and 250-1

II. Applicable to: All Division of Correction inmates housed in Division of Correction institutions and facilities

III. Purpose: To establish policy for the operation and management of the Administrative Remedy Procedure (ARP).

IV. Definition: Administrative Remedy Procedure means the procedure established by the Commissioner of Correction for inmate complaint resolution.

V. Policy:

A. The Division of Correction encourages staff and inmates to make a good faith effort to resolve all institutionally related inmate complaints at the lowest possible level. Inmates are encouraged, but not required, to seek resolution of complaints through the informal resolution process. Inmates may seek formal resolution through the Administrative Remedy Procedure.

B. Formal resolution under the Administrative Remedy Procedure consists of two levels:

1. Filing a request for administrative remedy with the Warden, and
2. Appealing to the Commissioner, if not satisfied with the response.

C. An inmate not satisfied with the outcome of the Administrative Remedy Procedure Process may seek further administrative review in accordance with regulations of the Inmate Grievance Office (IGO).

D. The purposes of the Administrative Remedy Procedure are to solve inmate problems and to be responsive to inmate concerns. When the Division of Correction finds that a request for administrative remedy or an appeal is meritorious in whole or in part, the Administrative Remedy Procedure, to the extent possible, should provide the inmate with meaningful relief.

E. It is the policy of the Division of Correction that requests for administrative remedy and appeals under the Administrative Remedy Procedure should be answered on the merits and substantive relief provided to the inmate where warranted. Nevertheless, inmates must adhere to the time periods and other requirements set forth in this Directive and should not expect that any late submission will be considered.

VI. Procedures:

A. Inmates may seek relief through the Administrative Remedy Procedure for issues that include, but are not limited to:

1. Division of Correction and institutional policies and procedures;
2. Medical services;
3. Access to courts;
4. Religious liberties;
5. Lost, damaged, stolen, destroyed, or improperly confiscated property;
6. Use of force;
7. Sentence computation and diminution of confinement;
8. Institutional conditions affecting health, safety, and welfare; and
9. Administration and operation of this procedure.

B. Inmates may not seek relief through the Administrative Remedy Procedure on the following issues:

1. Case management recommendations and decisions;
2. Maryland Parole Commission procedures and decisions;
3. Disciplinary hearing procedures and decisions; and
4. Decisions to withhold mail.

C. Inmates may seek relief concerning case management recommendations and decisions both through informal resolution and under ICTO regulations. Disciplinary hearing decisions may be appealed under a wholly separate

procedure in accordance with COMAR 12.02.27, applicable DPSCS directives, and under IGO regulations. Under no circumstances should inmates use the Administrative Remedy Procedure to raise any issue concerning disciplinary hearing procedures and decisions. Decisions to withhold mail may be appealed pursuant to DCD 250-1.

D. Every inmate in the Division of Correction, regardless of physical condition, security level, administrative status, language barrier or housing assignment is entitled to submit a request for administrative remedy on those issues that qualify, and to appeal to the Commissioner if not satisfied with the response. If asked, wardens and staff shall ensure that assistance in filing requests for administrative remedy and appeals under the Administrative Remedy Procedure is available to inmates who are disabled or who are not functionally literate in English. Wardens shall ensure that the proper forms for using the Administrative Remedy Procedure are readily available in all housing units.

E. Inmates are responsible for using the Administrative Remedy Procedure in good faith and in an honest and straightforward manner. When filing a request for administrative remedy or an appeal, inmates should briefly and clearly state the facts giving rise to the complaint and the relief requested.

F. The Division of Correction will not allow any retaliation to be taken against inmates who use the Administrative Remedy Procedure in good

faith. Inmates may use the Administrative Remedy Procedure to pursue complaints of any retaliation against them. When a claim of retaliation is confirmed, the Warden shall take appropriate action in accordance with Department of Public Safety and Correctional Services standards of conduct.

G. Inmates may not file request for administrative remedy or appeals on behalf of other inmates, staff, or other third persons (such as visitors). Inmates are also restricted from filing class action complaints under this Directive.

H. All requests for administrative remedy and appeals to the Commissioner shall be submitted in the name under which the inmate is committed to the custody of the Commissioner of Correction and shall include the inmate's identification number. An inmate may also include a religious name or name authorized by court order.

I. The transfer of an inmate does not terminate the administrative remedy process, although transfer of an innate may be relevant to any relief. An inmate who is transferred after an incident but prior to filing a request for administrative remedy shall submit the request to the Warden of the inmate's current institution, within the appropriate time period.

J. Except as provided in Section VLK of this Directive, inmates may submit any number of requests for administrative remedy on issues

that qualify under the Administrative Remedy Procedure.

K. The Commissioner of Correction may limit the number of requests an inmate may file if the inmate has misused the Administrative Remedy Procedure by filing requests that are frivolous, unnecessarily duplicative, or which contain threatening, obscene or abusive language or material.

1. The Warden shall make a written recommendation to the Commissioner regarding the number of requests to which the inmate should be limited and the duration of the limitation using the Administrative Remedy Procedure Limitation Request, Appendix 1 to this Directive. The recommendation must provide a compelling reason for the limitation. The Warden's responsibilities under this section may be delegated only to an Assistant Warden.

2. The Commissioner shall review the recommendation to limit an inmate's use of the Administrative Remedy Procedure and respond in writing by approval or disapproval of the recommendation. The Commissioner's responsibilities under this section may only be delegated to an Assistant Commissioner.

3. An inmate may appeal a decision by the Commissioner to limit the number of administrative remedy requests to the IGO. Any appeal must be received by the IGO

within 30 days of the date the inmate receives the Commissioner's decision.

4. The Warden may dismiss any requests for administrative remedy that exceed the limit approved by the Commissioner. Regardless of any dismissal, staff shall investigate and take appropriate action on any issue in a request if failure to do so could result in serious harm.

L. Time Periods and Filing Procedures at the Institutional Level:

1. An inmate may, at any time, attempt informal resolution of a complaint, using both correspondence and discussion with staff, as well as the Informal Inmate Complaint Form, Appendix 2 to this Directive.

2. Inmates are encouraged to use informal resolution, but attempting informal resolution does not suspend or stay the deadline for filing a formal request for administrative remedy or any other time period.

3. An inmate must date, sign, and submit Request for Administrative Remedy, Appendix 3 to this Directive, within the later of:

   a. Thirty (30) calendar days of the date on which the incident occurred; or

   b. Thirty (30) calendar days of the date the inmate first gained knowledge of the incident or injury giving rise to the complaint.

4. Wardens should recognize that certain complaints may be ongoing in nature and therefore not always subject to a strict application of this time period. For example, the heating system in an inmate's housing unit has been malfunctioning for over 60 days. However, the weather has been unseasonably warm and the inmate has not complained because he or she has not been cold. The weather suddenly changes and now the inmate is cold and consequently complains about the malfunctioning heating system.

5. Requests for administrative remedy concerning sentence computation and diminution of confinement are not subject to the 30-day time period. Although this type of request may be filed at any time, inmates are encouraged to submit a request concerning sentence computation and diminution of confinement as soon as the inmate becomes aware of the problem. Appeals to the Commissioner of Correction concerning sentence computation and diminution of confinement must be filed within the time period set forth in Section VI.M.I of this Directive.

6. When extraordinary circumstances prevent an inmate from submitting a request for administrative remedy within the 30-day time period, the Warden may accept a late filing.

7. The inmate shall describe a single complaint or a reasonable number of closely

related issues on the request form. "Closely related issues" are those that arise out of a single occurrence or condition. For example, an inmate seeking both medical attention and monetary damages due to a claim of excessive force is clearly raising two closely related issues.

8. The inmate shall clearly and briefly state the facts giving rise to the complaint so that the basis for investigation can be determined. The necessary facts include:

   a. The date and location of the occurrence;

   b. The names(s) of staff involved;

   c. The name(s) of any witnesses;

   d. A brief statement of the facts; and,

   e. A brief statement of the relief requested.

9. If the inmate includes more than one issue in a single request for administrative remedy and the issues are not closely related or does not provide sufficient information to determine the basis for investigation, the Warden may dismiss the request for procedural reasons.

   a. If the Warden dismisses a request because the complaint contains multiple unrelated issues or does not provide sufficient information to determine the basis for investigation, the inmate may resubmit a request containing a single issue, or a

reasonable number of closely related issues, or may resubmit with additional information needed to determine the basis for investigation.

b. The inmate must resubmit the request within the original time period or within 15 days of the date of dismissal, whichever is later.

c. Regardless of any dismissal, staff shall investigate and take appropriate action on any issue in a request for administrative remedy if failure to do so could result in serious harm.

10. The inmate shall submit the request for administrative remedy to an officer in the control center of the inmate's housing unit, a tier officer, or a custody supervisor. The officer who receives a request for administrative remedy must sign and date the form and provide the inmate with the carbonless copy of the request. The officer who receives a request for administrative remedy must deliver the request to the location designated by the Warden by the end of that officer's shift.

11. Within five business days of the date the inmate submits a request for administrative remedy, the Warden shall provide the inmate with a receipt and case number. Inmates are responsible for keeping the carbonless copy of the request for administrative remedy and any receipts. These

documents are needed in the event of further proceedings.

12. The Warden shall investigate and respond to all requests for administrative remedy within 30 calendar days of the date of submission of the request for administrative remedy.

    a. The Warden is permitted one extension of 15 calendar days to respond to a request for administrative remedy. The inmate's consent to the extension is not required.

    b. If the Warden extends the time to respond, the Warden must provide written notice of the extension using the Extension Form, Appendix 4 to this Directive. The completed form must be sent to the inmate within the original 30 days.

13. An inmate may withdraw a request for administrative remedy at any time. An inmate who withdraws a request for administrative remedy shall submit the withdrawal using the Withdrawal Form, Appendix 5 to this Directive. Withdrawal of the request may prevent consideration of the claim at a higher level.

14. By separate Directive, the Commissioner shall establish standards for the investigation of requests for administrative remedy and preparing responses, as well as the duties of wardens and institutional administrative remedy coordinators.

15. Regardless of any dismissal for procedural reasons, staff shall investigate and take appropriate action on any issue in a request for administrative remedy if failure to do so could result in serious harm.

16. The Warden shall promptly provide to the inmate any relief ordered in response to a request for administrative remedy or appeal.

17. If the Warden fails to respond to a request for administrative remedy within 30 calendar days of the date the request is submitted or within 45 calendar days of the date the request is submitted, if an extension is required by the Warden under Section VI.L.12.a of this Directive, the request for administrative remedy is considered denied and the inmate may appeal to the Commissioner of Correction.

M. Time Periods and Filing Procedures for Appeals:

1. All appeals to the Commissioner of Correction must be dated, signed and submitted, using the Headquarters Appeal of Administrative Remedy Response, Appendix 6 to this Directive, so that the appeal is received by the Commissioner's Office within 30 calendar days of the date the inmate receives the Warden's response, or within 30 calendar days of the date the response from the Warden was due.

Appeals concerning sentence computation and diminution of confinement are included within this time period.

2. Unless indigent as defined by DCD 175-2, inmates are encouraged to affix proper postage and use the United States Postal Service when submitting an appeal. Inmates may also use institutional courier mail systems to submit appeals. If an institutional courier system is used, the Division of Correction has no responsibility for delivery dates exceeding the applicable time period.

3. When extraordinary circumstances prevent an inmate from submitting an appeal so that it is received by the Commissioner's Office within the 30-day time period, the Commissioner may accept a late filing.

4. An inmate may appeal to the Commissioner even if the Warden finds the complaint meritorious in whole or in part, for example, if the inmate is dissatisfied with the relief ordered by the Warden.

5. When any appeal is received by the Commissioner, the headquarters administrative remedy coordinator shall, within five business days of the date the appeal was received, send the inmate Part C of the appeal notifying the inmate of the date the appeal was received.

6. The Commissioner shall investigate and respond to all appeals within 30 calendar

days of the date the appeal is received, unless an extension is required under Section VI.M.9.b of this Directive.

7. The Commissioner's investigation of an appeal is not limited by any investigation conducted by the Warden. When responding to an appeal, the Commissioner is not limited to affirming or reversing the Warden's decision. The Commissioner may take any action in response to an appeal that is consistent with the major purposes of the Administrative Remedy Procedure.

8. A failure by the Warden to respond to a request for administrative remedy in a timely manner does not prevent the Commissioner from responding to an appeal on any basis that was available to the Warden.

9. If the inmate appeals to the Commissioner after the Warden has failed to respond in a timely manner, the Commissioner may direct the Warden to investigate the complaint and prepare a recommended response to the appeal for the Commissioner to review.

   a. The Warden shall investigate and prepare a recommended response to the appeal on behalf of the Commissioner and provide the Commissioner with the recommended response within 15 calendar days of the date of the Commissioner's order, or earlier if required by the Commissioner.

b. If the Warden is directed to investigate and prepare a recommended response on behalf of the Commissioner, the Commissioner is permitted one extension of 15 calendar days to respond to the appeal. The inmate's consent to the extension is not required.

c. If the Commissioner extends the time to respond to an appeal, the Commissioner must provide written notice to the inmate using the Extension Form, Appendix 4 to this directive within the original 30 days.

d. The Commissioner may accept or reject the Warden's recommended response, substitute the Commissioner's response, or take any action consistent with the purposes of the Administrative Remedy Procedure, except remanding to the Warden for further proceedings at the institutional level.

10. If the inmate appeals to the Commissioner after the Warden has failed to respond in a timely manner, and the inmate subsequently receives a response from the Warden concerning the same request for administrative remedy, the Warden shall also provide the Commissioner with a copy of the untimely response.

a. The inmate may withdraw the appeal using the Withdrawal Form, Appendix 5 to this Directive if the inmate is satisfied with the Warden's response, even though the response was not timely.

b. If the inmate is not satisfied with the Warden's response, the inmate may continue with the appeal.

c. If the inmate continues with the appeal, no further action is required by the inmate. The inmate may but is not required to supplement the appeal based on the Warden's response.

11. Any request for administrative remedy submitted directly to the Commissioner without first being submitted to the Warden shall be referred by the Commissioner to the Warden.

    a. The Commissioner shall refer a request for administrative remedy submitted directly to the Commissioner within 30 calendar days of the date the request is received by the Commissioner. The referral shall include the date the request was received.

    b. The Commissioner shall provide written notice of the referral to the inmate within 30 calendar days of the date the request was received by the Commissioner. The inmate's consent to the referral is not required.

c. In the event of such a referral, the Warden shall provide the inmate with a receipt using Part C of the request within five business days of receiving the referral and shall respond to the inmate within 30 calendar days of the date the Warden receives the referral.

d. If an extension of 15 calendar days to respond to a referral is required, the Warden shall provide the inmate with written notice within 30 calendar days of the date the Warden received the referral using the Extension Form, Appendix 4 to this Directive. The inmate's consent to the extension is not required.

e. In all respects, the referral shall be treated as if it were an original request for administrative remedy, except that no referral by the Commissioner shall be dismissed by the Warden for lack of timeliness if the original request was received by the Commissioner within 30 calendar days of the date of the incident or within 30 calendar days of the date the inmate gained knowledge of the incident or injury giving rise to the complaint, whichever is later.

f. Regardless of any referral, headquarters staff shall investigate and take appropriate action on any issue in a request for administrative

remedy submitted directly to the Commissioner if failure to do so could result in serious harm.

12. By separate Directive, the Commissioner shall establish standards for the investigation of appeals and preparing responses to appeals, and the duties of the headquarters administrative remedy coordinator.

13. Regardless of any dismissal of an appeal for procedural or other reasons, headquarters staff shall investigate and take appropriate action on any issue in an appeal if failure to do so could result in serious harm.

14. If the Commissioner fails to respond to an appeal within 30 calendar days of the date the Commissioner receives the appeal, or 45 calendar days of the date received if an extension is required under Section VI.M.9.b of this Directive, the appeal is considered denied, and the inmate may seek further administrative review under regulations of the IGO.

N. Regulations of the Inmate Grievance Office (IGO) include the following:

1. COMAR 12.07.01.06B provides: "An appeal from the administrative remedy procedure to the Inmate Grievance Office shall be filed within 30 days from the grievant's receipt of a response from the Commissioner [of Correction], or within 30 days of the date the Commissioner's response was due."

2. COMAR 12.07.01.06E provides: "The Inmate Grievance Office may dismiss any disciplinary proceeding appeal and any grievance within the scope of the administrative remedy procedure that has not been exhausted through all institutional remedies in a timely manner."

3. COMAR 12.07.01.06F provides: "A time limitation or procedural bar may be waived (by the Inmate Grievance Office] for a grievance which represents a continuing problem or for which good cause is shown for a failure to proceed in a timely manner."

4. COMAR 12.07.01.07A provides: "The Executive Director shall conduct a preliminary review of a grievance to determine whether it should be dismissed or proceed to a hearing."

5. COMAR 12.07.01.07B(4) provides: "A grievance shall be dismissed on preliminary review as wholly lacking in merit if . . . [t]he grievant has failed to exhaust remedies available under the administrative remedy procedure or the disciplinary proceeding in a timely manner, and has not shown good cause for the failure to do so."

O. In the Courts of the State of Maryland, judicial review of final decisions in matters before the IGO is available pursuant to Correctional Services Article, § 10-210.

1. The inmate may seek judicial review of a final decision in matters before the IGO in the Circuit Court of the County in which the inmate is confined. Correctional Services Article, § 10-210(b)(2).

2. Courts and Judicial Proceedings Article, § 5-1003(a)(1) provides: "A prisoner may not maintain a civil action until the prisoner has fully exhausted all administrative remedies for resolving the complaint or grievance."

P. Federal law, 42 U.S.C. § 1997e(a) provides: "No action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Q. This series of Directives establishes policy and procedure for the operation of the Administrative Remedy Procedure throughout the Division of Correction.

R. The institutional administrative remedy coordinator or designee shall complete the Policy Management Audit Form, Appendix 7 to this Directive in June and December of each calendar year. When deficiencies are noted, a compliance plan shall be completed to address each deficiency. A copy of the completed form(s) shall be forwarded to the:

1. Institutional audit coordinator; and

2. Director, Office of Policy Development, Analysis and Management

The institutional administrative remedy coordinator or designee shall maintain a copy of the form for review during the Headquarters Administrative Remedy Audit.

S. No institutional directives are required or permitted.

VII. Attachments:

A. Appendix 1, Administrative Remedy Procedure Limitation Request (DOC Form 185-002aR)

B. Appendix 2, Informal Inmate Complaint Form (DOC Form 185-002bR)

C. Appendix 3, Request for Administrative Remedy (DOC Form 185-002c)

D. Appendix 4, Extension Form (DOC Form 185-002dR)

E. Appendix 5, Withdrawal Form (DOC Form 185-002eR)

F. Appendix 6, Headquarters Appeal of Administrative Remedy Response (DOC Form 185-002fR)

G. Appendix 7, Policy Management Audit Form (DOC Form 1-2aR) and Policy Management Compliance Plan (DOC Form 1-2bR)

VIII. Rescissions:

185-001: Table of Contents, dated April 1, 1993

185-002: Administrative Remedy Procedure Policy, dated February 15, 2005

185-100: Administrative Remedy Procedure Description, dated April 1, 1993

185-101: Time Frames, dated April 1, 1993

185-200: Institution Program Orientation and Management, dated April 1, 1993

185-201: Inmate Orientation, dated April 1, 1993

185-202: Staff Awareness, dated April 1, 1993

185-203: Informal Resolution Procedure, dated April 1, 1993

185-204: Preliminary Review of a Request for Administrative Remedy, dated April 1, 1993

185-205: Administrative Dismissal of a Request, dated April 1,1993

185-206: Acceptance and Investigation of a Request for Administrative Remedy, dated April 1, 1993

185-207: Warden's Response to a Request for Administrative Remedy, dated April 1, 1993

185-208: Providing Relief to a Request for Administrative Remedy, dated April 1, 1993

185-300: Headquarters Program Organization and Management, dated April 1, 1993

185-301: Administrative Dismissal of an Appeal, dated April 1, 1993

185-302: Acceptance and Investigation of a Headquarters Appeal of Administrative Remedy Response, dated April 1, 1993

185-303: Commissioner's Response to a Headquarters Appeal of Administrative Remedy Response, dated April 1, 1993

185-304: Providing Relief to the Inmate, dated April 1, 1993

185-305: Adverse Effect Request, dated, April 1, 1993

185-400: Program Description of Procedures for Inmates, dated April 1, 1993

185-401: Submitting a Complaint for Informal Resolution, dated April 1, 1993

185-402: Submitting a Request for Administrative Remedy, dated April 1, 1993

185-403: Submitting a Headquarters Appeal of Administrative Remedy Response, dated April 1, 1993

185-500: Professional Training and Development, dated April 1, 1993

185-600: Documentation and Reporting, dated April 1, 1993

185-700: Audits, dated April 1, 1993

VIII. Rescission: DCD 185-003, dated April 1, 1993

Distribution: A
L
S

Appendix 1 to DCD 185-002

MARYLAND DIVISION OF CORRECTION
ADMINISTRATIVE REMEDY
PROCEDURE LIMITATION REQUEST

(Instructions for completing this form are on the back of Page 2)

TO: Commissioner of Correction
FROM: ______________________________
Warden

____
Institution

PART A – INMATE INFORMATION

____
Last Name First Name Middle Initial

________________ ________________
DOC Number Institution

____
Housing Location

Protective Custody ☐ Administrative Segregation ☐
Disciplinary Segregation ☐

PART B – INMATE ADMINISTRATIVE REMEDY HISTORY

1. # of Administrative Remedy Requests Filed at _____ (Institution) During the Last Six Months: _____

2 # of Meritorious Administrative Remedy Requests at _____ (Institution) During the Last Six Months: _____

3. # of Frivolous/Malicious Administrative Remedy Requests filed at ____ (Institution) During the Last Six Months: _____

PART C – SPECIFIC REASONS TO LIMIT INMATE'S ADMINISTRATIVE REMEDY REQUESTS

I recommend limiting the inmate to filing ____ Administrative Remedy Requests per month for ____ months.

_________ ____________________________________

Date Signature of Warden/Assistant Warden

PART D – COMMISSIONER REVIEW AND COMMENTS

☐ **Approved**

☐ **Disapproved**

COMMENTS:

__________ ______________________________________

Date Signature of Commissioner/ Assistant Commissioner

C: ARP Coordinator

Instructions for Completing Administrative Remedy Procedure Limitation Request, DOC Form 185-002aR

1. Use a computer or typewriter.
2. Complete the "From" section by adding warden's name and the institution.
3. Complete Part A by listing inmate information to include: Name, DOC Number, Institution, Housing Location, Housing Status (Protective Custody, Administrative Segregation, Disciplinary Segregation).
4. Complete Part B by listing the inmate's administrative remedy history to include:
   a. Number of administrative remedy requests filed at (Institution) during the last six months;
   b. Number of meritorious administrative remedy requests at (institution) during the last six months; and

c. Number of frivolous/ malicious administrative remedy requests filed at (institution) during ale last six months

5. The warden must complete Part C by listing:

    a. Specific reasons for limiting the inmate's administrative remedy requests.

    b. Designating the limitation time period and the number of ARPs the inmate is limited for during the time period.

6. Warden shall sign and date Part C.

7. Commissioner of Correction/ designee shall review the form and complete Part D by approving or disapproving the request, providing comments and signing and dating Part D.

8. The completed form shall be returned to the warden.

Appendix 2 to DCD 185-002

Informal Inmate Complaint Form

Name: ____________ Housing Location: ____________

DOC #: ___________ Date: ______________________

The subject of my complaint is: (check one)

__ 1. Classification

__ 2. Institutional Programs

__ 3. Mail and Packages

__ 4. Visiting Procedures and Telephone Calls

__ 5. Commitment

__ 6. Property and/or Clothing

__ 7. Payroll

__ 8. Disciplinary Matters (excluding adjustment hearing decisions)

__ 9. Complaints against Staff or Others

__ 10. Institutional Operations

__ 11. Dietary

__ 12. Other (explain):
____
____
____

A. Complaint (Inmate)

Briefly describe your complaint, including the date of the incident, the persons involved, and the remedy you are seeking.

____
____
____
____
____

B. Response (Staff)

Complete and return to Department Head/Shift Commander ____________________ by __________________.
(Name)

____
____
____
____

Submitted by: ________________________ Date: __________
Signature

Approved by: ________________________ Date: __________
Department Head/
Shift Commander

Instructions for Processing Informal Complaints, DOC Form 185-002bR

A. All staff shall attempt to resolve institutionally-related inmate complaints on an informal basis. All department heads and shift commanders shall ensure staff cooperation and compliance with this directive.

B. Upon receipt of an Informal Inmate Complaint Form the department head or shift commander shall:

1. Initial the complaint and indicate the date received; and

2. Assign an appropriate staff person, as determined by the nature of the complaint, to review the complaint and draft a response to the inmate.

C. Upon receipt of the Informal Inmate Complaint Form from the department head or shift commander, the assigned staff person shall:

1. Review Section A. to establish the basis of the inmate's complaint;

2. Review the appropriate regulations, directives, policies, and/or procedures to determine the following with regard to the incident or complaint:

   a. Staff compliance with existing policy and procedure;

   b. The merit of the inmate's complaint; and

   c. An appropriate remedy, if applicable.

3. On the basis of this review, the staff person shall:

   a. Draft a response to the complaint in Section B. of the Informal Inmate Complaint Form and return the response to the department head or shift commander within five calendar days; or

   b. Consult with the department head or shift commander for approval of any corrective action or relief deemed appropriate. Draft a response, as directed, and return the response to the department head or shift commander within five calendar days.

D. Upon receipt of the response, the department head or shift commander shall:

1. Review, sign, and date the response;

2. Ensure that the response is sent to the inmate; and

3. Ensure that staff take the actions necessary to grant the approved relief to the inmate.

Appendix 4 to DCD 185-002

Administrative Remedy Procedure
EXTENSION FORM

TO: _______________, *Inmate Name and DOC Number*

_______________ *Institution*

Under the provisions of DCD 185-002, the
______________________ is permitted one extension of 15
WARDEN/COMMISSIONER
calendar days to respond to a request for administrative remedy. Please be advised that the permitted extension is required in order to properly respond to your ________________________. The new due date for
REQUEST OR APPEAL
response is ________________.
DATE

__________________________________ ___________

Warden/Commissioner or Institutional/ Date
Headquarters Coordinator

Appendix 3 to DCD 185-002

____________________________ ____________
Officer's Name: Print and Signature Date

CASE NO. _______________

MARYLAND DIVISION OF CORRECTION
REQUEST FOR ADMINISTRATIVE REMEDY
(Instructions for completing this form are on the back)

TO: ☐ Warden of Institution

Emergency Request: ☐ Check only if your complaint poses a continued threat to your health, safety, or welfare.

FROM: ________________________ ________________
Last Name First Name Middle Initial

______________ _____________
DOC Number Institution

Housing Location ____________ Protective Custody ☐
Administrative Segregation ☐ Disciplinary Segregation ☐

Part A – INMATE REQUEST

_________ ____________________________________
Date Signature of Inmate

Part B – RESPONSE

_________ ____________________________________
Date Signature of Warden

You may appeal this response by following the procedure prescribed on the back of this form.

Part C – RECEIPT

Case No. __________

RETURN TO: ________________________ ____________
Last Name First Name Middle Initial

______________ ______________
DOC Number Institution

I acknowledge receipt of your complaint dated __________
in regard to: ____
____
____

__________ ____________________________________
Date Institutional ARP Coordinator

Original: White – Institutional
ARP Coordinator
Copy: Canary – Inmate

Instructions to Inmates for Completing Request for Administrative Remedy, DOC Form 185-002c

1. Use a typewriter, ink, or pencil.

2. Your request must be addressed to the Warden of the institution where you are housed, regardless of where the incident which you are complaining about occurred.

3. Your complaint must be submitted within the later of thirty (30) calendar days of the date on which the incident occurred or thirty (30) calendar days from the date that you first gained knowledge of the incident or injury giving rise to the complaint. Read DCD 185-002 for a complete description of time frames.

4. If you believe that your request concerns a situation that poses a continuing threat to your health, safety, or welfare, you may ask that your request be processed as an emergency by checking the space provided.

5. Type or print the specifics of the complaint in the space provided in Part A. Use one form for each complaint or closely related complaints. Be sure to include the date of the incident, the names of the people involved, and a description of the incident. A description of any efforts you have made to resolve the incident informally before submitting this request is helpful. Keep the specifics as brief as possible. If you checked the Emergency Request space, you must include an explanation for why you believe your complaint should be processed as an emergency. If you need more space, use the continuation sheet that is in duplicate form.

5, Date and sign the request in the spaces provided in Part A. You may write "see attached" in Part A and attach a written or typed complaint on the continuation sheet that is in duplicate form.

6. Submit the request to an officer in the control center of the housing unit, a tier officer or a custody supervisor. If the Warden has issued an Information Bulletin (IB) for submitting a Request for Administrative Remedy, follow those procedures.

7. If you need assistance in completing or submitting a Request for Administrative Remedy, write to your institutional administrative remedy coordinator.

8. If at any time you wish to withdraw your complaint, please sign and date the Withdrawal Form, Appendix 5 to DCD 185-002 and submit it to any staff member.

Instructions to Staff for Completing – Receipt for Administrative Remedy, DOC Form 185-002c.

1. Sign and date the form(s) in the upper right hand corner where indicated.
2. Give the canary copy of the form(s) to the inmate.
3. Deliver the white copy of the form(s) to a location designated by the warden by the end of your shift.

Inmate Appeal Procedure

If you choose to appeal the warden's response, you must complete the Headquarters Appeal of Administrative Remedy Response, Appendix 6 to DCD 185-002. The appeal must be received within 30 calendar days from the date you received the Warden's response or within 30 calendar days from when the Warden's response was due.

Part A (Continued) – INMATE REQUEST

____________	______________________________________
Date	Inmate's Name: Print and Signature DOC#

Part A (Continued) – INMATE REQUEST

____________	______________________________________
Date	Inmate's Name: Print and Signature DOC#

Appendix 5 to DCD 185-002

Administrative Remedy Procedure
WITHDRAWAL FORM

TO: ______________, *Administrative Remedy Coordinator*

______________ *Institution*

I, ________________________, DOC # ______________, wish to withdraw my request for administrative remedy, ARP Case No.

____

I acknowledge that my complaint can not be further addressed through the administrative remedy procedure. I also understand that failure to exhaust the administrative remedy procedure by withdrawing my request may result in dismissal of my complaint at a higher level.

_________________________________ ______________
Inmate's Signature Date

_________________________________ ______________
Staff Witness/Title Date

Appendix 6 to DCD 185-002

CASE NO. ____________

MARYLAND DIVISION OF CORRECTION
HEADQUARTERS APPEAL OF ADMINISTRATIVE REMEDY RESPONSE

(Instructions for completing this form are on the back)

TO: ☐ Commissioner of Correction...Appeal of (check one):

☐ Dismissal for Procedural Reasons

☐ Warden's Response

☐ No Response from Warden

☐ Executive Director: Inmate Grievance Office

FROM: ______________________ ______________
Last Name First Name Middle Initial

_____________ _____________
DOC Number Institution

Housing Location ___________ Protective Custody ☐
Administrative Segregation ☐ Disciplinary Segregation ☐

Part A – REASON FOR APPEAL

________ ______________________________
Date Signature of Inmate

Part B – RESPONSE

________ ______________________________
Date Signature of Commissioner

You may appeal this response by following the procedure prescribed on the back of this form.

Part C – RECEIPT

Case No. __________

RETURN TO: ____________________________________
Last Name First Name Middle Initial

______________ ____________
DOC Number Institution

I acknowledge receipt of your complaint dated _________
in regard to: _____________________________________
____
____

_________ ___________________________________
Date Headquarters Coordinator

Instructions to Inmates for Completing Headquarters Appeal of Administrative Remedy Response

1. Use a typewriter, ink, or pencil. Enter the case number recorded on the receipt received from the institutional coordinator in the blank provided.

3. Indicate the type of appeal by checking the To: Commissioner of Correction box and check the type of response received.

4. Type or print the specifics of the appeal in the space provided in Part A. Use one form for each appeal. Be sure to include the date of the incident, the names of the people involved, and a description of the incident. Keep the specifics as brief as possible. If you need more space, use the continuation sheet that is in duplicate form.

5. Date and sign the appeal in the spaces provided in Part A. You may write "see attached" in Part A and attach a written or typed complaint on the continuation sheet(s).

6. Mail: 1) the appeal, 2) one copy of any completed Request for Administrative Remedy you received showing the warden's or institutional coordinator's response to your complaint, and 3) a copy of the Receipt for Warden's Response (if applicable) to:

   Commissioner of Correction
   6776 Reisterstown Road, Suite 310
   Baltimore, Maryland 21215

   so that they are received within thirty (30) calendar days of the day you received the warden's response, or within 30 days of the date the warden's response was due.

   Note: If you are filing an appeal of no response from the Warden, you should send: 1) the appeal, 2) a copy of your original ARP, and 3) the receipt with the assigned case number. If the warden issues a response after you file an appeal of no response, you can either 1) continue with the appeal, 2) continue with the appeal and supplement the appeal with additional information as to why the warden's response is inaccurate, or 3) if you are satisfied with the warden's response you may withdraw your appeal using the Withdrawal Form, Appendix 5 to DCD 185-002.

7. If you need assistance in completing the Headquarters Appeal of Administrative Remedy Response write to your institutional administrative remedy coordinator.

8. If at any time you wish to withdraw your complaint, please sign and date the Withdrawal Form, Appendix 5 to DCD 185-002 and mail it to the Commissioner of Correction, Attention: Headquarters ARP Coordinator (See address above).

Instructions to Inmates for an Appeal to the Inmate Grievance Office

If you choose to appeal the Commissioner's response, you must do so within 30 days of the date you received the Commissioner's response or within 30 days of the date the Commissioner's response was due. See COMAR 12.07.01.06.B.

1. Check the space marked "Executive Director – Inmate Grievance Office" only when you are appealing the Commissioner's response to a Headquarters Appeal of Administrative Remedy Response, or the failure to respond. You must enclose 1) one copy of any completed Request for Administrative Remedy and 2) Headquarters Appeal of Administrative Remedy Response you received showing the warden's response to your complaint and the Commissioner's response to your complaint.

2. Complete this form by typing or printing the specifics of the appeal in the space provided in Part A. Use one form for each appeal. Be sure to include:

    a. The name and address of the institution where you are incarcerated;

    b. The nature of your grievance, including the name(s) of the person(s) you believe are responsible for your grievance;

c. The facts or evidence on which your grievance is based, giving dates, times, and the names of any persons, officials, or inmates involved; any applicable case numbers and/ or receipts;

d. The names and addresses of any witnesses, lawyer, or representative you would like to be present at your hearing;

e. Your signature, and date your request.

3. Mail your complaint to:

Executive Director
Inmate Grievance Office
115 Sudbrook Lane
Suite 200
Sudbrook Station
Pikesville, MD 21208

Part A (Continued) – REASON FOR APPEAL

Date	Inmates Name: Print and Signature DOC #

Part A (Continued) – REASON FOR APPEAL

Date	Inmates Name: Print and Signature DOC #

Title & DCD #: ______________________________
Institution/Facility: ______________________________
Date: __________ Auditor: ______________________________

Line Item Number	DCD Reference Number(s)	Line Item Standard	Mark (C) for Compliance	Mark (D) for Deficient	Non-Compliance Corrective Action Plan Attached	Date to Re-audit Compliance	Date to Re-audit Non-Compliance
1.	Section VI.B.1-4	1. Are all ARPs properly dismissed for procedural reasons when they concern one of the following issues: case management recommendations and/or procedures, MPC or adjustment procedures or decisions, or decisions to withhold mail?					
2.	Section VI. D	2. Are ARP forms readily available in all housing units?					
3.	Section VI. G-H	3. Did all inmates file ARPs using their committed name and inmate identification number? Were inmates restricted from filing class action complaints or filing on behalf of others?					
4.	Section VI.K.1-4	4. Did the Warden provide a reason with each recommendation to limit the amount of ARPs an inmate can file? Were ARPs that exceed the limit by the Commissioner dismissed?					
5.	Section VI.L.4-5	5. Were all ARPs that included ongoing or Commitment issues accepted past the 30 day time frame?					
6.	Section VI.L.7	6. Are Inmates allowed to submit a reasonable number of closely related issues in one complaint?					
7.	Section VI.L.9b	7. When inmates are asked to resubmit ARPs, are they given the later of 15 days or the remainder of the 30 day time frame to do so.					
8.	Section VI.L.10	8. ARPs are first submitted to an officer, who then submits the ARP to an area designated by the Warden by the end or that officer's shift.					
9.	Section VI.L.12a-b	9. The Warden has responded to all ARPs accepted for investigation within 30 days or 45 days if an extension was required. If an extension was required, the inmate was informed via Appendix 4 to DCD 185-002 within the original 30 day time frame.					
10.	Section VI.L. 15	10. Staff has referred any issue that could result in serious harm for follow up outside of the ARP process.					

Distribution: Institutional Audit Coordinator
Director, Office of Policy Development, Analysis and Management

Policy Management Compliance Plan

Title & DCD #: ___________________________
Institution/Facility: ________________________
Date: ____________________________________
Name/Title of Person Completing Form: _______
____

Line Item Number	DCD Reference Section	Corrective Action	Employee/ Person(s) Responsible	Compliance Due Date	Action Taken	Date of Compliance

Distribution: Institutional Audit Coordinator
Director, Office of Policy Development, Analysis and Management

Appendix 1 to DCD 185-002

MARYLAND DIVISION OF CORRECTION
ADMINISTRATIVE REMEDY
PROCEDURE LIMITATION REQUEST

(Instructions for completing this form are on the back of Page 2)

TO: Commissioner of Correction

FROM: ______________________________
Warden

____
Institution

PART A – INMATE INFORMATION

____
Last Name First Name Middle Initial

________________ ________________
DOC Number Institution

____
Housing Location

Protective Custody ☐ Administrative Segregation ☐
Disciplinary Segregation ☐

PART B – INMATE ADMINISTRATIVE REMEDY HISTORY

1. # of Administrative Remedy Requests Filed at _____ (Institution) During the Last Six Months: _____

2 # of Meritorious Administrative Remedy Requests at _____ (Institution) During the Last Six Months: _____

3. # of Frivolous/Malicious Administrative Remedy Requests filed at ____ (Institution) During the Last Six Months: _____

PART C – SPECIFIC REASONS TO LIMIT INMATE'S ADMINISTRATIVE REMEDY REQUESTS

I recommend limiting the inmate to filing ____ Administrative Remedy Requests per month for ____ months.

__________ ____________________________________

Date Signature of Warden/Assistant Warden

PART D – COMMISSIONER REVIEW AND COMMENTS

☐ **Approved**

☐ **Disapproved**

COMMENTS:

__________ ______________________________________
Date Signature of Commissioner/
Assistant Commissioner

C: ARP Coordinator

Instructions for Completing Administrative Remedy Procedure Limitation Request, DOC Form 185-002aR

1. Use a computer or typewriter.

2. Complete the "From" section by adding warden's name and the institution.

3. Complete Part A by listing inmate information to include: Name, DOC Number, Institution, Housing Location, Housing Status (Protective Custody, Administrative Segregation, Disciplinary Segregation).

4. Complete Part B by listing the inmate's administrative remedy history to include:

    a. Number of administrative remedy requests filed at (Institution) during the last six months;

    b. Number of meritorious administrative remedy requests at (institution) during the last six months; and

c. Number of frivolous/ malicious administrative remedy requests filed at (institution) during ale last six months

5. The warden must complete Part C by listing:

   a. Specific reasons for limiting the inmate's administrative remedy requests.

   b. Designating the limitation time period and the number of ARPs the inmate is limited for during the time period.

6. Warden shall sign and date Part C.

7. Commissioner of Correction/ designee shall review the form and complete Part D by approving or disapproving the request, providing comments and signing and dating Part D.

8. The completed form shall be returned to the warden.

Appendix 2 to DCD 185-002

Informal Inmate Complaint Form

Name: ____________ Housing Location: ____________

DOC #: ___________ Date: _______________________

The subject of my complaint is: (check one)

__ 1. Classification

__ 2. Institutional Programs

__ 3. Mail and Packages

__ 4. Visiting Procedures and Telephone Calls

__ 5. Commitment

__ 6. Property and/or Clothing

__ 7. Payroll

__ 8. Disciplinary Matters (excluding adjustment hearing decisions)

__ 9. Complaints against Staff or Others

__ 10. Institutional Operations

__ 11. Dietary

__ 12. Other (explain):
____
____
____

A. Complaint (Inmate)

Briefly describe your complaint, including the date of the incident, the persons involved, and the remedy you are seeking.

____
____
____
____
____

B. Response (Staff)

Complete and return to Department Head/Shift Commander ____________________ by __________________.
(Name)

____
____
____
____

Submitted by: ________________________ Date: __________
Signature

Approved by: ________________________ Date: __________
Department Head/
Shift Commander

Instructions for Processing Informal Complaints, DOC Form 185-002bR

A. All staff shall attempt to resolve institutionally-related inmate complaints on an informal basis. All department heads and shift commanders shall ensure staff cooperation and compliance with this directive.

B. Upon receipt of an Informal Inmate Complaint Form the department head or shift commander shall:

1. Initial the complaint and indicate the date received; and

2. Assign an appropriate staff person, as determined by the nature of the complaint, to review the complaint and draft a response to the inmate.

C. Upon receipt of the Informal Inmate Complaint Form from the department head or shift commander, the assigned staff person shall:

1. Review Section A. to establish the basis of the inmate's complaint;

2. Review the appropriate regulations, directives, policies, and/or procedures to determine the following with regard to the incident or complaint:

   a. Staff compliance with existing policy and procedure;

   b. The merit of the inmate's complaint; and

   c. An appropriate remedy, if applicable.

3. On the basis of this review, the staff person shall:

   a. Draft a response to the complaint in Section B. of the Informal Inmate Complaint Form and return the response to the department head or shift commander within five calendar days; or

   b. Consult with the department head or shift commander for approval of any corrective action or relief deemed appropriate. Draft a response, as directed, and return the response to the department head or shift commander within five calendar days.

D. Upon receipt of the response, the department head or shift commander shall:

   1. Review, sign, and date the response;

   2. Ensure that the response is sent to the inmate; and

   3. Ensure that staff take the actions necessary to grant the approved relief to the inmate.

Appendix 3 to DCD 185-002

____________________________ ___________
Officer's Name: Print and Signature Date

CASE NO. _______________

MARYLAND DIVISION OF CORRECTION
REQUEST FOR ADMINISTRATIVE REMEDY
(Instructions for completing this form are on the back)

TO: ☐ Warden of Institution

Emergency Request: ☐ Check only if your complaint poses a continued threat to your health, safety, or welfare.

FROM: ________________________ ________________
Last Name First Name Middle Initial

______________ _____________
DOC Number Institution

Housing Location ____________ Protective Custody ☐
Administrative Segregation ☐ Disciplinary Segregation ☐

Part A – INMATE REQUEST

__________ ____________________________________
Date Signature of Inmate

Part B – RESPONSE

__________ ____________________________________
Date Signature of Warden

You may appeal this response by following the procedure prescribed on the back of this form.

Part C – RECEIPT

Case No. __________

RETURN TO: ________________________ ____________

Last Name First Name Middle Initial

______________ ______________

DOC Number Institution

I acknowledge receipt of your complaint dated __________
in regard to: ____

____

____

__________ ___________________________________

Date Institutional ARP Coordinator

Original: White – Institutional
ARP Coordinator
Copy: Canary – Inmate

Instructions to Inmates for Completing Request for Administrative Remedy, DOC Form 185-002c

1. Use a typewriter, ink, or pencil.
2. Your request must be addressed to the Warden of the institution where you are housed, regardless of where the incident which you are complaining about occurred.
3. Your complaint must be submitted within the later of thirty (30) calendar days of the date on which the incident occurred or thirty (30) calendar days from the date that you first gained knowledge of the incident or injury giving rise to the complaint. Read DCD 185-002 for a complete description of time frames.

4. If you believe that your request concerns a situation that poses a continuing threat to your health, safety, or welfare, you may ask that your request be processed as an emergency by checking the space provided.

5. Type or print the specifics of the complaint in the space provided in Part A. Use one form for each complaint or closely related complaints. Be sure to include the date of the incident, the names of the people involved, and a description of the incident. A description of any efforts you have made to resolve the incident informally before submitting this request is helpful. Keep the specifics as brief as possible. If you checked the Emergency Request space, you must include an explanation for why you believe your complaint should be processed as an emergency. If you need more space, use the continuation sheet that is in duplicate form.

5, Date and sign the request in the spaces provided in Part A. You may write "see attached" in Part A and attach a written or typed complaint on the continuation sheet that is in duplicate form.

6. Submit the request to an officer in the control center of the housing unit, a tier officer or a custody supervisor. If the Warden has issued an Information Bulletin (IB) for submitting a Request for Administrative Remedy, follow those procedures.

7. If you need assistance in completing or submitting a Request for Administrative Remedy, write to your institutional administrative remedy coordinator.

8. If at any time you wish to withdraw your complaint, please sign and date the Withdrawal Form, Appendix 5 to DCD 185-002 and submit it to any staff member.

Instructions to Staff for Completing – Receipt for Administrative Remedy, DOC Form 185-002c.

1. Sign and date the form(s) in the upper right hand corner where indicated.
2. Give the canary copy of the form(s) to the inmate.
3. Deliver the white copy of the form(s) to a location designated by the warden by the end of your shift.

Inmate Appeal Procedure

If you choose to appeal the warden's response, you must complete the Headquarters Appeal of Administrative Remedy Response, Appendix 6 to DCD 185-002. The appeal must be received within 30 calendar days from the date you received the Warden's response or within 30 calendar days from when the Warden's response was due.

Part A (Continued) – INMATE REQUEST

______	______
Date	Inmate's Name: Print and Signature DOC#

Part A (Continued) – INMATE REQUEST

______	______
Date	Inmate's Name: Print and Signature DOC#

Appendix 4 to DCD 185-002

Administrative Remedy Procedure
EXTENSION FORM

TO: _______________, *Inmate Name and DOC Number*

_______________ *Institution*

Under the provisions of DCD 185-002, the
______________________ is permitted one extension of 15
WARDEN/COMMISSIONER
calendar days to respond to a request for administrative remedy. Please be advised that the permitted extension is required in order to properly respond to your ________________________. The new due date for
REQUEST OR APPEAL
response is ________________.
DATE

________________________________ ___________
Warden/Commissioner or Institutional/ Date
Headquarters Coordinator

Appendix 5 to DCD 185-002

Administrative Remedy Procedure
WITHDRAWAL FORM

TO: ______________, *Administrative Remedy Coordinator*

______________ *Institution*

I, ________________________, DOC # ______________, wish to withdraw my request for administrative remedy, ARP Case No.

____

I acknowledge that my complaint can not be further addressed through the administrative remedy procedure. I also understand that failure to exhaust the administrative remedy procedure by withdrawing my request may result in dismissal of my complaint at a higher level.

________________________________ ______________
Inmate's Signature Date

________________________________ ______________
Staff Witness/Title Date

Appendix 6 to DCD 185-002

CASE NO. ____________

MARYLAND DIVISION OF CORRECTION
HEADQUARTERS APPEAL OF
ADMINISTRATIVE REMEDY RESPONSE
(Instructions for completing this form are on the back)

TO: ☐ Commissioner of Correction...Appeal of (check one):

☐ Dismissal for Procedural Reasons

☐ Warden's Response

☐ No Response from Warden

☐ Executive Director: Inmate Grievance Office

FROM: ______________________ ______________
Last Name First Name Middle Initial

______________ ______________
DOC Number Institution

Housing Location ___________ Protective Custody ☐
Administrative Segregation ☐ Disciplinary Segregation ☐

Part A – REASON FOR APPEAL

________ ________________________________
Date Signature of Inmate

Part B – RESPONSE

________ ________________________________
Date Signature of Commissioner

You may appeal this response by following the procedure prescribed on the back of this form.

Part C – RECEIPT

Case No. __________

RETURN TO: ____________________________________
Last Name First Name Middle Initial

______________ ____________
DOC Number Institution

I acknowledge receipt of your complaint dated _________
in regard to: ______________________________________
____
____

_________ __________________________________
Date Headquarters Coordinator

Instructions to Inmates for Completing Headquarters Appeal of Administrative Remedy Response

1. Use a typewriter, ink, or pencil. Enter the case number recorded on the receipt received from the institutional coordinator in the blank provided.

3. Indicate the type of appeal by checking the To: Commissioner of Correction box and check the type of response received.

4. Type or print the specifics of the appeal in the space provided in Part A. Use one form for each appeal. Be sure to include the date of the incident, the names of the people involved, and a description of the incident. Keep the specifics as brief as possible. If you need more space, use the continuation sheet that is in duplicate form.

5. Date and sign the appeal in the spaces provided in Part A. You may write "see attached" in Part A and attach a written or typed complaint on the continuation sheet(s).

6. Mail: 1) the appeal, 2) one copy of any completed Request for Administrative Remedy you received showing the warden's or institutional coordinator's response to your complaint, and 3) a copy of the Receipt for Warden's Response (if applicable) to:

   Commissioner of Correction
   6776 Reisterstown Road, Suite 310
   Baltimore, Maryland 21215

   so that they are received within thirty (30) calendar days of the day you received the warden's response, or within 30 days of the date the warden's response was due.

   Note: If you are filing an appeal of no response from the Warden, you should send: 1) the appeal, 2) a copy of your original ARP, and 3) the receipt with the assigned case number. If the warden issues a response after you file an appeal of no response, you can either 1) continue with the appeal, 2) continue with the appeal and supplement the appeal with additional information as to why the warden's response is inaccurate, or 3) if you are satisfied with the warden's response you may withdraw your appeal using the Withdrawal Form, Appendix 5 to DCD 185-002.

7. If you need assistance in completing the Headquarters Appeal of Administrative Remedy Response write to your institutional administrative remedy coordinator.

8. If at any time you wish to withdraw your complaint, please sign and date the Withdrawal Form, Appendix 5 to DCD 185-002 and mail it to the Commissioner of Correction, Attention: Headquarters ARP Coordinator (See address above).

Instructions to Inmates for an Appeal to the Inmate Grievance Office

If you choose to appeal the Commissioner's response, you must do so within 30 days of the date you received the Commissioner's response or within 30 days of the date the Commissioner's response was due. See COMAR 12.07.01.06.B.

1. Check the space marked "Executive Director – Inmate Grievance Office" only when you are appealing the Commissioner's response to a Headquarters Appeal of Administrative Remedy Response, or the failure to respond. You must enclose 1) one copy of any completed Request for Administrative Remedy and 2) Headquarters Appeal of Administrative Remedy Response you received showing the warden's response to your complaint and the Commissioner's response to your complaint.

2. Complete this form by typing or printing the specifics of the appeal in the space provided in Part A. Use one form for each appeal. Be sure to include:

   a. The name and address of the institution where you are incarcerated;

   b. The nature of your grievance, including the name(s) of the person(s) you believe are responsible for your grievance;

c. The facts or evidence on which your grievance is based, giving dates, times, and the names of any persons, officials, or inmates involved; any applicable case numbers and/ or receipts;

d. The names and addresses of any witnesses, lawyer, or representative you would like to be present at your hearing;

e. Your signature, and date your request.

3. Mail your complaint to:

Executive Director
Inmate Grievance Office
115 Sudbrook Lane
Suite 200
Sudbrook Station
Pikesville, MD 21208

Part A (Continued) – REASON FOR APPEAL

Date	Inmates Name: Print and Signature DOC #

Title & DCD #: ____________________
Institution/Facility: ____________________
Date: __________ Auditor: ____________________

Line Item Number	DCD Reference Number(s)	Line Item Standard	Mark (C) for Compliance	Mark (D) for Deficient	Non-Compliance Corrective Action Plan Attached	Date to Re-audit Compliance	Date to Re-audit Non-Compliance
1.	Section VI.B.1-4	1. Are all ARPs properly dismissed for procedural reasons when they concern one of the following issues: case management recommendations and/or procedures, MPC or adjustment procedures or decisions, or decisions to withhold mail?					
2.	Section VI. D	2. Are ARP forms readily available in all housing units?					
3.	Section VI. G-H	3. Did all inmates file ARPs using their committed name and inmate identification number? Were inmates restricted from filing class action complaints or filing on behalf of others?					
4.	Section VI.K.1-4	4. Did the Warden provide a reason with each recommendation to limit the amount of ARPs an inmate can file? Were ARPs that exceed the limit by the Commissioner dismissed?					
5.	Section VI.L.4-5	5. Were all ARPs that included ongoing or Commitment issues accepted past the 30 day time frame?					
6.	Section VI.L.7	6. Are Inmates allowed to submit a reasonable number of closely related issues in one complaint?					
7.	Section VI.L.9b	7. When inmates are asked to resubmit ARPs, are they given the later of 15 days or the remainder of the 30 day time frame to do so.					
8.	Section VI.L.10	8. ARPs are first submitted to an officer, who then submits the ARP to an area designated by the Warden by the end or that officer's shift.					
9.	Section VI.L.12a-b	9. The Warden has responded to all ARPs accepted for investigation within 30 days or 45 days if an extension was required. If an extension was required, the inmate was informed via Appendix 4 to DCD 185-002 within the original 30 day time frame.					
10.	Section VI.L. 15	10. Staff has referred any issue that could result in serious harm for follow up outside of the ARP process.					

Distribution: Institutional Audit Coordinator
Director, Office of Policy Development, Analysis and Management

Policy Management Compliance Plan

Title & DCD #: ____________ Institution/Facility: ____________ Date: ____________ Name/Title of Person Completing Form: ____________			Employee/ Person(s) Responsible	Compliance Due Date	Action Taken	Date of Compliance
Line Item Number	DCD Reference Section	Corrective Action				

Distribution: Institutional Audit Coordinator
Director, Office of Policy Development, Analysis and Management

DCD 185-003

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

[SEAL] **DIVISION OF CORRECTION DIRECTIVE**	**PROGRAM:**	**ADMINISTRATIVE REMEDY PROCEDURES**
	DCD #:	**185-003**
	TITLE:	**Institutional Administrative Remedy Procedures**
	ISSUED:	**August 27, 2008**
	EFFECTIVE:	**August 27, 2008**
	AUTHORITY:	**/s/ Paul O'Flaherty Paul O'Flaherty Assistant Commissioner**
	APPROVED:	**/s/ J. Michael Stouffer J. Michael Stouffer Commissioner**

I. References:

A. Suits by Prisoners, 42 U.S.C.§ 1997e(a)

B. Correctional Services Article, §§ 10-201 through 10-210, Annotated Code of Maryland

C. Courts and Judicial Proceedings Article, §§ 5-1001 through 5-1007, Annotated Code of Maryland

D. COMAR 12.02.27 and COMAR 12.07.01.

E. DCD 175-2 and 250-1

II. Applicable to: All Division of Correction (DOC) inmates housed in DOC institutions and facilities and all DOC staff.

III. Purpose: To establish procedure for wardens and institutional staff to implement policy as stated in DCD 185-002.

IV. Definition: None.

V. Policy: It is the policy of the Division of Correction that:

A. Staff and inmates shall be encouraged to make a good faith effort to resolve all institutionally related inmate complaints at the lowest possible level.

B. Inmates shall seek formal resolution initially through the Administrative Remedy Procedure when attempts at informal resolution fail or are not pursued.

C. Inmates shall adhere to the time periods and other requirements set forth in this Directive and should not expect that any late submission will be considered.

D. Requests for administrative remedy and appeals under the Administrative Remedy Procedure be answered on the merits and that substantive relief be provided to the inmate when warranted.

VI. Procedures:

A. Warden

1. The warden is responsible for the operation of the administrative remedy procedure at the institutional level and for ensuring institutional compliance.

2. The warden shall:

a. Designate a correctional case management specialist, supervisor, manager, or correctional officer as the institutional administrative remedy coordinator and designate an alternate to function as coordinator in the coordinator's absence;

b. Designate one supervisor within each department (who shall be referred to as the departmental liaison throughout this series of directives) to serve as an investigator and/or to delegate investigations to departmental staff (this includes the medical department);

c. Ensure that all inmates and staff are aware of the administrative remedy procedure;

d. Encourage the use of the informal resolution process by staff and inmates to resolve inmate complaints at the lowest possible level by directing staff to actively participate in the resolution of inmate complaints;

e. Respond to all complaints within the prescribed time frame; and

f. Manage the institution's compliance with the administrative remedy directives through the institutional coordinator.

B. Administrative Remedy Coordinator (ARC)

1. The administrative remedy coordinator is responsible for managing the operation of the administrative remedy procedure within the institution.

2. The coordinator shall:

a. Process all formal complaints submitted through the administrative remedy procedure;

b. Ensure that all institutional staff responsibilities for administrative remedy are completed consistent with established procedures;

c. Report to the warden any non-compliance with procedures which affect the ability to meet established time frames;

d. Ensure the availability of all appropriate administrative remedy forms to all inmates by supplying these forms to the case management department, housing unit officers, and the inmate library;

e. Make appropriate accommodations for any inmate who is not proficient in the English language so that the inmate has access to the ARP process; and

f. Process all complaints consistent with the procedures and time frames established in the administrative remedy Dens.

C. Department Liaisons

1. Department liaisons shall be the administrative remedy coordinator's point of contact for all investigations related to that department.

2. Department liaisons may choose to either conduct the investigations themselves or assign the complaint to an employee in that department for investigation.

D. Investigators

1. Investigators shall investigate each case assigned to them in accordance with the procedures established in this directive utilizing the Administrative Remedy Procedure Case Summary, Appendix 1 to this directive.

2. Investigators shall be responsible and accountable for submitting completed investigations back to the ARC by the due date.

E. Preliminary Review of an Administrative Remedy Procedure (ARP) Request

1. The warden or the institutional coordinator shall conduct a preliminary review of each request for administrative remedy to determine if the inmate's complaint concerns an emergency request or if the complaint is frivolous or malicious.

2. If is determined that the complaint concerns an emergency request, all regular time limits and procedural requirements shall be set aside and the warden or designee shall, without further substantive review of the request:

   a. Accelerate the investigative process;

   b. Direct immediate corrective action; and/or

   c. Notify the institutional health care provider of any medical complaints that are determined to be emergencies.

3. If the warden determines that the complaint is frivolous or malicious, the warden shall:

   a. Complete Part B of Appendix 3 to DCD 185-002,

   b. Indicate that the request is dismissed for procedural reasons final as frivolous or malicious or both;

   c. Forward the request to the institutional coordinator to be indexed, copied, and distributed; and

   d. Review the request to determine if the inmate properly completed an ARP request as required by DCD 185-002.

4. If the inmate fails to properly complete the ARP request and if this failure is vital to determining the inmate's interest or

basis for the investigation, the ARC shall dismiss the complaint for procedural reasons pending resubmission.

5. Inmates are encouraged but not required to list the steps taken to resolve their complaint informally and a complaint should not be dismissed for procedural reasons pending resubmission to obtain this information.

F. Resubmitting a Request

1. If the institutional coordinator has dismissed a request for procedural reasons as insufficient or incomplete and issued instructions for resubmitting the request, the inmate may resubmit the request to the warden, one time only, by:

   a. Completing a new Request for Administrative Remedy; and

   b. Following the specific instructions provided by the institutional coordinator in the receipt portion of Part C (Appendix 3 to DCD 185-002) of the Request for Administrative Remedy.

2. Failure to resubmit the request in accordance with the coordinator's instructions shall result in a dismissal for procedural reasons final of the request which is subject to non-concurrence by the headquarters coordinator.

G. Inmates shall submit their request for administrative remedy to an officer in the control center of the inmate's housing unit, a tier

officer, or a custody supervisor. The request will be processed by the officer in accordance with the instructions in DCD 185-002.

H. The warden may issue an Institutional Bulletin (D3) designating a location to which officers shall deliver the requests.

   1. The IB may designate a time and place for inmates to submit their requests.

   2. The warden shall ensure that all inmates have at least a daily opportunity to turn in their requests.

   3. The requests shall be stamped daily either by staff assigned to the Warden's office or the institutional coordinator. The time frame for indexing starts from the stamp date.

I. The warden's time frame for responding to a request starts from the date that the officer signs the request.

J. An inmate may, for any reason, withdraw a complaint by submitting to the institutional or headquarters coordinator a completed Withdrawal Form, Appendix 5 to DCD 185-002. The coordinator shall ensure that:

   1. The Withdrawal Form is included in the ARP file; and

   2. The inmate is offered a copy.

K. Indexing and Assigning Case Numbers

   1. The administrative remedy coordinator shall maintain the Administrative Remedy Index, Appendix 2 to this directive, to

record requests for administrative remedy within five working days of the date stamp on the request. The coordinator shall ensure that:

a. The index is maintained electronically with the ability to search for requests by year, inmate name, subject code, and disposition code.

b. A new index form is used at the beginning of each calendar month. Enter the institution, month, and year at the top of the form.

c. Each request received is assigned a case number consisting of the institution's initials followed by a four digit sequential number followed by the last two digits of the year. The four digit number shall begin at 0001 and return to that number on January 1 of each year. (Example: MCTC-0001-08 would be the number for the first request received by the institutional coordinator of the Maryland Correctional Training Center for the calendar year 2008).

d. Each case which is resubmitted in accordance with the coordinator's instructions retains the assigned case number.

e. Each case that is returned from the headquarters coordinator due to a non-concurrence of the institutional coordinator's rationale for a

dismissal for procedural reasons retains the assigned case number and is investigated.

2. The first five columns should be completed as the request or appeal is indexed.
    a. The first column shall contain the assigned case number.
    b. The second column shall contain the inmate's name
    c. The third column shall contain the inmate's DOC number.
    d. The fourth column shall contain the date of the month on which the complaint was indexed.
    e. The fifth column, if applicable, shall contain either:
        (1) The number code "5" from the disposition codes indicating that a request has been dismissed for procedural reasons pending resubmission; or
        (2) The number code "7" indicating that the case has been returned for investigation due to a nonconcur of a dismissal for procedural reasons by the Headquarters Coordinator.
        (3) Column five shall also contain the date on which the resubmitted request is indexed and

accepted or the date the non-concur is indexed and accepted.

f. Column six shall contain the subject code(s) identifying the nature of the complaint. Codes are provided on the reverse side of the index form. The coordinator is responsible for establishing which code is the most appropriate. No more than two subject codes may be entered in this column.

g. The remaining index entries shall be completed as follows:

   (1) Column seven shall contain the date of the month on which the warden or commissioner signed the response or the date that the request was dismissed for procedural reasons by the institutional coordinator.

   (2) Column eight shall either contain the date that the inmate signed the receipt of Warden's response or shall contain the date that the dismissal for procedural reasons by the institutional coordinator was mailed to the inmate.

   (3) Column nine shall contain a one-digit number from the coding sheet located on the back of the index indicating the disposition of the complaint.

(4) Column ten is for the entry of a brief description of the inmate's complaint, the reason for the dismissal for procedural reasons of the complaint, or the date that the resubmitted request is duo.

h. Each line of the index form shall be used through the last entry on the last date of the month.

i. By the tenth working day of each month, a copy of the previous month's index shall be electronically mailed to the headquarters administrative remedy office.

j. The coordinator shall ensure that the index is properly updated as dispositions are rendered in previously unresolved cases.

k. When dispositions have been made for all cases indexed for the month, a copy of the completed index shall be electronically mailed to the headquarters coordinator.

L. Administrative Remedy Procedure Files

1. The administrative remedy coordinator shall maintain a centralized file with a copy of each closed administrative remedy request or appeal with any investigative findings or documentation attached.

   a. Files shall be maintained chronologically by month and year in the order indexed. A copy of the monthly index

shall be kept in the front of each file separating each new month as a directory to the file's contents.

b. Files from the previous year may be stored or archived on January 1st of the following year. For example, all 2006 files shall be stored or archived effective January 1, 2007. The files shall be stored by year in order of case number with a copy of that year's index in the front. The files shall be kept for at least four years following the final disposition of the request and then shall be destroyed.

2. The Warden may authorize these files to be stored electronically provided these files are recoverable should the institution's computers fail.

M. Quarterly Reports

1. Institutional coordinators shall accumulate aggregate data regarding the number and types of requests by subject code heading as listed on the reverse side of the index form using the Request for Administrative Remedy Quarterly Report, Appendix 3 to this directive.

2. Reports of the data are to be maintained by the institutional coordinator and available upon request or in the event of an audit.

N. Dismissal of a Request for Procedural Reasons

1. The institutional coordinator shall dismiss the request for procedural reasons pending resubmission when the inmate has failed to properly complete all sections of the request or when the inmate has failed to provide sufficient information or specific information within the complaint essential for the completion of its investigation. (Note: A request without an officer's signature is considered incomplete.) The institutional coordinator shall:

   a. Provide in the receipt portion, Part C (Appendix 3 to DCD 185-002), the reason(s) why the request is incomplete;

   b Provide specific instructions for the inmate to properly complete the request for administrative remedy;

   c. Provide the specific due date of the resubmitted request which is the later of 15 calendar days from dismissal or within the original 30 day time frame; and

   d. Return the request and a blank request for administrative remedy to the inmate and keep one copy for the file.

2. Failure by the inmate to resubmit the request in accordance with the coordinator's instructions or failure to resubmit by the due date given shall result in a final dismissal for procedural reasons at the institutional coordinator's discretion subject

to non-concurrence by the headquarters coordinator.

a. If the inmate fails to resubmit the request, the disposition date in column seven of the index shall be the date that the resubmission was due.

b. If the resubmission is received after the due date, the disposition date is still the date that the resubmission was due, but the date that the late resubmission is received shall be noted in column ten.

3. The institutional coordinator shall:

a. Accept a late filing or take appropriate action outside of the ARP process for good cause if failure to do so could result in serious harm.

b. Issue a final dismissal of a request for procedural reasons when the request is regarding any of the following issues:

(1) Case management recommendations and decisions;

(2) Maryland Parole Commission procedures and decisions;

(3) Adjustment hearing procedures and decisions; and

(4) Appeals of notices of decision to withhold mail.

c. Issue a final dismissal of a request for procedural reasons when the inmate

has failed to submit the request within the proper time frame unless the inmate establishes that extraordinary circumstances prevented the inmate from filing the request in a timely manner. The institutional coordinator may, as necessary, refer dismissed cases to appropriate institutional staff for evaluation and follow-up outside of the administrative remedy procedure.

d. Issue a final dismissal of a request for procedural reasons when the inmate's complaint is one which has been previously resolved, is repetitive, or had been previously addressed through the administrative remedy procedure. The coordinator shall note the case number of the request that previously addressed the same issue.

e. Issue a final dismissal of a request for procedural reasons when the request is in excess of that inmate's monthly limit as established by the Commissioner of Correction.

4. The Warden or institutional coordinator shall issue a final dismissal of a request for procedural reasons when it has been determined that the basis of the complaint is the same basis of an investigation under the authority of the Internal Investigative Unit (IIU).

a. The dismissal must refer to IIU's case number.

b. The response shall read: "Your request is dismissed for procedural reasons final. This issue is being investigated by IIU, case number: ____. Since this case shall be investigated by IIU, no further action shall be taken within the ARP process."

5. When a request is dismissed for procedural reasons by the coordinator, the coordinator shall:

   a. Provide in the receipt portion, Part C (Appendix 3 to DCD 185002), the rationale for the dismissal for procedural reasons; and

   b. Sign and date part C (Appendix 3 to DCD 185-002).

6. The coordinator shall return any request which is dismissed for procedural reasons to the inmate on the date the request is indexed and reviewed and ensure that the completed dismissed request for administrative remedy is distributed as follows:

   a. Original and one copy to the inmate; and

   b. One copy to the administrative remedy file maintained by the coordinator.

7. A final dismissal for procedural reasons of a request by the warden or institutional coordinator shall be treated as a

substantive decision and the rationale for dismissal may be appealed by the inmate.

O. Accepting and Investigating a Request for Administrative Remedy

1. The institutional coordinator shall accept requests which are not dismissed for procedural reasons for investigation and response.

2. On the date the request is indexed, the coordinator shall:

   a. Send the receipt portion, Part C (Appendix 3 to DCD 185-002), of the request for administrative remedy to the inmate;

   b. Review each request to determine the nature of the complaint and the departmental liaison(s) to whom the investigation should be assigned; and

   c. Assign the request to the departmental liaison(s) for investigation within 20 calendar days or less.

3. For cross-over cases:

   a. The coordinator of the indexing institution shall send the original request to the coordinator of the institution where the basis for the complaint occurred and shall retain a copy for the file.

   b. The receiving institutional coordinator shall assign the case to the applicable department liaison(s).

c. The institution where the incident occurred shall be responsible for investigating the request; and

d. The Warden of that institution shall be responsible for responding to the request.

e. The original Warden's response, case summary, and supporting documentation shall then be forwarded to the indexing institution so that that coordinator can update the index and ensure that the request is distributed to the inmate.

f. Both institutions shall maintain an ARP file on the case.

4. Upon receipt, the departmental liaison(s) shall either investigate the request or assign the request to a staff person within that department for investigation.

5. One or more employees may participate in the investigation of a complaint, provided there is no conflict of interest.

    a. If a case is assigned to an employee who believes that participation in the investigation would be a conflict of interest, that employee must notify the departmental liaison and substantiate that conflict.

    b. If the departmental liaison determines that there is a conflict of interest, the departmental liaison shall

then assign the investigation to a different employee.

6. The assigned investigator shall, at a minimum, complete each of the following steps and document that completion on the Administrative Remedy Procedure Case Summary, Appendix 1 to this directive. Instructions for completing the case summary are as follows:

    a. Conduct Interviews: Absent good cause, all relevant persons must be interviewed to establish the basis of the inmate's complaint and the chronology of the events. Relevant persons are:

        (1) The inmate;

        (2) All relevant witnesses named by the inmate; and

        (3) All relevant employees, including medical staff.

    b. If the person interviewed is a staff member, that person shall provide a written report of the facts absent good cause (such as being out on extended leave).

    c. If the complaint is one which involves a situation affecting a group of inmates and interviews of the complainants would disrupt institutional security, operations, or schedules, no interviews shall be required. However, the reason for the lack of

interviews must be documented in writing on the Administrative Remedy Procedure Case Summary, Appendix 1 to this Directive.

d. At the Maryland Correctional Adjustment Center and at the North Branch Correctional Institution, interviews of complainants and relevant inmate witnesses may be conducted via the intercom system to accommodate security requirements. However, personal contact interviews must be conducted, absent good cause, if the intercom is inoperable at the time of the interviews.

7. Establish the Specific Findings of Fact

a. All reports submitted regarding the case shall be reviewed by the investigator.

b. Based on the testimony of witnesses and the information contained in the reports submitted, the investigator shall establish and list any actions or events in the order of their occurrence and shall list any additional facts in the case.

8. Review All Relevant Documents

a. The investigator shall review all relevant directives, institutional directives, bulletins, etc., to establish that all actions were taken in accordance with current policy and procedure.

b. Any supporting document must be included in the ARP file.

9. Make a Recommendation

   a. The investigator shall make a recommendation for a finding of meritorious, meritorious in part, or dismissal and shall draft a suitable response for the coordinator's review.

   b. The assigned investigator shall submit to the departmental liaison all findings, recommendations, and supporting documentation for return to the institutional coordinator within the time frame specified.

10. The coordinator shall review the investigation for completion of all investigative steps, sufficiency of documentation, and application of all relevant directives, etc., and review the recommendation and draft a response.

11. Investigations which are found by the coordinator to be incomplete or insufficient or in which the recommendations are not supported by investigative material shall be returned to the investigator with specific instructions for reinvestigation and resubmission.

12. All investigative reports and reinvestigations must be submitted within the time frame.

13. Upon the withdrawal of a request by an inmate the coordinator shall:

- a Notify the appropriate departmental liaison to halt the investigation of the request; and
- b. Document the disposition of the case on the index.

14. If it is found that thirty calendar days is insufficient to complete the investigation and respond to the inmate's request, the Warden is permitted one extension of fifteen (15) calendar days.
    - a. The inmate's consent to the extension is not required.
    - b. The Warden or designee shall provide written notification, using the Extension Form (Appendix 4 to DCD 185-002), to the inmate regarding the 15 day extension within the original 30 day timeframe.
    - c. A copy of the extension form shall be maintained in the ARP file.
15. Upon receipt of the completed case summary from the departmental liaison, the coordinator shall prepare an appropriate response for the warden's review and signature in Part B (Appendix 3 to DCD 185-002) of the Request for Administrative Remedy. The prepared response shall be based upon:
    - a. The case summary;
    - b. Documents and reports attached; and

c. The investigator's recommended response.

16. The response should:

a. Address fully all issues and allegations raised in the complaint;

b. Be easily understood;

c. State clearly the facts upon which the decision is based; and

d. The first sentence of the warden's response should clearly state the disposition of the inmate's complaint as:

(1) Meritorious;

(2) Meritorious in part; or

(3) Dismissed, as defined in DCD 185-001.

17. The warden shall review the response to ensure that the complaint has been satisfactorily resolved and that the response is appropriate.

a. If the above criteria have been met, the warden shall sign the response in the space provided in Part B (Appendix 3 to DCD 185002) of the Request for Administrative Remedy; or

b. If the above criteria have not been met to the warden's satisfaction, the warden shall return all information to the coordinator for either:

(1) A reinvestigation for additional information; or

(2) A revised response.

18. The institutional coordinator shall ensure that the completed Request for Administrative Remedy is distributed as follows:

    a. Original and one copy to the inmate; and

    b. One copy to the administrative remedy file maintained by the coordinator.

19. The inmate shall sign and date the Receipt of Warden's Response, Appendix 4 to this directive, upon delivery of the response.

    a. One copy of the receipt is issued to the inmate; and

    b. One copy of the receipt is forwarded to the institutional coordinator to be maintained in the institutional ARP file. This date shall be noted in column eight of the index.

20. The inmate may appeal the warden's decision in accordance with policy as stated in the 185 series.

P. Meritorious or Meritorious in Part Cases

1. When the disposition of an administrative remedy request is meritorious or meritorious in part and relief specified in the warden's response has not been fully provided to the inmate at the time of the response, the warden shall clearly instruct appropriate staff, in writing, to:

a. Provide the relief specified; and

b. Provide written documentation of the relief provided to the institutional coordinator.

2. The warden may also initiate a change in institutional policy or procedure, if deemed appropriate, as a provision of relief or make a recommendation to the Commissioner or designee for a change in division policy or procedure and acknowledge this action in the response.

3. The warden shall ensure that:

   a. Staff provides full relief, as specified in the warden's response; and

   b. Staff provides documentation of that relief within ten calendar days of the date of the response.

4. The institutional coordinator shall monitor meritorious or meritorious in part cases for compliance by maintaining active cases in a separate location from the dismissed cases or the closed meritorious or meritorious in part cases by:

   a. Filing such cases chronologically, by calendar due date which shall always be ten calendar days from the date of the warden's response;

   b. Monitoring the file on no less than a weekly basis for staff compliance;

c. Notifying the warden when staff fails to provide the relief specified within the proper time frame; and

d. Placing the documentation of the relief provided in the administrative remedy file upon receipt.

5. When relief is provided, the case shall be considered closed and filed in accordance with this directive.

6. When the relief includes monetary reimbursement for property, the value of the property at the time of loss should be calculated utilizing Appendix 3 to DCD 220-008.

7. The inmate should then be presented with the reimbursement value of the property and be asked to sign Appendix 1 to DCD 220-008 which shall indicate whether or not the inmate accepts the settlement.

8. If the inmate accepts the settlement, the money should he placed in the inmate's institutional money account under the authority of the Warden and without the review process described in DCD 220-008.

9. For purposes of appeal, if the inmate accepts the settlement offered the amount is considered to be correct and all issues in that request are considered settled.

10. If the inmate refuses to accept the settlement, that fact shall be documented on Appendix 1 to DCD 220-008 and that form shall be placed in the ARP file. That case

is considered closed and no money shall be placed in the inmate's account. The inmate may appeal to the Commissioner within the proper time frame.

11. If at the time of Warden's response, the inmate has already refused settlement, the Warden shall:

    a. State that the request is meritorious in part;

    b. List the property that the Warden agrees was lost or damaged due to staff negligence;

    c. State what amount was offered to the inmate; and

    d. State that no money shall be deposited into the inmate's account due to the inmate's refusal to accept settlement.

Q. Inmate Orientation

1. The Introduction to the Administrative Remedy Procedure, Appendix 5 to this DCD shall be read during the orientation of all newly arriving inmates at MRDCC, MCI-W, and all maintaining institutions.

2. All wardens shall ensure that the Introduction to the Administrative Remedy Procedure is incorporated into the institutional inmate handbooks.

R. Staff Awareness

1. The warden shall mandate that all new employees be given and sign for the

Administrative Remedy Procedure Fact Sheet for New Employees, Appendix 6 to this directive, about the administrative remedy process.

2. The fact sheet shall be maintained in the employee's personnel file kept by the institution.

VII. Attachments:

A. Appendix 1, Administrative Remedy Procedure Case Summary, DOC Form 185-003aR

B. Appendix 2, Administrative Remedy Index, DOC Form 185-003bR

C. Appendix 3, Request for Administrative Remedy Quarterly Report, DOC Form 185-003cR

D. Appendix 4, Receipt of Warden's Response, DOC Form 185-003d

E. Appendix 5, Introduction to the Administrative Remedy Procedure

F. Appendix 6, Administrative Remedy Procedure Fact Sheet for New Employees

G. Appendix 7, Policy Management Audit Form (DOC Form 1-2aR)

H. Appendix 8, Policy Management Compliance Plan (DOC Form 1-2bR)

VIII. Rescissions: None.

Distribution: A
L
S

Appendix 1 to DCD 185-003

Administrative Remedy Procedure Case Summary

I. ***Case Information:***

Assigned Investigator:________________ Date:_________

Inmate's Name:__________________ DOC #:__________

ARP Case No.:___________________

Pursuant to DCD 185-003, the above-noted administrative remedy case has been assigned to you for investigation. This investigative case summary should be completed in accordance with the instructions provided in DCD 185-003. Ali steps of the investigation must be completed. If a step is not applicable, it should be noted in the space provided. Failure to complete the case summary in accordance with the instructions will result in the case summary being returned to you for further investigation and/or proper completion. This case summary must be completed and returned to the departmental liaison by no later than ______________________________.

II. ***Investigation:***

1. Inmate interviewed on ________ by __________. Basis of complaint:

2. Witnesses interviewed (include dates, summary of testimony):

3. Employees interviewed (include dates, summary of testimony):

4. Specific relevant documents and/or evidence reviewed:

5. Specific findings of fact (list):

III. ***Recommended Disposition/Draft Response:***

IV. ***Action to be Monitored for Compliance (if applicable):***

__________________________ _____________________

Signature of Investigator Date Submitted

Appendix 2 to DCD 185-003

Maryland Division of Correction
Administrative Remedy Index

____________ Institution   ____________ Month   ____________ Year

Column 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9	Col. 10
Case Number	Inmate Name	Inmate DOC #	Filing Date	Resubmit/ Non-concur Code/Date	Subject Code	Dispo-sition Date	Dispo-sition Rec'd Date	Dispo-sition Code	Abstract
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									
18.									
19.									
20.									

See back of form for Disposition Codes.

DOC Form 185-003bR (Rev. 8/08)

Subject Codes

Case Management

1. Classification Procedures
(Excluding recommendations and decisions)

Institutional Programs

2a. Religion (Excluding publications)
2b. Education or Vocational Programs
2c. Drug and Alcohol Programs
2d. Organizations and Self- Help Groups
2e. Recreation, Hobby Programs, Leisure Time Activities
2f. Other Programs

Community Communication
(Except Legal and the Decision to Withhold Mail)

3a. Rejection of Mail
3b. Packages
3c. Other Mail Problems (Delay, etc.)
3d. Visiting List
3e. Visiting Time/ Conditions (Including Loss of Visits)
3f. Telephone Calls or System
3g. Marriage
3h. News Media

Institutional Operations

4a. Food (Except Medical Diets)
4b. State Issued Clothing
4c. Personal Property (Loss, Confiscation, Destruction, etc.)
4d. Housing or Environmental Conditions (Includes Safety, Lighting, Heat, etc.)
4e. Commissary or Commissary Account

4f. Request for Photocopying
4g. Searches (Including Visit Related Searches)
4h. Drug Testing (Except Disciplinary Appeals)
4i. Pay
4k. Other Operations

<u>Complaints Against Staff or Others</u>

5a. Harassment by Staff
5b. Assault by Staff
5c. Use of Excessive Force by Staff
5d. Discrimination by Staff
5e. Other Complaints Against Staff
5f. Complaints Against Non Staff Persons

<u>Disposition Codes</u>

1. Dismissed
2. Meritorious
3. Meritorious in Part
4. Dismissed for Procedural Reasons (Final)
5. Dismissed for Procedural Reasons (Pending Resubmission)
6. Withdrawn at the Inmate's Request
7. Non-Concur with Dismissal for Procedural Reasons

<u>Medical/ Mental Health</u>

6a. Access or Delay in Receiving Medical Care
    1. Due to Sick Call Procedures
    2. Referral to or Appointment with a Specialist
6b. Problems with Medication
    1. Medication Prescribed
    2. Delay in receiving Prescribed Medication

6c. Physician's Orders (Delay, Follow Thru, Improper, etc)
6d. Medical Diets
   1. Medical Staff Involvement with Medical Diets
   2. Custody Staff Involvement with Medical Diets
6e. Medical Transfers
6f. Right to Refuse Treatment
6g. Pregnancy, Abortion, Child Birth, and Child Placement
6h. Medical Records (Excluding Mental Health)
   1. Lost, Misplaced, or Damaged
   2. Inmate Access
6i. Routine Transfers Causing Interruption in Medical Care
6j. Access to Private or Non-Approved Treatment Denied
6k. Dental Care (All Dental Complaints)
6l. Mental Health Care

<u>Legal</u>

7a. Pre-trial Credit
7b. Sentence Computation (Excluding Pre-Trial Credit)
7c. Detainer
7d. Legal Assistance
7e. Administrative Remedy Procedure
7f. Requests for Notarization
7g. Other Legal

Appendix 3 to DCD 185-003

REQUEST FOR ADMINISTRATIVE REMEDY
Quarterly Report

(Institution)
(Blank) QUARTER

2008

	(1st Month)						(2nd Month)						(3rd Month)					
	1	2	3	*4	6		1	2	3	*4	6		1	2	3	*4	6	
CLASSIFICATION PROCEDURES																		
INSTITUTIONAL PROGRAMS																		
COMMUNITY COMMUNICATION																		
INSTITUTIONAL OPERATIONS																		
COMPLAINTS AGAINST STAFF																		
MEDICAL MENTAL HEALTH																		
LEGAL																		
TOTAL																		
																Total	0	

1 DISMISSED
2 MERITORIOUS
3 MERITORIOUS IN PART
4* ADMINISTRATIVELY DISMISSED (FINAL), (TOTALS ONLY)
6 WITHDRAWN AT INMATES REQUEST

NOTES: (1st Month) Incompletes (2nd Month) Incompletes (3rd Month) Incompletes

DOC Form 185-003cR (8/08)

Appendix 4 to DCD 185-003

Administrative Remedy Procedure
Receipt of Warden's Response

____
Institution

______________	__________	______________
Name of Inmate	**DOC Number**	**Housing Location**

I, the undersigned, indicate by my signature that I have received the warden's response to ARP Case No.____________________, received on _______________.

______________________________ ____________________
Signature of Inmate **Date**

______________________________ ____________________
Signature of Staff Witness **Date**

DOC Form 185-003d (8/08)

Appendix 4 to DCD 185-003

Receipt of Warden's Response

____
Institution

______________	__________	______________
Name of Inmate	**DOC Number**	**Housing Location**

I, the undersigned, indicate by my signature that I have received the warden's response to ARP Case No.____________________, received on _______________.

______________________________ ____________________
Signature of Inmate **Date**

______________________________ ____________________
Signature of Staff Witness **Date**

DOC Form 185-003d (8/08)

Appendix 4 to DCD 185-003

Receipt of Warden's Response

____
Institution

Name of Inmate **DOC Number** **Housing Location**

I, the undersigned, indicate by my signature that I have received the warden's response to ARP Case No.__________________, received on ______________.

Signature of Inmate **Date**

Signature of Staff Witness **Date**

DOC Form 185-003d (8/08)

Appendix 4 to DCD 185-003

Receipt of Warden's Response

____
Institution

Name of Inmate **DOC Number** **Housing Location**

I, the undersigned, indicate by my signature that I have received the warden's response to ARP Case No.__________________, received on ______________.

Signature of Inmate **Date**

Signature of Staff Witness **Date**

DOC Form 185-003d (8/08)

Appendix 5 to DCD 185-003

Introduction to the Administrative Remedy Procedure

The Division of Correction encourages inmates to seek resolution of their problems or complaints at the lowest possible level by presenting them informally to the appropriate staff. The administrative remedy procedure (ARP) was developed to resolve inmate complaints within the division, when informal resolution had failed. If an inmate exhausts the ARP process, the next appeal is to the Inmate Grievance Office. For issues that are within the authority of the ARP process, courts normally require the inmate to exhaust the ARP process and the inmate grievance process prior to filing an action with the court.

The administrative remedy procedure, or ARP, provides a means for informal resolution of a complaint, formal presentation of the compliant to the Warden for resolution at the institutional level, and formal appeal of the Warden's response to the Commissioner for resolution of the complaint at division headquarters. The administrative remedy procedure is a structured program to resolve inmate complaints in accordance with specific procedures and time frames.

The forms used to file complaints at each step of the ARP process can be obtained from the inmate library, the housing unit officer, or from an inmate's assigned case management specialist. The time frames and instructions for completing the forms can be found in Division of Correction Directives in the 185 series. If help is needed to complete a form or you need help understanding the ARP

process, assistance can be obtained from the inmate's assigned case management specialist or from the institutional administrative remedy coordinator.

The administrative remedy coordinator is a staff person designated by the Warden to manage the administrative remedy procedure within the institution. However, formal complaints must first be addressed to the Warden, who also provides a response. The Warden of [institution] is [name]. The institution's administrative remedy coordinator is [name]. The Commissioner of Correction, to whom appeals of the warden's response should be addressed, is [name]. Information about the appeal process is also in the 185 series of the directives.

Appendix 6 to DCD 185-003

Administrative Remedy Procedure Fact Sheet for New Employees

The Division of Correction encourages inmates to seek resolution of their problems or complaints at the lowest possible level by presenting them informally to the appropriate staff. If an inmate approaches you with a valid problem that is within your power to resolve, you are asked to resolve it.

The administrative remedy procedure (ARP) was developed to resolve inmate complaints within the division when informal resolution had failed. If an inmate exhausts the ARP process, the next appeal is to the Inmate Grievance Office, For issues that are within the authority of the ARP process, courts normally require the inmate to exhaust the ARP process and the inmate grievance process prior to filing an action with the court. Inmates can "write **an** ARP" on most issues. Some examples of things that inmates **cannot** ARP are:

1. Case management recommendations and decisions,
2. Adjustment procedures and decisions.
3. Parole hearing procedures and decisions.
4. The Warden's decision to withhold mail.

The ARP process consists of filing a request for administrative remedy with the Warden, and then if the inmate is not satisfied, sending an appeal to the Commissioner of Correction. If the inmate is still not satisfied with the response, he/ she can appeal to the Inmate Grievance Office.

The forms used to file complaints at each step of the ARP process can be obtained from the inmate library, the housing unit officer, or from an inmate's assigned case management specialist, Please refer to the Division of Correction directives 185 series for more information about the ARP process.

I, (Print Name) ______________________, certify that on (Date) ___________________ I received a copy of the above fact sheet regarding the administrative remedy procedure and have been advised to review the 185 series in the Division of Correction Directives.

____
(Signature)

Distribution: Personnel Department

Institution/Facility: ______________________________

Date: ____________ Auditor: ______________________________

Line Item Number	DCD Reference Number(s)	Line Item Standard	Mark (C) for Compl	Mark (D) for Deficie	Non-Compliance Co Action Plan Attache	Date to Re-audit Compliance	Date to Re-audit Non-Compliance
1.	Section VI.E.1.	1. Does the Warden or the institutional coordinator conduct a preliminary review of each request?					
2.	Section VI.H.2.	2. Do all inmates have at least a daily opportunity to submit their requests to designated staff?					
3.	Section VI.K.1	3. Are cases indexed within 5 business days of submission?					
4.	Section VI.J.1	4. When requests are withdrawn, is there a withdrawal form in the ARP file?					
5.	Section VI.L.I.a	5. Are files maintained chronologically by month and year in the order indexed, with a copy of the index in front of each month?					
6.	Section VI.M.1.2.	6. Are quarterly reports completed?					
7.	Section VI.N.1.c.	7. When inmates are required to resubmit a request, are they given the later of 15 calendar days or the original 30 day time frame before the resubmitted request is due?					
8.	Section VI.O. 6-9	8. Do cases that are dismissed for procedural reasons because they are under the authority of IIU reference IIU's case number?					
9.	Section VI.O.12	9. Are all sections of the case summary completed?					
10.	Section VI.D.2.	10. Are investigations completed by the due date?					
11.	Section VI.O.14.b.	11. Did the Warden issue a response within 30 calendar days or 45 calendar days if an extension was required?					
12.	Sections VI.O.14.c	12. If an extension was required, is there a copy of the extension form In the file?					
13.	Section VI.O.16.a-d	13. Does the Warden's response give the disposition in the first sentence? Is the response clear?					
14.	Section VI.P.1.a	14. If relief has not been provided by the time of response, are the instructions for providing relief clear?					
15.	Section VI.P.7.	15. If the order for relief includes reimbursement, are the inmates given an opportunity to sign Appendix 1 to DCD 220-008?					
16.	Section VI.Q.2	16. Does the inmate orientation include a description o f the ARP process?					

Distribution: Institutional Audit Coordinator

Policy Management Compliance Plan

Title & DCD #: ___________________________
Institution/Facility: ________________________
Date: ____________________________________
Name/Title of Person Completing Form: _______
____

Line Item Number	DCD Reference Section	Corrective Action	Employee/ Person(s) Responsible	Compliance Due Date	Action Taken	Date of Compliance

Distribution: Institutional Audit Coordinator
Director, Office of Policy Development, Analysis and Management

DOC Form 1-2bR (7/08)

DCD 185-004

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

<table>
<tr><td rowspan="7">[SEAL]
DIVISION OF CORRECTION DIRECTIVE</td><td>PROGRAM:</td><td>ADMINISTRATIVE REMEDY PROCEDURES</td></tr>
<tr><td>DCD #:</td><td>185-004</td></tr>
<tr><td>TITLE:</td><td>Headquarters Administrative Remedy Procedures</td></tr>
<tr><td>ISSUED:</td><td>August 10, 2008</td></tr>
<tr><td>EFFECTIVE:</td><td>August 27, 2008</td></tr>
<tr><td>AUTHORITY:</td><td>/s/ Paul O'Flaherty
Paul O'Flaherty
ASSISTANT COMMISSIONER</td></tr>
<tr><td>APPROVED:</td><td>/s/ J. Michael Stouffer
J. Michael Stouffer
COMMISSIONER</td></tr>
</table>

I. References:

A. Suits by Prisoners, 42 U.S.C.§ 1997e(a)

B. Correctional Services Article, §§ 10-201 through 10-210, Annotated Code of Maryland

C. Courts and Judicial Proceedings Article, §§ 5-1001 through 5-1007, Annotated Code of Maryland

D. COMAR 12.02.27 and COMAR 12.07.01.

E. DCD 175-2 and 250-1

II. Applicable to: All DOC inmates housed in DOC institutions and facilities and all DOC staff.

III. Purpose: To establish procedure for the Commissioner and all DOC staff to implement policy as stated in DCD 185-002.

IV. Definition: None.

V. Policy: It is the policy of the Division of Correction that:

A. Requests for administrative remedy and appeals under the Administrative Remedy Procedure shall be answered on the merits and substantive relief provided to the inmate where warranted.

B. Inmates shall adhere to the time periods and other requirements set forth in this Directive and should not expect that any late submission will be considered.

VI. Procedures:

A. The Commissioner may designate an Assistant Commissioner to manage and supervise the administrative remedy procedure.

B. Commissioner or Designee

1. An Assistant Commissioner is responsible for the operation of the administrative remedy procedure at the headquarters level.

2. The Assistant Commissioner is responsible for ensuring compliance with all provisions of the directives. The Assistant Commissioner shall:

   a. Designate a headquarters administrative remedy coordinator;

   b. Designate appropriate departmental supervisors at division headquarters to serve as investigators and/or to delegate investigations to departmental staff;

   c. Ensure that division staff and inmates use the administrative remedy procedure in good faith to effectively resolve inmate complaints at the lowest possible level;

   d. Direct, control, and supervise wardens in the institutional operation of the administrative remedy procedure;

   e. Ensure the use of the administrative remedy procedure as a management tool to help identify problems with specific services and programs in specific institutions, or deficiencies in division policies or procedures that indicate a need for reevaluation, change, or staff training; and

   f. Respond to all appeals within the prescribed time frame.

C. Administrative Remedy Coordinator

1. The headquarters administrative remedy coordinator is responsible for managing the operation of the administrative remedy procedure at the headquarters level.

2. The coordinator shall:

   a. Process all appeals submitted through the administrative remedy procedure;

   b. Ensure that all headquarters staff responsibilities for administrative remedy are completed consistent with established procedures;

   c. Report to the Assistant Commissioner any non-compliance with procedures which affect the ability to meet established time frames;

   d. Receive, acknowledge, and direct the investigation of a headquarters appeal of administrative remedy response;

   e. Ensure that all headquarters records relating to the administrative remedy procedure are properly maintained;

   f. Develop training resources and develop and implement programs for the training of coordinators and investigators;

   g. Monitor and ensure institutional compliance with this series of

directives by conducting on-site audits in accordance with this directive.

D. Investigators

1. Headquarters investigators shall investigate each case assigned to them or assign the case to an employee within that department.

2. Headquarters investigators shall be responsible and accountable for submitting completed investigations to the headquarters administrative remedy coordinator by the due date.

E. Preliminary Review of an Appeal

1. Inmates shall follow the instructions for submitting an appeal as stated in DCD 185-002.

2. The headquarter's coordinator shall review the appeal for completeness. The coordinator shall dismiss an appeal for procedural reasons pending resubmission when the inmate has failed to complete the Headquarters Appeal of Administrative Remedy Response form properly or when the inmate has failed to provide sufficient information for indexing or investigating the appeal or both. The coordinator shall:

   a. Provide in the receipt portion, Part C, of the Headquarters Appeal of Administrative Remedy Response form the reason(s) why the form is not

complete or the reason(s) why the appeal is not sufficient;

b. Provide specific instructions for the inmate to complete the form properly and the specific date by which the inmate may resubmit the appeal to the commissioner (at least 15 calendar days); and

c. Return the appeal and a blank Headquarters Appeal of Administrative Remedy Response form to the inmate.

3. Failure by the inmate to resubmit the appeal in accordance with the instructions or on time shall result in a final dismissal for procedural reasons and no further action shall be taken to resolve the complaint through the administrative remedy procedure.

4. The headquarter's coordinator shall review the appeal for timeliness. An appeal which is not received within 30 calendar days of the date the inmate receives the Warden's response, or within 30 calendar days of the date the response from the Warden was due shall be dismissed for procedural reasons as final by the headquarters coordinator as untimely. An appeal dismissed as untimely can not be resubmitted and no further action shall be taken to resolve the complaint through the administrative remedy procedure. The coordinator may, as necessary, refer

such cases to appropriate headquarters staff for evaluation and follow-up outside of the administrative remedy procedure.

5. The headquarters' coordinator shall review the appeal to determine if the request is frivolous or malicious. The Commissioner or designee shall issue a final dismissal for procedural reasons when the request had been determined to be frivolous and/or malicious. The Commissioner or designee shall:

    a. State that the request is dismissed for procedural reasons final without investigation as frivolous and/or malicious,

    b. Sign and date Part B; and

    c. Forward the request to the headquarters coordinator to be indexed, copied, and distributed.

6. Any request for administrative remedy submitted directly to the Commissioner without first being submitted to the Warden shall be redirected by the Commissioner to the Warden in accordance with DCD 185-002. These cases shall be noted on the headquarters index without a case number.

7. Within five working days of the date stamped received; the headquarters administrative remedy coordinator shall index the appeal using the assigned institutional case number.

8. The headquarters administrative remedy coordinator shall review the appeal to determine whether it is an appeal of dismissal for procedural reasons, appeal of no response from the Warden, or an appeal of the Warden's response.

9. An inmate who, for any reason, no longer wishes to pursue a complaint through the Administrative Remedy Procedure may elect to withdraw his/her request by submitting to the institutional or headquarters coordinator a completed Withdrawal Form, Appendix 5 to DCD 185-002. The coordinator shall:

    a. Include the Withdrawal Form in the ARP file; and

    b. Ensure the inmate is offered a copy.

F. Indexing

1. Cases shall be indexed as described in DCD 185.003 except that:

    a. They shall retain the same case number given at the institution;

    b. They will be maintained in alphabetical order by last name, then first name, then by the earliest case number; and

    c. The index will be kept yearly and not be separated by each new month.

2. Complaints that are initial requests that should have been submitted to the Warden, but are incorrectly mailed to the

Commissioner's attention shall be redirected to the Warden. These requests will not yet have an assigned case number but shall still be added to the headquarters index.

3. The headquarters coordinator shall maintain a centralized file of all closed administrative remedy requests and appeals with any investigative findings or documentation attached.

    a. Files shall be maintained in alphabetical order by last name, then first name, then by the earliest case number.

    b. Files from the previous year shall be stored or archived on January of the following year. For example, all 2006 files shall be stored or archived effective January **1**, 2007. The files shall be kept for at least four years following the final disposition of the request and then destroyed.

    c. The Commissioner may authorize these files to be stored electronically provided these files are recoverable should the institution's computers fail.

G. Appeals of Dismissal for Procedural Reasons

1. The headquarters coordinator shall review those appeals submitted which challenge the, institutional. coordinator's decision to dismiss a request for. procedural reasons.

a. When the coordinator concurs with the institutional coordinator's rationale for dismissal, the appeal shall be dismissed for procedural reasons.

b. This dismissal of the appeal for procedural reasons is a final dismissal and no further action shall he taken to resolve the complaint through the administrative remedy procedure.

c. When the coordinator does not concur with the institutional coordinator's rationale for dismissal, the request shall be returned to the institutional coordinator.

d. The case shall retain the assigned case number and a receipt reflecting the new index date shall be issued to the inmate. The request shall be indexed and investigated in accordance with the procedures established in DCD 185-003.

2. Appeals which challenge the warden's dismissal of a request for procedural reasons as frivolous or malicious shall be:

   a. Reviewed by the headquarters coordinator for timeliness, sufficiency, and completeness; and

   b. Reviewed by the headquarters coordinator to determine whether the original request or the appeal is frivolous or malicious.

c. If the coordinator determines that the appeal is frivolous or malicious, the headquarters coordinator shall prepare a response for the Commissioner to dismiss the appeal for procedural reasons final based on the appeal or original request being frivolous or malicious.

d. If the coordinator does not agree with the Warden that the appeal is frivolous or malicious, the appeal shall be accepted for investigation and the appeal shall be answered on its merit.

3. Copies of the appeal form shall be distributed as follows:

   a. Original and one copy to the inmate;

   b. One copy to the institutional coordinator for placement in the institution's administrative remedy file; and

   c. One copy to the headquarters administrative remedy file.

H. Appeal of No Warden's Response

1. An inmate may submit a Headquarters Appeal of Administrative Remedy Response to the Commissioner as an appeal of no response if the warden has failed to respond to the inmate's request for administrative remedy within the proper time frame.

   a. This appeal shall initiate an investigation of the complaint itself.

b. The inmate should include a statement that the appeal is being submitted due to the warden's failure to issue a response to the initial request.

c. The Commissioner may direct the Warden to investigate and prepare a response for the Commissioner's signature as described in DCD 185-002.

2. The Commissioner's response to an appeal of no response from the warden shall be the final step of the ARP process for that complaint.

3. Copies of the appeal form shall be distributed as follows:

a. Original and one copy to the inmate;

b. One copy to the institutional coordinator for placement in the institution's administrative remedy file; and

c. One copy to the headquarters administrative remedy file.

I. Appeal of the Warden's Response

1. If an inmate disagrees with the warden's response to a request for administrative remedy, the inmate may appeal the decision to the Commissioner by completing a Headquarters Appeal of Administrative Remedy Response form.

2. The inmate should follow the instructions on the back of the form for filing the appeal.

3. If this appeal is not dismissed for procedural reasons it shall be accepted for investigation.

J. Accepting and Investigating an Appeal to a Request for Administrative Remedy

1. The headquarters coordinator shall accept the appeals for investigation and response which are not dismissed for procedural reasons. On the date the appeal is indexed, the coordinator shall:

   a. Send the receipt portion, Part C, of the Headquarters Appeal of Administrative Remedy Response (Appendix 6 to DCD 185-002) to the inmate for any appeal accepted;

   b. Review each appeal to determine the nature of the complaint and the headquarters departmental supervisor to whom the investigation should be assigned; and

   c. Assign the investigation to the appropriate headquarters departmental supervisor for assignment to a headquarters investigator and completion of the investigation within twenty calendar days or less.

2. Using the Headquarters Investigative Summary Appendix 1 to this directive, the headquarters investigator shall review the request for administrative remedy, the warden's response to the request, and the inmate's appeal to effectively establish the basis of the inmate's appeal.

3. As part of every investigation, the headquarters investigator shall, at a minimum, establish contact with the institutional coordinator at the responding institution to:
   a. Affirmatively establish the basis for the warden's response via case summary; and
   b. Ensure and document that the institution's investigation was completed in accordance with the provisions of DCD 185-003.
4. The headquarters investigator shall be authorized to request and obtain from the institutional coordinator all or any portion of the institution's administrative remedy case file to determine the basis for the warden's response or to confirm the proper completion of the institution's investigation.
5. Upon completion of the Headquarters Investigative Summary, the headquarters investigator shall review the following to make a recommendation in the case:
   a. The facts in the case;
   b. The supporting documentation of events;
   c. The sufficiency and completion of the institution's investigation; and
   d. The basis and appropriateness of the warden's response.

6. Based on an assessment of the above factors, the headquarters investigator shall draft a suggested response recommending a finding of
    a. Meritorious;
    b. Meritorious in part; or
    c. Dismissal.
7. The headquarters investigator shall submit to the headquarters coordinator a report including all findings, recommendations, supporting documentation, and a suggested response.
8. The headquarters coordinator shall review the investigation for completion and sufficiency of documentation.
9. Investigations which are found by the headquarters coordinator to be incomplete or to contain insufficient documentation to support the recommended response shall be returned to the assigned investigator with specific instructions for reinvestigation and submission within a specified time frame.
10. All investigative reports shall be submitted within the time frame specified by the headquarters coordinator.
11. Upon receipt of a completed Headquarters Investigative Summary from the headquarters investigator, the headquarters coordinator shall review the summary, any documents and reports attached, and the investigator's final

recommended response and draft an appropriate response for the review of the Commissioner or designee.

12. The response shall fully address only those issues which were raised in the appeal as well as in the inmate's request. New issues raised in the appeal which were not part of the inmate's request shall not be investigated, and it shall be clearly stated in the Commissioner's response that those issues shall not be addressed.

13. The appeal shall be found to be either:

    a. Meritorious;

    b. Meritorious in part; or

    c. Dismissed.

14. The response shall state what specific relief or remedy is to be provided to the inmate, where applicable, as well as who shall provide the relief.

15. The Commissioner or designee shall review each appeal response to ensure that the response is appropriate. The Commissioner or designee shall:

    a. Sign and date the appropriate response; or

    b. Return the response and investigative packet to the headquarters coordinator for:

        (1) A reinvestigation for additional information; or

(2) An amended response for review and signature.

16. The headquarters coordinator shall ensure that the completed Headquarters Appeal of Administrative Remedy Response form is distributed as follows:

    a. Original and one copy to the inmate;

    b. One copy to the institutional coordinator for placement in the institution's administrative remedy file; and

    c. One copy to the headquarters administrative remedy file.

K. Meritorious or Meritorious in Part Cases

1. When the disposition of an administrative remedy complaint is found to be meritorious or meritorious in part by the Commissioner, the Commissioner shall direct the appropriate headquarters departmental supervisor or the appropriate warden to take the action specified in the response.

2. If the relief includes monetary reimbursement, the procedures in 185-003 shall be followed.

3. The Commissioner shall ensure that written notification of the relief provided is sent to the headquarters administrative remedy coordinator within thirty calendar days of the date of the commissioner's response.

4. The headquarters coordinator shall ensure that the relief specified by the

commissioner is rendered within the time frame specified. The headquarters coordinator shall:

a. Maintain a file of appeal responses pending relief; and

b. Monitor the file for institutional or departmental compliance.

5. Upon receipt of the written notification of the relief provided, the headquarters coordinator shall review the documentation to ensure that the relief provided fulfills the action ordered in the commissioner's response.

a. If the required action has been fulfilled, the documentation shall be attached to the headquarters copy of the appeal response, the inmate's appeal, and all investigative materials and filed in accordance with the procedures established in this directive.

b. If the action ordered in the response has not been fulfilled as specified, the headquarters coordinator shall notify the institutional coordinator that the relief provided has not fulfilled the action ordered by the Commissioner's response and provide specific instructions for the institutional coordinator to fulfill the Commissioner's order.

L. Audits

1. The audit team shall consist of the headquarters coordinator, who shall supervise

the audit, and at least one institutional coordinator designated by the headquarters coordinator.

2. The dates and times of on-site audits shall be established by the commissioner or designee.

3. The commissioner or designee shall notify the warden of the facility of the date and time of any scheduled audit.

4. An entrance interview shall be conducted. Upon arrival, the audit team shall meet with the Warden/designee to explain the purpose of the audit and provide a general overview of the audit plan.

5. All members of the audit team and the institutional coordinator of the facility shall be present throughout the audit. At a minimum, the audit shall include:

   a. An examination of the administrative remedy procedure files and indexes to determine accuracy;

   b. An examination of investigations to ensure completeness and thorough documentation;

   c. An examination of the administrative remedy procedure, in practice as well as theory, to ensure compliance with this series of directives;

   d. An examination of meritorious requests and the implementation of any remedies granted; and

e. Interviews with randomly selected inmates and staff to assess their satisfaction with the administrative remedy procedure.

6. At the conclusion of the audit, the audit team shall meet with the warden or designee to provide an overview of the audit findings.

7. The headquarters coordinator shall provide the Commissioner or designee with an audit report within 30 calendar days of the date of audit completion.

8. The Commissioner or designee shall provide a copy of the report to the warden, who shall respond to the audit report within thirty days and provide a plan of corrective action if necessary.

9. A facility is subject to an unannounced audit or a re- audit to determine the level of compliance with the plan of corrective action at any time.

VII. Attachments: Appendix 1, Headquarters Investigative Summary, DOC Form 185-004aR (Rev. 8/08)

VIII. Rescissions: None.

Distribution: A
L
S – All Administrative Remedy Coordinators
All Inmate Grievance Coordinators

Appendix 1 to DCD 185-004

Headquarters Investigative Summary

I. Assigned Investigator: ____________________
Date: ____________________
Inmate's Name: ____________________
DOC #: ____________________
ARP Case No.: ____________________

Pursuant to DCD 185-004, the above-noted administrative remedy case has been assigned to you for investigation. This investigative case summary should be completed in accordance with the instructions provided in DCD 185-004. All steps of the investigation must be completed. If a step is not applicable, it should be noted in the space provided. Failure to complete the case summary in accordance with the instructions will result in the case summary being returned to you for further investigation and/or proper completion. This case summary must be completed and returned to the headquarters administrative remedy coordinator no later than ______________.

II. ***Investigation:***

The following information was obtained from ______________, institutional coordinator at ______________, on ______________ during the investigation of the above noted administrative remedy appeal.

1. Inmate was interviewed on ______________ by ______________. Details:

2. Witnesses listed below were interviewed:

3. Employees listed below were interviewed:

4. Specific relevant documents and/or evidence reviewed (list):

5. Specific findings of fact (list):

III. ***Warden's Response:***

1. The established basis of the warden's response was (summarize):

2. Concur or non-concur with the warden's response (state rationale):

IV. ***Commissioner's Draft Response*** (recommend disposition/prepare a draft response):

________________________ __________________

Signature of Investigator Date Submitted

[Memorandum in Support of
Defendant's Motion for Summary Judgment
(Nov. 18, 2019)
(ECF No. 186-4)]

Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KEVIN YOUNGER, *Plaintiff*, v. JEMIAH L. GREEN, ET AL., *Defendants*.	* * * * * * *	Case No.: 1:16-cv-03269-RDB

* * * * * * * * * * * * * * * * *

DECLARATION

I, F. Todd Taylor, Jr., attest and affirm as follows:

1. I am more than 18 years of age and am competent to testify, upon personal knowledge, to the matters stated herein.

2. I am the Executive Director of the Inmate Grievance Office ("IGO") of the Maryland Department of Public Safety and Correctional Services ("the Department").

3. As the IGO's Executive Director, I oversee the processing of all grievances filed by inmates committed to the custody of the Commissioner of Correction and incarcerated in facilities managed by the Department's Division of Correction ("DOC").

4. I am familiar with the above-captioned matter, in which I understand former DOC inmate Kevin Younger (DOC #239-743) sues various correctional officers and their supervisors for injuries he purportedly sustained while an inmate at the DOC's Maryland Reception, Diagnostic & Classification Center ("MRDCC") on September 30, 2013. 1 further understand that Mr. Younger alleges that his injuries are the result of a retaliatory attack on him and other inmates, including Raymond Lee, DOC #417-610, by MRDCC correctional officers Green, Hanna, and Ramsey.

5. I have reviewed the IGO's records to discern whether they reflect a grievance by Mr. Younger that relates to the alleged September 30, 2013 assault. Based on this review, I have determined that the IGO's records contain one such grievance: IGO No. 2014-0698. According to the records of that grievance, complete copies of which are attached, Mr. Younger filed a grievance regarding the September 30, 2013 assault on March 28, 2014, and the IGO administratively dismissed the grievance on November 25, 2014. (Attachment 1.) There is no indication in the records that Mr. Younger sought judicial review of the IGO's decision.

6. I have also reviewed the IGO's records to discern whether they reflect a grievance by Mr. Lee that relates to injuries he may have sustained as a result of the alleged September 30, 2013 assault by officers Green, Hanna, and Ramsey. The IGO's records show that:

(i) on November 13, 2013, after exhausting the administrative remedy process, Mr. Lee

filed a grievance regarding the September 30, 2013 assault;

(ii) Mr. Lee's grievance (No. 2013-1996) subsequently went before an administrative law judge ("All"), who, following a hearing, issued a Proposed Decision on January 28, 2015, wherein she found the grievance to be meritorious and recommended to the Department's Secretary that Mr. Lee be awarded $5,000 for his injuries; and

(iii) on March 13, 2017, the Department's Secretary issued an Order affirming the ALJ's Proposed Decision.

Copies of Mr. Lee's grievance (pp. 1-4), the ALJ's Proposed Decision (pp. 131-42), and the Secretary's Order (p. 143) are attached. (Attachment 2.)

7. The documents attached to this Declaration are true and accurate copies of records prepared and maintained in the ordinary course of business of the IGO and the Department. They are also true and accurate copies of public records that set forth both the activities of the IGO and the Department and matters observed pursuant to a duty imposed by law.

I AFFIRM AND DECLARE, UNDER PENALTY OF PERJURY AND UPON PERSONAL KNOWLEDGE, THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT.

11/18/19	/s/ F. Todd Taylor, Jr.
DATE	F. TODD TAYLOR, JR.

ATTACHMENT 1

RECEIVED
MAR 28 2014

3/21/2014

Inmate Grievance Commission
115 Sudbrook Lane, Suite 200
Pikesville, Maryland 21208

Dear Ms., Sir,

As you can see this case was dropped against me because the states attorney office knew like I told the Warden, chief of security at MROCC and other officers who would listen that Officer Ganiyu lied that I assaulted him at MRDCC on 5 dorm September 29, doing the 3-11 shift. For that lied I was beaten the very next morning after breakfast by the officers Sgt. Dixon, Sgt. Green, Sgt. Ramsey, Cpl. Hanna in my cell on lock up with fist (Back) [2] handcuffs, radios, boots to my head and body. My left hand was step on several times that my left picky I no longer have any use in it. It's hard for me to lift up anything with my left hand and left me in a pool of blood. These officers were removed from MRDCC to other DOC properties and I was given a DOC hearing for assaulting an officer and found guilty, took a year of my visits and put in a state prison with no time or parole violation I still haven't had a parole retake hearing and given 120 days lockup that ended January 2014. DOC hearing officer that heard my case and Warden [3] Tyrone Crowder, Assistant Warden Suzanne Fisher, Security Chief Vivian Presbury, Shift Commander Major Nathan Rollins knew from the start that Officer Ganiyu had lied that I assaulted him and

others and that only Raymond Lee who wroted out a statement to why he jumped on this officer. They the wardens, security chief and major had the memorandum from Captain Angelina White dated September 29, 2013 from Cpl. Glenn Curry from him being the wittness to the assault on this officer from beginning to end. Put on lock up, and beaten and having 1,969 good conduct (Back) [4] taken from me that push my release date from Feb. 13, 2014 to Feb. 13, 2017 credits DOC knew they could not touch I caught my time pre 1992. I showed the warden here at Roxbury and my casemanager a Ms. Jewels both know I should be out of here and sent to my detainer but continual to stall for DOC to tried to fix this to make it look better. They both made copies of my paperwork and I still sit in this prison with no time or convictions, violations. Move paperwork and how can they lied now?

/s/ Kevin J. Younger

[5] I filed an ARP to the warden here at Roxbury and sent him several request. I wroted Director of Corrections Sowers and now I am writing this office. Nobody wants to talk about it but me and my lawyer. I wrote Sgt. A. Thompson at DPSCSIIU on Corridor Road.

Part C – RECEIPT Case No. KCI-0196-14

RETURN TO: Younger Kevin J
Last Name First Name Middle Initial

239-743 RCI 4D16B
DOC Number Institution

I acknowledge receipt of your complaint dated 2-6-14 in regard to:
[illegible] for procedural reasons: Final per DCD185-002 VI.B.2

Inmates may not seek relief through the Administrative Remedy Procedure on Maryland Parole Commission procedures and decisions.

3-10-14 /s/ [Illegible]
Date Institutional ARP Coordinator

Original: White – Institutional ARP Coordinator
Copy: Canary – Inmate

Page: 1 Date: 2/26/2014
Room: 3 Time: 2:16 PM
Case No. 3B02237616 [BAR CODE]

[SEAL] **DISTRICT COURT OF MARYLAND FOR BALTIMORE CITY**
Located at 1400 E. NORTH AVE, BALTIMORE, MD 21213-1400
STATE OF MARYLAND VS. YOUNGER, KEVIN
MRDCC: 501 E MADISON STREET
BALTIMORE MD 212030000

CC #:133501327 State ID:0000418788 LocID:
Eyes: BRN Hair: GRA Height: 5'09"
Weight: 159 lb. Race: 1 Sex: M
DOB: [redacted] DL #:

DEFENDANT TRIAL SUMMARY

The above case was heard today, 02/26/2014 by Judge JAMEY H. HUESTON

The Court's finding is as follows:

001 ASSAULT-SEC DEGREE
Plea - OTHER PLEA Verdict - NOLLE PROSEQUI

002 RECKLESS ENDANGERMENT
Plea - OTHER PLEA Verdict - NOLLE PROSEQUI

003 CON-ASSAULT-SEC DEGREE
Plea - OTHER PLEA Verdict - NOLLE PROSEQUI

2/26/2014 Defendant________________ (YOUNGER, KEVIN)

You may be entitled to expunge this record and any DNA Sample and DNA Record relating to the charge or charges against you if you must certain conditions. Further information on expungement is contained in a brochure available at the Clerk's Office or on our website at http://www.courts.state.md.us/district.

Tracking No. 131002121095

DISTRICT COURT OF MARYLAND FOR Baltimore City - Eastside

[SEAL]

LOCATED AT (COURT ADDRESS)
I-100 East North Avenue
Baltimore, Maryland 21213

(City County)

RELATED CASES:

[BAR CODE]

DC Case No: 3B02237616

COMPLAINANT	DEFENDANT
D/Sgt A. Thompson	Younger, Kevin # 239-743 (Inmate)
Printed Name	Printed Name
DPSCS IIU: 8510 Corridor Road, Suite 100	MRDCC: 501 East Madison Street
Number and Street Address	Number and Street Address
Savage, Maryland 20763	Baltimore, Maryland 21202
City State, and Zip Code	City, State, and Zip Code
410.724.5720	
Telephone	

PSIU 00/35 #2016 Agency, sub-agency, and ID# (Officer Only)	N/A Telephone CC# 13-35-01327

DEFENDANT'S DESCRIPTION: Driver's License# N/A Sex M Race B Ht 5"9 Wt 159

Hair GRY Eyes BRO Complexion MED Other FBI 541151MA8 D.O.B [redacted] ID SID 418788

APPLICATION FOR STATEMENT OF CHARGES

Page 1 of TWO

I, the undersigned, apply for statement of charges and a summons or warrant which may lead to the arrest of the above named Defendant because on or about 9/29/2013 @ 1820 hrs (Date) at MRDCC: 501 East Madison Street, Baltimore Maryland 21202 (Place) ______________________, the above named Defendant

> while lawfully confined at the Maryland Reception Diagnostic Classification Center, a State Correctional Facility, did willfully assault COII A. Ganiyu On, September 29, 2013, at approximately 1820 hours, after disobeying a direct order to replace a dinner tray, COII Ganiyu attempted to place handcuffs on Inmate M. Brown, when several inmates in the dormitory began to chastise the officer for his action. Inmate Kevin Younger # 239-743 than approached the officer and grabbed his arm to prevent him from securing the handcuffs on Inmate Brown. At that time Inmate R. Lee ~~stuck~~ [stucked] COII Ganiyu in the face with a closed fist. Once on the ground, inmate Younger than began to punch the officer with closed fists and kick him in his face and upper body. As a result, COII

Ganiyu was taken to Concentra for medical treatment and then transported via 911 to University of Maryland Shock trauma for

Concise statement of facts showing that there is probable cause to believe that a crime has been committed and that the Defendant has committed it):
(Continued on attached ONE pages) (DC/CR 1A)

I solemnly affirm under the penalties of perjury that the contents of this Application are true to the best of my knowledge, information and belief.

October 24, 2013	[Illegible]
Date	Officer's Signature

I have read or had read to me and I understand the Notice on the back of this form.

October 24, 2013	[Illegible]
Date	Applicant's Signature

Subscribed and sworn to before me this 24th day of October (time) 2013 Year

Time: 4:08 PM ~~Judge~~/Commissioner [Illegible]

1322
ID

I understand that a charging document will be issued and that I must appear for trial ☐ on ________ Date at ________ Time, ☒ when notified by the Clerk, at the Court location shown at the top of this form.

____
Applicant's Signature

☒ I have advised applicant of shielding right. ☒ Applicant declines shielding.

☐ I declined to issue a charging document because of lack of probable cause.

10/24/13	[Illegible] 1322
Date	Applicant's Signature

SOU Phone: 410-358-3456 SOU Fax: 410-358-1178 Global E-Mail: SIR	IIDU PCO Fri. #1 Ph. 410-333-8732 or 410-333-1733 x216 Maryland Division of Correction	Appendix 1 to DCD 20-3

☐ Preliminary **Serious Incident Report**
☒ Final

Control # MRDCC - 2013 - 036
Facility Year Sequence #

Incident Date: 9/29/2013 Time: 6:10PM

Section A Incident Categories		
Priority 1		
	1a	Accidental Firearm Categories
	1b	Adverse Job Action
	1c	Arrest, Staff
	1d	Assault, Inmate, Life Threatening
	1e	Assault, Staff, Life Threatening
	1f	Attempted Escape

	1g	Deadly Force
	1h	Death, Inmate, Accidental
	1g	Deadly Force
	1h	Death, Inmate, Accidental
	1i	Death, Inmate, Homicide
	1j	Death, Inmate, Suicide
	1k	Death, Inmate, Unknown
	1l	Death, Staff on Duty
	1m	Disturbance, Force Used
	1n	EOC Activation
	1o	Escape
	1p	Fire, Fire Dept. Required
	1q	Hazard, Evacuation Required
	1r	Homicide, Staff
	1s	Injury, Inmate, Life Threatening
	1t	Injury, Staff, Life Threatening
	1u	Other-SELF MUTILATION
	1v	Security Breach Staff Needed
Priority 2		
	2a	Arrest, Inmate
	2b	Arrest, Visitor
	2c	Assault, Inmate, Weapon Used
X	2d	Assault, Staff, Physical
	2e	Attempted PR Escape
	2f	Attempted Suicide
	2g	Death, Inmate, Natural
	2h	Drugs Recovered
	2i	Escape, Pre-release
	2j	Hazard, No Evacuation
	2k	Injury, Visitor
	2l	Inmate Group Protest
	2m	Other
	2n	Secondary Medical, Inmate
	2o	State Property Damage

Section B	Facility Notifications	
Time Notified	**Title**	**Name**
	Commissioner	
	Deputy Commissioner	
7:29 PM	Director of Corrections	Ms Felicia Hinton
	DOC PIO	
8:00 PM	IIU	Sgt. Carolyn Murray
6:25 PM	Warden	Tyrone Crowder
7:20 PM	Assistant Warden	Suzanne, Fisher
7:22 PM	Security Chief	Vivian Presbury
	Facility Administrator	
E-Mail	Shift Commander	Major Nathan Rollins
	Reg. Health Care Admin.	
	Director Medical Services	
	Asst. Director Mental Health	
	FBI	
	State Police	
	Local Police	
	Institutional Duty Offier	
	IIDU	
	Other Regional Duty Off	
	Other	
	Other	

Section C	**Reporting Official**
Incident Report to SOU/HDU PCO **Date:** 9/29/2013 Time: 6:10PM	

To: SIR	
Name Last, First	Title
By: Armstrong, Eddie	Captain
Name Last, First	Title
Shift Commander/Designee	
	Armstrong, Eddie
	Name Last, First

[Illegible]	9/29/13	8:00
Signature	Date	Time

[SEAL] Department of Public Safety and Correctional Services
Central Region

Maryland Reception-Diagnostic and Classification Center
550 E. MADISON STREET • BALTIMORE, MARYLAND 21202
(410) 878-3500 • FAX (410) 783-4106
• TTY USERS 1-800-735-2253 • www.doscs.maryland.gov

Memorandum

TO: Captain, Angelina White

FROM: Corporal, Glenn, Curry [/s/ GC]

DATE: September 29, 2013

SUBJECT: Assault on Officer Alade Ganlyu

On the above date and time I Cpl. Glenn Curry III Called a 10-13 in SDORM. I called the code because while I was standing on the Charlie side of SDorm waiting to relieve Ofc. Alade Ganiyu for lunch I witnessed Ofc. Alade Ganiyu

trying to handcuff inmate Mark Brown SID#3134471 but he would not allow Ofc. Alade Ganiyu to handcuff him at this time inmate Brown stood up and pushed Ofc. Alade Ganiyu out of my sight. When I entered into Sdorm I witnessed Ofc. Alade Ganiyu on the floor with blood on his face while inmate Raymon Lee was standing over him with his right hand balled up trying to punch Ofc. Alade Ganiyu. At this time I Cpl. Glenn Curry III hand cuffed inmate Raymon Lee and escorted him off the dorm.

"FROM GOOD TO GREAT"

P/N

OBSCIS REPORTING FUNCTIONS
OFFENDER TRAFFIC HISTORY

PAGE: 001
DATE: 05/02/14
TIME: 11:18

DOC #: 239743 YOUNGER KEVIN JOSEPH

DATE	TIME	LOCATION	BLOCK	TIER	CELL	BED		REASON	PER
03 26 2014	15 30	SEE REASON					33	FEDRL CUST	VILLARREAL J
03 26 2014	15 00	ROXBURY CO	HU4D	1	016	B	19	TRAN TO CT	VILLARREAL J
03 03 2014	14 00	ROXBURY CO	HU4D	1	016	B	20	TRAN FM CT	REED C
02 28 2014	13 30	JESSUP COR	A	A	117	A	27	RET FR COU	JACKSON, S
02 28 2014	07 20	SEE REASON					31	COURT APPR	JACKSON, S
02 27 2014	10 45	JESSUP COR	A	A	117	A	19	TRAN TO CT	WATSON JAC
02 14 2014	14 35	ROXBURY CO	HU4D	1	016	B	19	TRAN TO CT	VILLARREAL J
02 12 2014	10 15	JESSUP COR	A	A	113	A	19	TRAN TO CT	JACKSON, S
02 05 2014	11 36	ROXBURY CO	HU4D	1	016	B	03	HOUSING	VILLARREAL J
02 04 2014	14 00	ROXBURY CO	HU5C	1	007	B	20	TRAN FM CT	REED C
02 03 2014	14 00	JESSUP COR	A	A	122	B	27	RET FR COU	JACKSON, S
02 03 2014	06 55	SEE REASON					31	COURT APPR	JACKSON, S
01 31 2014	11 40	JESSUP COR	A	A	122	B	19	TRAN TO CT	JACKSON, S
01 30 2014	12 18	ROXBURY CO	HU5C	1	007	B	20	TRAN FM CT	VILLARREAL J
01 29 2014	13 10	JESSUP COR	A	A	519	B	27	RET FR COU	JACKSON, S
01 29 2014	07 40	SEE REASON					31	COURT APPR	JACKSON, S
01 28 2014	18 20	JESSUP COR	A	A	519	B	27	RET FR COU	WRIGHT S

- INQUIRY ONLY.

[SEAL] **Department of Public Safety and Correctional Services**

Inmate Grievance Office
115 SUDBROOK LANE • SUITE 200 •
SUDBROOK STATION •
PIKESVILLE, MARYLAND 21208-3878
410-585-3840 • FAX: 410-318-6015 •
V/ TTY USERS: 800-735-2258 •
www.dpscs.state.md.us

STATE OF MARYLAND

MARTIN O'MALLEY
GOVERNOR

ANTHONY G BROWN
LT GOVERNOR

GARY O. MAYNARD
SECRETARY

G. FRANKLIN LAWRENCE
DEPUTY SECRETARY

SCOTT S. OAKLEY
EXECUTIVE DIRECTOR

May 2, 2014

Kevin Younger, #239743
RCI

RE: IGO No. 201400698

Dear Mr. Younger:

I have conducted a preliminary review of your grievance received March 28, 2014. I am unable to ascertain the precise nature and scope of your original ARP complaint because you have failed to provide a copy.

Md. Code Ann. Corr. Serv. §10-206(b) provides that the Inmate Grievance Office ("IGO") can require by regulation that the ARP process be exhausted before a grievance is submitted to the IGO, and COMAR 12.07.01.05(E) is the regulation by which the IGO imposes this requirement. The U.S. Supreme Court recently determined that the term "exhaustion" as used in administrative law means "proper exhaustion," and proper exhaustion means "using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits)." *Woodford v. Ngo*, 126 S.Ct. 2378 (2006); *see also Moore v. Bennette*, 517 F.3d 717 (4th Cir. 2008).

COMAR 12.07.01.04(B)(9)(a) requires that you demonstrate exhaustion of the ARP process by submitting, with your grievance at the outset of the grievance process, all related ARP paperwork. COMAR 12.07.01.06(B)(4) provides that a grievance shall be dismissed on preliminary review as wholly lacking in merit if the grievant did not properly exhaust remedies available under the ARP process and if the exhaustion requirement has not been waived for good cause shown. *See* COMAR 12.07.01.05(F).

In order for this Office to determine whether you have properly exhausted an available ARP remedy, whether you have timely filed this grievance, and whether you have stated a claim upon which administrative relief can and should be granted, we require that you provide copies of all related ARP paperwork pertaining to this grievance, including your ARP complaint to the Warden, any receipt from the Warden, any response of the Warden, any appeal to the Commissioner, any receipt from the Commissioner,

and any response of the Commissioner, all as required by COMAR 12.07.01.04(B)(9). I note that you have provided only the receipt from the Warden.

Please provide a copy of all missing ARP paperwork within 30 days of the date of this letter. If we have not received these copies or another appropriate response within the next 30 days, your grievance will be dismissed pursuant to Md. Code Ann. Corr. Serv. §10-207(b)(1) as having been determined to be wholly lacking in merit, without further notice to you.

Very truly yours,

/s/ Robin Woolford
Robin Woolford
Deputy Director

RW/dbm

[sent via MC 5/15 /s/ RW]

Woolford, Robin

From: Smith, Kwesha
Sent: Thursday, May 15, 2014 12:24 PM
To: Woolford, Robin
Subject: FW: Kevin Younger, #239743

You can either scan or fax (410 764-5116) the letter to me and I will forward it.

Thanks

From: Woolford, Robin
Sent: Thursday, May 15, 2014 10:35 AM
To: Smith, Kwesha
Subject: FW: Kevin Younger, #239743

Good morning –

I have a letter I need to get out to this inmate. I just need to know how I should address it.

Thanks for your help.

ROBIN WOOLFORD
INMATE GRIEVANCE OFFICE
410 585 3843

From: Woolford, Robin
Sent: Thursday, May 08, 2014 8:32 AM
To: Woolford, Robin
Subject: RE: Kevin Younger, #239743

I have forwarded your request to Kwesha Smith who handles do not disclose inmates.

Thank you.

Amanda Roberts
Case Management Specialist
DPSC5 Headquarters ARP/100 Unit
(410) 585-3335
(410) 764-5116 (f)

This communication may contain confidential *or* privileged information. Unauthorized retention, disclosure, or use of this Information is prohibited and may be unlawful. Accordingly, If this email has been sent to you in error, please

notify the sender and delete the email from your computer and network.

From: Woolford, Robin
Sent: Wednesday, May 07, 2014 3:38 PM
To: Roberts, Amanda R.
Subject: Kevin Younger, #239743

Good afternoon –

I have a grievance from the above named inmate. He sent it to us while he was at RCI. OBSCIS says he is now in federal custody and I need to contact HQ. Can you tell me where he is or how I can get our response to him?

Thank you.

ROBIN WOOLFORD
INMATE GRIEVANCE OFFICE
410 585 3843

Message Confirmation Report

MAY-15-2014 02:54 PM THU

Fax Number : 410 318 6015
Name : MARYLAND DPSCS IGO

Name/Number : 94107645116
Page : 3
Start Time : MAY-15-2014 02:53PM THU
Elapsed Time : 00’56”
Mode : STD ECM
Results : [O.K]

[sent via MC 5/15 /s/ RW]

Woolford, Robin

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[SEAL] **Department of Public Safety and Correctional Services**

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SCOTT S. OAKLEY
EXECUTIVE DIRECTOR

May 15, 2014

Kevin Younger, #239743
DOC HQ

RE: IGO No. 201400698

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COMAR 12.07.01.04(B)(9)(a) requires that you demonstrate exhaustion of the ARP process by submitting, with your grievance at the outset of the grievance process, all related ARP paperwork. COMAR 12.07.01.06(B)(4) provides that a grievance shall be dismissed on preliminary review as wholly lacking in merit if the grievant did not properly exhaust remedies available under the ARP process and if the exhaustion requirement has not been waived for good cause shown. *See* COMAR 12.07.01.05(F).

In order for this Office to determine whether you have properly exhausted an available ARP remedy, whether you have timely filed this grievance, and whether you have stated a claim upon which administrative relief can and should be granted, we require that you provide copies of all related ARP paperwork pertaining to this grievance, including your ARP complaint to the Warden, any receipt from the Warden, any response of the Warden, any appeal to the Commissioner, any receipt from the Commissioner, and any response of the Commissioner, all as required by

COMAR 12.07.01.04(B)(9). I note that you have provided only the receipt from the Warden.

Please provide a copy of all missing ARP paperwork within 30 days of the date of this letter. If we have not received these copies or another appropriate response within the next 30 days, your grievance will be dismissed pursuant to Md. Code Ann, Corr. Serv. §10-207(b)(1) as having been determined to be wholly lacking in merit, without further notice to you.

Very truly yours,

/s/ Robin Woolford
Robin Woolford
Deputy Director

RW/dbm

5/20/2014

I wroted Director of Corrections Sowers who I saw at Roxbury and he told me to write him. I am here in Lexington Kentucky because of the head injury I got. To see if I can able to continual with my case because I keep having moments were I can't remember things. You know this you fired the warden at MRDCC remember? All changes by DOC in court against me was dropped. Kevin Younger

---

[Illegible] — Officer's Name: Print and Signature

12/26/13 — Date

CASE NO. ______________

MARYLAND DIVISION OF CORRECTION
REQUEST FOR ADMINISTRATIVE REMEDY
(Instructions for completing this form are on the back)

TO: ☒ Warden of Institution

Emergency Request: ☐ Check only if your complaint poses a continued threat to your health, safety, or welfare.

FROM: Younger (Last Name) Kevin (First Name) Joseph (Middle Initial)

239743 (DOC Number) Roxbury (Institution)

Housing Location H5C-7 Protective Custody ☐
Administrative Segregation ☐ Disciplinary Segregation ☒

Part A – INMATE REQUEST

These 4 officers Sgt. Dixon, Sgt. Green, Sgt. Ramsey, CPL II Hanng beat me with fist, handcuffs, radios and kicks to my face and head, body and one smash my left hand with his boot and cause damage to my left finger that left it damage that I can't hold objects are working still working and drawing a paycheck.

12/6/2013 — **Date**

Kevin Joseph Younger — **Signature of Inmate**

Part B – RESPONSE

________	______________________________
Date	**Signature of Warden**

You may appeal this response by following the procedure prescribed on the back of this form.

Part C – RECEIPT

Case No. __________

RETURN TO: ________________________ ____________
Last Name First Name Middle Initial

_______________ _____________
DOC Number Institution

I acknowledge receipt of your complaint dated _________
in regard to: _____________________________________

________	______________________________
Date	**Institutional ARP Coordinator**

Original: White – Institutional ARP Coordinator
Copy: Canary – Inmate

/s/ [Illegible] 12/26/13 2 of 2

Part A (Continued) – INMATE REQUEST

I was interview by Internal Affairs from the department of correction 3 times and pictures taken. In the meantime I was given 110 days on lockup and charge with 2nd degree battery on an officer only after I was beaten to cover up what was done to me even after I was beaten after I told MRDCC staff I did not have nothing to do with this. I received a threat before I came to a state prison to serve lockup time with convicted others doing time from life to 5 to 20 years. I am charging all 4 officers with I hope attempted murder by heading me in my head with handcuffs and radios that resulted in me being numb to have stiches being place in my head and face. Per MRDCC medical doctor per Roxbury medical doctor who xray my finger. DOC can't lie about facts like my 110 lockup time

12-24-2013	Kevin J. Younger	239743
Date	Inmate's Name: Print and Signature	DOC #

RECEIVED 6/25/2014
JUL 01 2014
INMATE GRIEVANCE OFFICE

Robin Woolford
Maryland Division of Correction
6776 Reisterstown Road
Baltimore, Maryland 21215

Dear Ms. Woolford,

I writed you again only this time I've made a copy of this letter for my personal files when I go into United States District Court. I was beaten by several Maryland Division of Corrections officers September 30, 2013 when I was grabbed off my bunk and thrown to the floor and beaten by handcuffs, radios, fist and kick with steel toe boots and lost the used of my left pink finger but you know all this this photos don't lied and the MRDCC doctor medical won't lied for you I was left in a pool of blood and could not even walk or get out of bed to wash or use the bathroom. These officers continual to work while I was charge on a complete lied by this officer who was beaten seeking for himself money to retire on. His lied was exposed by other officers and charges placed by your department against me in court was dropped. So now with a head injury they got from this beating i sit here in Lexington Kentucky at U.S. Federal hospital to see if I can stand [illegible] [2] U.S. government case in U.S. District Court. My mind at times comes and goes to a complete blank at times. I blame your officers and DOC. I wroted ARP's and Director Sowers that I was getting threats never heard a word from DOC or Director Sowers. Threats told me threw my door [illegible] other inmates coming from your

officers. But you know this already I put that in ARP's and letters to DOC. See you in U.S. District Court on my $10 million dollar lawsuit. Read Officer Curry report to Captain Angelina White. See you in court!

Kevin J Younger
239743

[SEAL] **Department of Public Safety and Correctional Services**

Inmate Grievance Office
115 SUDBROOK LANE • SUITE 200 •
SUDBROOK STATION •
PIKESVILLE, MARYLAND 21208-3878
410-585-3840 • FAX: 410-318-6015 •
V/ TTY USERS: 800-735-2258 •
www.dpscs.state.md.us

STATE OF MARYLAND

MARTIN O'MALLEY
GOVERNOR

ANTHONY G BROWN
LT GOVERNOR

GARY O. MAYNARD
SECRETARY

G. FRANKLIN LAWRENCE
DEPUTY SECRETARY

SCOTT S. OAKLEY
EXECUTIVE DIRECTOR

August, 2014

Kevin Younger, #4239743
DOC HQ

RE: IGO No. 201400698

Dear Mr. Younger:

I am in receipt of your letter of May 20, 2014, and accompanying paperwork, and I have conducted a further preliminary review of your grievance received March 28, 2014, as an "appeal" from the disposition of an un-numbered ARP complaint. In essence, you complained in your original ARP complaint to the Warden that you were assaulted by Sgt. Green, Sgt. Ramsey and Cpl. Hanna on September 30, 2013.

Md. Code Ann. Corr. Serv. §10.206(b) provides that the Inmate Grievance Office ("IGO") can require by regulation that the ARP process be exhausted before a grievance is submitted to the IGO, and COMAR 12.07.01.05(E) is the regulation by which the IGO imposes this requirement. The U.S. Supreme Court recently determined that the term "exhaustion" as used in administrative law means "proper exhaustion," and proper exhaustion means "using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits)." Woodford v. Ngo, 126 S.Ct. 2378 (2006); see also Moore v. Bennette, 517 F.3d 717 (4th Cir. 2008).

COMAR 12.07.01.04(B)(9)(a) requires that you demonstrate exhaustion of the ARP process by submitting, with your grievance at the outset of the grievance process, all related ARP paperwork. COMAR 12.07.01.06(3)(4) provides that a grievance shall be dismissed on preliminary review as wholly lacking in merit if the grievant did not properly exhaust remedies

available under the ARP process and if the exhaustion requirement has not been waived for good cause shown. See COMAR 12.07.01.05(F).

In order for this Office to determine whether you have properly exhausted an available ARP remedy, whether you have timely filed this grievance, and whether you have stated a claim upon which administrative relief can and should be granted, we require that you provide copies of all related ARP paperwork pertaining to this grievance, including your ARP complaint to the Warden, any receipt from the Warden, any response of the Warden, any appeal to the Commissioner, any receipt from the Commissioner, and any response of the Commissioner, all as required by COMAR 12.07.01.04(B)(9). I note that you have provided only your ARP complaint to the Warden.

Please provide a copy of these documents and any other ARP paperwork not previously provided within 30 days of the date of this letter. If we have not received these copies or another appropriate response within the next 30 days, your grievance will be dismissed pursuant to Md. Code Ann. Corr. Serv. §10-207(b)(1) as having been determined to be wholly lacking in merit, without further notice to you.

Very truly yours,

/s/ Scott S. Oakley
Scott S. Oakley
Executive Director

SSO/dbm

8/24/2014

Inmate Grievance Office
115 Sudbrook Lane – Suite 200
Sudbrook Station
Pikesville, Maryland 21208

RECEIVED
AUG 26 2014
INMATE
GRIEVANCE OFFICE

Ms. Robin Woolford,

Since you want to quote law let's. Haywood v. Drown, Jones v. Boch eliminated the burden of proof on a prisoner to plead and prove exhaustion of administrative remedies under the Prison Litigation Reform Act. This has led to a large number of reported cases dealing with the exhaustion requirement. In general, courts intervene in the correctional administrative process under three circumstances. The statute or policy under which the prison administrator is acting is unconstitutional or unconscionable. With my lawyer I am filing a 10 million lawsuit against the Maryland Division of Correction for using deadly force on me. For example blows to the head like handcuffs, radios is likely to cause death or serious bodily harm. Deadly force as a means of self defense is never justified unless the prison official is in reasonable apprehension of death or serious injury and the use of deadly force is a last resort. Sgt. Green, Sgt. Dixon, Sgt. Ramsey, Cpl. Hanna beat me with fist, steeltoe boot kicks, radios, handcuffs to my head, body and broke my left pinky finger. See your in court lady!

/s/ Kevin Younger
418788

August 22, 2014

Robin Woolford	RECEIVED
Inmate Grievance Office	AUG 26 2014
115 Sudbrook Lane – Suite 200	INMATE
Sudbrook Station	GRIEVANCE OFFICE
Pikesville, Maryland 21208	

Ms. Robin Woolford,

As you can see I am back in Baltimore City from the Federal Medical Facility at Lexington Kentucky. I was at Lexington due from the beating I got from these officers. Sgt. Green, Sgt. Dixon, Sgt. Ramsey, Cpl. Hanna. I was beaten with handcuffs, radios and hits to my body and head by steeltoe boots and what hit by fist to my head and body that resulted in me blacking out and waking up not able to move in a pool of blood. I received a broken left pinky finger and severe injurys to my head. You know all this by my medical file from that beating and interviews with your investigators who interviewed me 3 times. I put in a ARP's at MRDCC and Roxbury. Only one manage to get to the warden at Roxbury and I was sent a receipt and I was moved to back in Baltimore City under Fed custody. You write to this and do that but you mean when you are talking about [2] a department that is not brutal and dirty officers selling drugs, phones and protection. Officers who set up the inmates for beatings and murder by opening their door so this could happen like I seen happen at BCDC in August 2012. 5 inmates was allowed to go up in another inmate cell while whole ties on lockdown to wait

change of shift. From another part of jail came on our parole retake tier. I will tell them when we take this all to the F.B.I. in Woodlawn. You like I knew protect dirty brutal officers and to beat someone almost half to death then charge them on lies and then dropped those lies and I only did was tried to pull this kid off this lying coward. I suffer memory lost now and still have the scars from that brutal beating on my face. The Inmate Grievance Office is a joke and part of this dirty drug dealing Maryland Division of Correction. The next time we talk will be with the F.B.I. and justice department. I mean everything nothing left out.

/s/ Kevin Younger
418788

Woolford, Robin

From: Session, Chantell
Sent: Wednesday, October 08, 2014 10:45 AM
To: Woolford, Robin
Subject: RE: Kevin Younger, #239743

Good morning sorry for the late response I was at JCI conducting an audit Monday and Tuesday. According the Appeal Index we do not have any appeals from inmate Kevin Younger 239743.

Thanks

Chantell Session
Case Management Specialist II
DPSCS Headquarters ARP/IGO Unit
6776 Reisterstown Rd
Baltimore, Maryland 21215
(410) 585-3334 (office)
(410) 764-5116 (fax)

From: Woolford, Robin
Sent: Monday, October 6, 2014 10:54 AM
To: Session, Chantell
Subject: Kevin Younger, #239743

Good morning –

Could you please tell me if you have anything from the above named inmate? He alleges he was assaulted by officers on September 30, 2013. He's provided fragments of paperwork with no ARP number or response from the warden.

Many thanks.

ROBIN WOOLFORD
INMATE GRIEVANCE OFFICE
410 585 3843

[SEAL] **Department of Public Safety and Correctional Services**

Inmate Grievance Office
115 SUDBROOK LANE • SUITE 200 •
SUDBROOK STATION •
PIKESVILLE, MARYLAND 21208-3878
410-585-3840 • FAX: 410-318-6015 •
V/ TTY USERS: 800-735-2258 •
www.dpscs.state.md.us

STATE OF MARYLAND

MARTIN O'MALLEY
GOVERNOR

ANTHONY G BROWN
LT. GOVERNOR

GREG L. HERSHBERGER
SECRETARY

PATRICIA DONOVAN
DEPUTY SECRETARY

SCOTT S. OAKLEY
EXECUTIVE DIRECTOR

November 25, 2014

Kevin Younger, #239743
CDF

RE: IGO No. 20140698

Dear Mr. Younger:

I am in receipt of your letters of August 22 and 24, 2014 and I have conducted a further preliminary review of your grievance received March 28, 2014, as an "appeal" from the disposition of an un-numbered ARP complaint. In essence, you complained in your original ARP complaint to the Warden that you were assaulted by Sgt. Green, Sgt. Ramsey and Cpl. Hanna on September 30, 2013.

Md. Code Ann. Corr. Serv. §10-206(a) provides that the IGO can require by regulation that a grievance be submitted to the IGO within a specified period of time and in a specified manner, and the IGO has utilized this authority to impose these requirements by regulation: COMAR 12.07.01.05 (time within which a grievance must be submitted); COMAR 12.07.01.4 (manner in which a grievance must be submitted).

Md. Code Ann. Corr. Serv. §10-206(b) provides that the IGO can require by regulation that a subordinate administrative inmate complaint procedure provided by the DOC or Patuxent Institution and considered by the IGO to be reasonable and fair must be exhausted before the submission of a grievance to the IGO, and the IGO has utilized this authority to impose this requirement for grievance complaints within the scope of the DOC's Administrative Remedy Procedure (ARP) and for grievance complaints arising from disciplinary proceedings: COMAR 12.07.01.02.

Md. Code Ann. Corr. Serv. § 10-207 provides that the IGO shall conduct a preliminary review of each grievance submitted to the IGO and may dismiss the complaint

without a hearing or specific findings of fact if the complaint is found to be wholly lacking in merit on its face.

The IGO has long interpreted this statute as authorizing the IGO to dismiss a grievance after preliminary review if (1) the grievant is not in the custody of the DOC or Patuxent Institution at the time the grievance is submitted; (2) the grievance complaint is not against an official or employee of the DOC or Patuxent Institution; (3) the grievance is not filed within the specified period of time; (4) the Grievant did not properly exhaust subordinate ARP or disciplinary procedures; (5) the grievance fails to state a claim upon which administrative relief can and should be granted; and (6) the grievance is moot. COMAR 12.07.01.06(B).

While Md. Code Ann. Corr. Serv. §10-207 authorizes the IGO to dismiss a grievance without specific findings of fact, brief factual inquiries are often inherent in many of the bases upon which an inmate grievance can be dismissed after preliminary review and without a hearing. COMAR 12.07.01.04(B)(9)(a), for example, requires that you demonstrate exhaustion of the ARP process by submitting, with your grievance at the outset of the grievance process, all related ARP paperwork. In this case, there is a brief factual inquiry inherent in examining this paperwork and determining whether you failed properly to exhaust the ARP process turning on the question whether you filed an "ARP appeal" to the Commissioner. You failed to establish by appropriate paperwork that you filed an appeal to the Commissioner and you have failed to provide the usual Commissioner's receipt or any other document or record indicating that your ARP appeal was received by

the Commissioner. Exercising the authority to conduct a preliminary investigation of the grievance, COMAR 12.07.01.03(B)(6), the IGO has independently inquired of the Commissioner's Office concerning whether an ARP appeal was received in this case, and the Commissioner's Office has responded that they have not received any ARP appeals from you. 1 therefore conclude that you failed effectively to file an ARP appeal in this case and you therefore failed properly to exhaust the ARP process before the submission of this grievance as required by COMAE. 12.07.01.02(D). As you have provided no basis for waiving the ARP exhaustion requirement, this grievance must be dismissed. COMAE. 12.07.01.06(B)(4).

Accordingly, your grievance is hereby administratively dismissed pursuant to Md. Code Ann. Corr. Serv. §10-207(b)(1) as having been determined to be wholly lacking in merit, and this file is closed.

Sincerely,

/s/ Robin Woolford
Robin Woolford
Deputy Director

RW/sgh
Enc: 1

ATTACHMENT 2

RECEIVED
NOV 13 2013
INMATE
GRIEVANCE OFFICE

RE: NBCI-3325-13 11-4-13
RECEIVED IN ENVELOPE
FROM BETTY McCREA

Dear Mr Oakley

Sir the warden informed me in the above mentioned case the ARP process is not available to me. Enclosed is all the the proper paperwork. I have been assigned IIU case number (13-35-01334) staying within my time frame I moved my grievance to your office. Respectfully requesting an IGO hearing for the following reason. On 9-30-13 I was assaulted by three (3) correctional officers in violation of DCD-200-IV.AI which subject me to personal injurys. At approximately 7:00 AM in the morning I was awaking by being sprayed down with maise. My head was under the blanket but when I looked up I saw officer Sgt Ramsey standing at my door spraying yelling yall like banking CO's. I put my head back under the covers but when I heard the can stop spraying I pulled my head back out. At the time I pulled my head out Officer Hanna came running in the cell and kicked me on the left side of my face. I flew back on the bed and when I lift myself up Sgt Green runs in and starts punching and kicking me. Before I knew it all three (3) of these officers were all on me punching and kicking me. At some point I passed out from the assault, when I woke up I woke up on my stomach face flat. I jumped up and didn't know what happened but there was blood all over the floor. Before I knew it my memory hit me all at once. I ran an looked in the mirror. My right eve where my eyebrow is was split open. My left side of my

face was swollen and my left eye was swollen shut. The officer who was assigned my tier came and asked me was I okay I told him I don't know what he was talking about. He left and shortly officer Walker came and ask me do I need medical because the assaulting officer said I refused. I told Walker yes I need medical he proceeded to take me to medical. In the hall we passed officer Sgt Green. I ask why this was done he said I did what I did so they did what they did. When I got to medical Sgt Ramsey told me to see medical I have to sign that I fell off of the bed so that I wrote the statement to get my eye stic up. Doing the assault I seeked compensatory and punitive damages for my injuries. The next day I was moved to NBCI.

Thank you #4171
Raymond Lee

Raymond Lee #417610

Appendix 3 to DCD 185-002

[Illegible] — 10-15-13
Officer's Name: Print and Signature — Date

CASE NO. NBCI-3325-13

MARYLAND DIVISION OF CORRECTION
REQUEST FOR ADMINISTRATIVE REMEDY
(Instructions for completing this form are on the back)

TO: ☑ Warden of Institution
Emergency Request: ☐ Check only if your complaint poses a continued threat to your health, safety [illegible].

FROM:	Lee	Raymon	Dayonois
	Last Name	First Name	Middle Initial

417610 — DOC Number
NBCI — Institution

Housing Location: B-46 Protective Custody ☐
Administrative Segregation ☑
Disciplinary Segregation ☑

Part A – INMATE REQUEST

I am writing this Administrative Remedy to inform about me being assulted by staff at MRDCC. I was assalted by Officer Ramsey, Officer Green and Officer Hanna. The assalt happen on 9-30 or 9-31.

10-10-13 — Date
Raymon Lee — Signature of Inmate

Part B – RESPONSE

Date
Signature of Warden

You may appeal this response by following the procedure prescribed on the back of this form.

Part C –RECEIPT

Case No. NBCI-3325-13

RETURN TO: Raymon — Last Name; Lee — First Name; Dayonois — Middle Initial

417610 — DOC Number
1-13-46-13 — Institution

I acknowledge receipt of your complaint dated 10-15-13 in regard to: Assault by Staff

Dismissed for procedural reasons Final per DCD 185.003.VI.N.4

This issue is being investigated by IIU, case number: 13-35-01334. Since this case shall be investigated by IIU, no further action shall be taken within the ARP Process.

10-16-13 /s/ [Illegible]
Date Institutional ARP Coordinator

Original: White Institutional ARP Coordinator
Copy: Canary– Inmate

DOC Form 185-002c (Rev. 7/08)

Part A (Continued) – INMATE REQUEST

The first incident happen on Sept 29 where me an another officer got into a incident. The officer accuse me and 4 other inmate assulted him which I believe his name is officer GeeGee I believe. The next morning I was waking by officer Sgt Ramsey maising me from at the door of my cell which was saying so yall like banking CO's. Next I know officer Hanna runs in my cell full speed and kick me in face on the left side. Next officer Sgt Green runs in my cell also and all three officers start punching and kicking me. I past out and from what they did left me wit 5 stics to my right eyebrow. Two chip front teeth and a fraction rib on the right side. I don't think they conducted there selfs proper! So I'm just informing the institution of the matter to see if I can get a attorney call.

10-10-13		
Date		
Raymon Lee	Raymon Lee	417610
Inmate's Name: Print and Signature		DOC#

RAYMOND LEE, DOC #417610, GRIEVANT v. THE MARYLAND DIVISION OF CORRECTION	* * * * * * * * *	BEFORE ANN C. KEHINDE, AN ADMIN- ISTRATIVE LAW JUDGE OF THE MARYLAND OFFICE OF ADMINIS- TRATIVE HEARINGS OAH NO.: DPSCS-IGO- 002V-14-19912 IGO NO.: 20131996

* * * * * * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
STIPULATIONS
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On November 13, 2013, the Grievant filed a grievance with the Inmate Grievance Office (IGO), which the IGO summarized in pertinent part as follows:

> This grievance is an appeal from the disposition of ARP-NBCI-3325-13, which is incorporated by reference herein. In essence, the Grievant complains that he was assaulted by [Correctional Officer] CO Ramsey, CO Green, and CO Hanna at [Maryland Reception – Diagnostic and Classification Center] MRDCC on September 30, 2013, following an incident in which Grievant was alleged to have assaulted MRDCC staff the day before.

I held a hearing on October 6, 2014, via video conferencing pursuant to section 10-207(c) of the Correctional Services Article, Annotated Code of Maryland (1999).[1] The Grievant participated in the hearing and was represented by Robert Berry, #236104. Joseph Okafor, Inmate Grievance Coordinator, represented the Division of Correction (DOC).

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the general regulations of the IGO and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); Code of Maryland Regulations (COMAR) 12.07.01.07 and .08; and COMAR 28.02.01 respectively.

---

[1] The hearing was originally scheduled for June 12, 2014, but was postponed due to malfunctioning video-conferencing equipment. The hearing was rescheduled for August 12, 2014, but postponed again for equipment problems. During the hearing on October 6, 2014, the record was held open until December 3, 2014, for Mr. Okafor to obtain a copy of the Internal Investigations Unit (IIU) record as Dat. Wright did not appear for the hearing. The IIU records will be discussed further below.

ISSUES

The issues are whether the Grievant was assaulted and injured by CO Ramsey, CO Green, and CO Hanna at MRDCC on September 30, 2013. If the Grievant was assaulted and injured, what amount of damages, if any, should be paid to the Grievant?

SUMMARY OF THE EVIDENCE

Exhibits

The IGO file was incorporated into the record and contained the following documents:

1. Grievance, received November 13, 2013
2. OBSCIS
3. Letter from IGO to Grievant, dated January 8, 2014
4. Letter from Grievant to, IGO, received April 10, 2014
5. Prehearing Order of the IGO, April 23, 2014
6. Notice of Hearing for June 12, 2014
7. Transmittal
8. Notice to the Presiding ALJ
9. Letter from Grievant to Scott Oakley, received June 5, 2014
10. Postponement due to equipment failure – unable to connect with NBCI
11. Notice of Hearing for August 12, 2014

12. Letter from Grievant to Scott Oakley, received June 23, 2014
13. Emails between Scott Oakley and Paul Owens, dated August 1, 2014
14. Supplemental Preheating Order of the IGO, dated August 4, 2014
15. *Subpoena Duces Tecum* to Internal Investigations Unit (IIU), Custodian of Records
16. Transmittal, received August 6, 2014
17. Notice to Presiding ALI
18. Facsimile cover sheet with records from Joseph Okafor, dated August 6, 2014
19. Postponement of August 12, 2014 hearing, due to video equipment not working
20. Notice of Hearing for October 6, 2014
21. *Subpoena Duces Tecum* to Detective Jonathan Wright, IIU
22. Letter from Grievant to IGO, received July 24, 2014
23. Email from Det. Wright to IGO, dated August 28, 2014
24. Second Supplemental Prehearing Order of the IGO, dated September 29, 2014
25. Transmittal
26. Notice to the Presiding ALJ

The Grievant submitted the following documents which were admitted:

1. Office of Inmate Health Services, September 30, 2013
2. [Dental] Summary Report for [Grievant]

The DOC did not submit any additional exhibits for admission into evidence.

Testimony

Mark Antonio Brown, #416507, Reginald Thompson, #417670, and Nicholas Cottman, #418215, testified on behalf of the Grievant, who also testified on his own behalf.

No one testified on behalf of the DOC.

FINDINGS OF FACT

Having considered the evidence presented, I find the following facts by a preponderance of the evidence:

1. Prior to and on September 29 and 30, 2013, the Grievant was incarcerated at MRDCC in Baltimore, Maryland. The Grievant was assigned to 5 Dormitory. On September 29, 2013, CO Made Ganiyu was the assigned officer to 5 Dormitory.

2. On September 29, 2013, at approximately 6:00 p.m., CO Ganiyu was attempting to place handcuffs on Mark Brown, #416507. Inmate Brown resisted. Inmates, including the Grievant, hit CO Ganiyu with their closed fists and kicked him while he lay on the floor. A code was called to assist CO Ganiyu.

3. The Grievant was handcuffed and escorted off the unit to the medical unit.

4. On September 29, 2013, the Grievant was seen by May Nnakaenyl, RN at approximately 7:31 p.m. The Grievant told the nurse that he had a bite mark on his right lower limb and a knot on his right knuckle. The Grievant's wound was cleaned and he was given a tetanus shot.

5. On September 29, 2013, the Grievant was served with a Notice of Inmate Rule Violation charging that he violated rule 100 (Engaged in a disruptive act that may interfere with the security, disturb the peace, or disrupt the orderly operation of the facility or community), rule 101 (Committed assault or battery on staff), and rule 400 (Disobeyed an Order).

6. On September 30, 2013, at some time prior to 9:47 a.m., CO Ramsey, CO Green, and CO Hanna entered the Grievant's cell and punched and kicked him in the face.

7. On September 30, 2013, at approximately 9:47 a.m., Chantell Duncan, RN, and Dr. Chhunchha treated the Grievant for the injuries he received at the hands of the correctional officer on September 30, 2013. The Grievant had a 1 cm laceration on his right eyebrow and two black eyes. The left side of the Grievant's face was bruised and swollen. The left side of the Grievant's neck was bruised and he had an abrasion on his lower lip. The Grievant received four stiches to close the laceration on his right eyebrow. The Grievant sustained fractures or chips to two of his teeth.

8. The Grievant experienced pain as a result of the injuries he sustained on September 30, 2013.

9. On November 26, 2013, the Grievant appeared for his hearing on the Notice of Inmate Rule Violation. The Grievant pled guilty to violating rules 100, 101 and 400. Hearing Officer Kimberly Stewart recommended the Grievant receive 365 days segregation, a loss of 180 good conduct credits, and six months of loss of visits.

10. On April 23, 2014, the Grievant received treatment for his fractured and chipped teeth.

11. As of the date of the hearing, CO Ramsey, CO Green and CO Hanna are no longer working for the DOC and had been arrested in connection with the assault on the Grievant.

DISCUSSION

The Court of Appeals, in *McCullough v. Whiner*, 314 Md. 602 (1989), held that a Maryland prison inmate, seeking monetary damages for personal injuries resulting from a correctional officer's alleged tortious conduct, must exhaust his remedies before the Inmate Grievance Commission (as the IGO was called at the time) prior to bringing a common law tort action. *See also*, *Earle v. Gunnell*, 78 Md. App. 648 (1989). *McCullough* also held that the Inmate Grievance Commission and the Secretary of Public Safety and Correctional Services (DPSCS) have the authority, within the context of the administrative remedy procedures, to make a monetary award, as long as funds are appropriated or otherwise lawfully available for this purpose.

Thus, monetary damages may be awarded for tortious conduct by the DOC that results in personal injury to an inmate.

The Grievant testified and presented testimony from Inmates Brown, Thompson, and Cottman, regarding the events of September 29 and 30, 2013. The testimony from the witnesses regarding what occurred on September 29, 2013, in 5 Dormitory with CO Ganiyu is irrelevant. On November 26, 2013, the Grievant pled guilty to engaging in a disruptive act (rule 100), committing an assault or battery on staff (rule 101), and disobeying an order (rule 400). These rule violations directly resulted from what occurred during the assault of CO Ganiyu in 5 Dormitory. The Grievant cannot relitigate the rule violations in this proceeding.

The Grievant and the other witnesses also testified about being assaulted on September 30, 2013 by CO Ramsey, CO Green and CO Hanna. Their descriptions of the assault were similar. The Grievant told medical personnel that he fell off his bunk but the nurse wrote in the Grievant's medical record that she believed the Grievant's injuries were a result of an altercation and not from falling off his bunk. The Grievant testified that he said he fell off his bunk because he was threatened with further violence if he said what really happened. Inmate Brown wrote in his MRDCC Inmate Statement Form that CO Green threatened to further assault him if he did not say he was injured from falling off of his bunk.

The Grievant requested that CO Ramsey, CO Green and CO Hanna be present at the hearing to testify and the

IGO granted the Grievant's request. At the hearing, Mr. Okafor stated that COs Ramsey, Green and Hanna were all arrested and that the arrest had "something to do with this case." Mr. Okafor further indicated that CO Hanna had resigned from the DOC prior to his arrest.

Prior to the hearing, the Grievant also requested that a copy of the IIU file (case number 13-35-01334) be made available to him for the hearing. This request was also granted by the IGO. On August 28, 2014, the OAH issued a *Subpoena Duces Tecum* to the Custodian of Records for the IIU. On that same date, Detective Jonathan Wright sent an email to the IGO that he was on scheduled leave the week of October 6, 2014. Det. Wright did not appear at the scheduled hearing.

With the agreement of the parties, the record was left open for Mr. Okafor to submit a copy of the complete IIU file and the DOC's closing argument by November 3, 2014.[2] On October 15, 2014, and November 3, 2014, I received emails from the media specialist at the OAH. She stated that Mr. Okafor called her to say he was having difficulty obtaining the IIU file without an order from me.

On November 6, 2014, I received a letter from Mark J. Carter, Executive Director of the Intelligence and

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[2] The Grievant also requested permission to submit a copy of documents obtained by his attorney. The Grievant proffered that these documents included a statement(s) from the Assistant Warden at MRDCC and statements from inmates that witnessed the incidents. The Grievant's request was granted and he was given until October 20, 2014, to submit the documents; however, I never received any documents from the Grievant.

Investigation Division (HD) of the DPSCS.[3] Mr. Carter stated that Det. Wright did not refer the matter through the chain of command; if he had, a representative would have appeared at the hearing and requested that the *Subpoena Duces Teem* be quashed because the records were the product of an open and ongoing criminal prosecution. Mr. Carter further referenced section 4-351(a) of the General Provisions Article of the Maryland Annotated Code for the proposition that the custodian of an investigatory file compiled for prosecution purposes may deny a request for production and inspection of that report.[4]

After reviewing the statute cited by Mr. Carter, I agreed with Mr. Carter's interpretation of the statute. By letter dated November 13, 2014, I informed the parties that I was quashing the subpoena that was issued to the IID for the investigative record. I further informed the parties that I had not received any records that were in the custody of the Grievant's private counsel. Finally, I noted in the letter that the Grievant gave a closing argument at the hearing but that Mr. Okafor requested the opportunity to put his closing argument in writing after he received the documents. I explained to the parties that Mr. Okafor would he granted until December 4, 2014, to submit in writing a closing argument in writing but that I would still issue the decision in this matter on or before February 2, 2015. Mr. Okafor's closing argument was timely received.

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[3] In his letter, Mr. Carter noted that the IIU was recently renamed the IID.

[4] Mr. Carter also stated in his letter that he was attaching copies of the relevant indictments because they are public records; no copies of indictments were attached to the letter I received.

Mr. Okafor did not challenge the Grievant's evidence that he sustained injuries as a result of being assaulted by the officers. I conclude that the Grievant did sustain injuries to his face and neck. The medical records corroborate the Grievant's testimony that he required four stiches to close the laceration to his right eyebrow, and that he sustained two black eyes, swelling and bruising to the left side of his face and neck as well as an abrasion on his lower lip. (Grv. Ex. 1). The Grievant's dental records corroborated his testimony that he sustained fractured or chipped teeth. (Grv. Ex. 2). In his grievance, the Grievant claimed that he also sustained a fractured right rib but he did not present any testimony or medical corroboration of this alleged injury.

The Grievant requested $400,000.00 as his remedy in this case. In his closing argument, Mr. Okafor argued that the Grievant should not receive any compensation for his injuries because the Grievant "was instrumental for initiating the situation that prompted this case and should be held accountable." Mr. Okafor further argued that the Grievant's "action as a spokesman for the inmate that had not eaten was a well calculated plan designed into stirring other inmates to engage in a mass disturbance that ended hospitalizing Officer Ganiyu for days, and he succeeded. Any monetary compensation to [the Grievant] will amount to rewarding someone with manipulative and opportunistic tendencies."

I disagree with Mr. Okafor's assessment. The Grievant's injuries were not the result of his assault on CO Ganiyu. In that assault, CO Ganiyu bit him on the leg and

that was his only injury. The Grievant's injuries for which he is requesting compensation were the result of three officers entering his cell and assaulting him in retaliation for assaulting an officer the day before. Vigilante "justice" is incompatible with the rule of law. There are procedures for holding the Grievant accountable for his wrongful conduct and they were used in this case: the Grievant was charged with three rule violations to which he pled guilty and was given a sentence of 365 days segregation, a loss of 180 good conduct credits and 6 months of loss of visits. Furthermore, the record reflects that CO Ganiyu stated he intended to file criminal charges against the Grievant and the other inmates who assaulted him.[5]

There was no justification in the evidence presented to me for the assault on the Grievant on September 30, 2013. The fact that there were three officers involved in assaulting the Grievant, and that these same officers were also involved in the assaults on Inmates Brown, Thompson and Cottman, leads me to conclude that other MRDCC staff were involved, or at least looked the other way, when these coordinated attacks took place. Under these circumstances, the Grievant is entitled to some compensation for the pain and suffering he endured. On the other hand, I do not conclude that the Grievant has sustained his burden to show that his requested remedy in the amount of

[5] Mr. Okafor also argued that the Grievant should be ordered to the pay "the exact amount[the Grievant) is asking as . . . compensation to Officer Ganiyu to help him defray his medical bills." However, this is not the forum for CO Ganiyu to seek compensation for his medical bills and, therefore, there will be no further discussion of this part of Mr. Woes closing argument.

$400,000.00 is reasonable. The Grievant received medical care at no expense to him and there is no convincing evidence that he has experienced permanent disability as a result of the attack.[6] After carefully considering all of the evidence in this case, I conclude that an award in the amount of $5,000.00 is reasonable and not excessive.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion,) conclude as a matter of law that the Grievant was assaulted and injured by three MRDCC staff on September 30, 2013. *McCullough v. Whiner*, 314 Md. 602 (1989).

PROPOSED ORDER

Having concluded that the grievance of Raymon Lee, DOC #417610, OAH No. DPSCS-IGO-002V-14-19912, IGO Case No, 20131996 is with merit, I **RECOMMEND** that the Department of Public Safety and Correctional Services award Mr. Lee five thousand dollars ($5,000.00) in compensation.

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[6] Although I noted that the State was responsible for the Grievant's medical care, and so he did not incur any medical or dental expenses, I am also aware that the fact that n plaintiff 's medical bills were subsequently paid for by the State does not bar his recovery. *See*, *Plank v. Summers*, 203 Md. 552 (1954).

January 28, 2015
Date Decision Mailed

/s/ Ann C. Kehinde
Ann C. Kehinde
Administrative Law Judge

ACK/cj
#154217

RAYMOND LEE, DOC #417610, GRIEVANT v. THE MARYLAND DIVISION OF CORRECTION	*	BEFORE ANN C. KEHINDE, AN ADMINISTRATIVE LAW JUDGE OF THE MARYLAND OFFICE OF ADMINISTRATIVE HEARINGS OAH NO.: DPSCS-IGO-002V-14-19912 IGO NO.: 20131996

* * * * * * * * * * * * * * * * *

FILE EXHIBIT LIST

The IGO file was incorporated into the record and contained the following documents:

1. Grievance, received November 13, 2013
2. OBSCIS
3. Letter from IGO to Grievant, dated January 8, 2014
4. Letter from Grievant to IGO, received April 10, 2014
5. Prehearing Order of the IGO, April 23, 2014

6. Notice of Hearing for June 12, 2014
7. Transmittal
8. Notice to the Presiding ALJ
9. Letter from Grievant to Scott Oakley, received June 5, 2014
10. Postponement due to equipment failure – unable to connect with NBCI
11. Notice of Hearing for August 12, 2014
12. Letter from Grievant to Scott Oakley, received June 23, 2014
13. Emails between Scott Oakley and Paul Owens, dated August 1, 2014
14. Supplemental Prehearing Order of the IGO, dated August 4, 2014
15. *Subpoena Duces Tecum* to Internal Investigations Unit (IIU), Custodian of Records
16. Transmittal, received August 6, 2014
17. Notice to Presiding ALJ
18. Facsimile cover sheet with records from Joseph Okafor, dated August 6, 2014
19. Postponement of August 12, 2014 hearing, due to video equipment not working
20. Notice of Hearing for October 6, 2014
21. *Subpoena Duces Tecum* to *Detective* Jonathan Wright, IIU
22. Letter from Grievant to IGO, received July 24, 2014

23. Email from Det. Wright to IGO, dated August 28, 2014

24. Second Supplemental Prehearing Order of the IGO, dated September 29, 2014

25. Transmittal

26. Notice to the Presiding ALJ

The Grievant submitted the following documents which were admitted:

1. Office of Inmate Health Services, September 30, 2013

2. [Dental] Summary Report for [Grievant]

The DOC did not submit any additional exhibits for admission into evidence.

RAYMOND LEE, DOC #417610 GRIEVANT v. THE MARYLAND DIVISION OF CORRECTION RESPONDENT	* * * * * * * * *	BEFORE ANN C. KEHINDE, AN ADMIN- ISTRATIVE LAW JUDGE OF THE MARYLAND OFFICE OF ADMINIS- TRATIVE HEARINGS OAH NO.: DPSCS-IGO- 002V-14-19912 IGO NO.: 20131996

* * * * * * * * * * * * * * * * *

ORDER OF THE SECRETARY

The Proposed Decision and Order of Administrative Law Judge Ann C. Kehinde, dated January 25, 2015, are AFFIRMED.

It is so ORDERED this 13 day of March, 2017.

/s/ Stephen T. Moyer
Stephen T. Moyer, Secretary

[Memorandum in Support of Defendant's
Motion for Summary Judgment
(Nov. 18, 2019)
(ECF No. 186-5)]

Exhibit 4

Transcript of Kevin Younger
Conducted on October 3, 2019

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KEVIN YOUNGER, Plaintiff, v. JEMIAH L. GREEN, et al., Defendants.	Case No.: 1:16-cv-03269-RDB

Deposition of KEVIN YOUNGER

Baltimore, Maryland

Thursday, October 3, 2019

10:05 a.m.

Job No.: 265398

Pages: 1 – 191

Reported by: Stephanie L. Hummon, RPR

[2] Deposition of KEVIN YOUNGER, held at the offices of:

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200 St. Paul Place
20th Floor
Baltimore, Maryland 21202
(410) 576-6324

Pursuant to Notice, before Stephanie L. Hummon, Registered Professional Reporter and Notary Public of the State of Maryland.

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* * *

[153] MR. HONICK: Objection.

A. I'm saying, I don't know that they're going to say I'm a hundred or I'm 10 percent, I don't know.

Q. I didn't ask what they'll say, I just asked what you say.

MR. HONICK: Objection.

A. Okay. You want my honest opinion, a hundred percent, because I got this terrible knee that keep making me lose my balance and fall out in the dirty streets in Baltimore City. I done fell about what, two, three times already, right.

And I got a broken finger, right, that – you know. And I'm 57 years old, a black man, looking for a job, with all these – and you got these kids out here 175, 180, 190 pounds –

Q. I'm not asking about that.

A. Okay.

Q. I know. You're upset.

A. Yeah.

Q. Don't be upset, please.

A. Oh, no, never.

[154] Q. I'm not asking about your employability. I'm just asking, when was the last time you were capable of working?

MR. HONICK: Objection.

A. Before I got incarcerated September the 27th, 2000, when I was driving my own – I call it my own cab service and things, that I enjoy.

Q. So since then, you haven't been capable, really –

A. No.

Q. – of being employed?

MR. HONICK: Objection.

A. Uh-uh.

Q. Okay. Now, going back – and I apologize for jumping around.

A. Okay. Go ahead.

Q. When you in various state systems, you were familiar with tile ARP process?

A. Correct.

Q. And you know how to fill out an ARP?

A. Correct.

Q. And you know how to correspond with [155] prison officials, like the IGO or the IGD?

A. Correct.

Q. What happens if the warden says no to your ARP?

MR. HONICK: Objection.

A. Okay. You want an honest opinion?

Q. Well, I want to know, technically, what happens –

MR. HONICK: Objection.

Q. – with the process.

A. The majority of prisoners that file ARPs know it's a crock of nothing, and the warden is not going to go against his people or his system. It's a waste of time. And the Maryland – the highest court in Maryland has proven that, saying that the SRP system need to be revised or destroyed because it's totally bias against the inmate.

Q. But the way that it's structured now, if the warden says, no, there is an appeal step, right?

MR. HONICK: Objection.

A. Yeah. Correct.

[156] Q. And if, at that step. there is a no, there is an appeal step to that, correct?

MR. HONICK: Objection.

A. True

Q. Okay. And know that an ARP is the first step the in the grievance process for an improper excessive use of force on anybody?

MR. HONICK: Objection.

A. Um-hum. Correct.

Q. In all the years you've been incarcerated –

A. Um-hum.

Q. – have you ever filed an ARP?

A. Of course.

Q. Okay.

A. But it –

Q. Okay. No question's pending.

A. Yeah, okay.

Q. Your lawyer would object.

A. Yeah.

Q. Okay. Did you file an ARP at MRDCC with regard to the September 30th –

[157] **A. I did.**

Q. – incident – well, let me finish my question.

A. Okay, Okay.

Q. Did you file it on or before October 31st, 2013?

MR. HONICK: Objection.

A. Did I file it before October the 31st?

Q. Between September 30th and October 31st?

A. Yes, I did, because I come out that system, and I know that's the first process that you do.

Q. Do you have a copy – I've never seen a copy of that.

A. They had moved me up to Hagerstown and put me in a Maryland State prison, ma'am, with no violations, no convictions, no nothing. I was put in beside murderers, baby killers, child killers –

Q. Okay. But let's just stick to my question, so we can get out of here today.

When you got to Roxbury –

A. Um-hum.

[158] Q. – in December 2013, is it true you filed an ARP?

A. I kept filing them.

Q. Is it true you filed an ARP then?

A. Yes.

Q. Okay.

A. I filed it again, because I never heard back because they moved me from Baltimore City – I never heard from my ARPs that I sent in Baltimore, so I filed again to the warden up there in Roxbury, right. I told the warden everything that had been done to me, and the warden denied my ARP. He denied myself and everything I told him.

Q. I got that. But between September 30th and October 31st, when specifically did you file your ARP?

MR. HONICK: Objection.

A. I wish – I wish I had memory of an 18-year-old or a 25-year-old, even a 40-year-old –

Q. Okay. But my question is just, when?

A. I just don't remember. I just don't.

Q. Do you really remember if you actually [159] filed it then?

MR. HONICK: Objection.

A. Oh, yes, I do. Yes. I do,

I'm going to tell you this, there's an inmate and a convict, Mr. Younger's an old convict. I know that system. I know the process in that system and I know this paperwork.

Q. Now, you filed with the treasurer.

A. Of course I did.

Q. But that wasn't your ARP, right?

A. No.

Q. Okay. So where did you file the form?

A. I filed it at Roxbury.

Q. At Roxbury?

A. Yes, to the treasury. I had put the wrong date, and they sent me a letter and said they couldn't find it. I had put the 30th instead of the 29th.

Q. Okay.

A. So I rewrote the letter and sent it to the treasury department.

Q. Okay. But let's forget about the [160] treasurer for the moment.

A. Um-hum.

Q. I just want to look at the ARP. Was that filed when you got to Roxbury?

A. I filed it again to the new warden, and then because I hadn't heard from my ARPs that I had sent at – from MRDCC to the – oh, my goodness –

Q. Did you check on your –

A. – Warden Crowley.

Q. Do you remember when you followed up or checked on your ARP?

MR. HONICK: Which day?

Q. I don't know. The only one I know is December.

A. Yeah, but the thing is, I never heard – I never heard anything back from MRDCC and Warden Crowley.

Q. Okay. But you knew you could still file it when you got to Roxbury?

A. Yeah, that's what I did.

Q. Okay. And we don't know what date –

A. No.

[161] Q. – you would have filed it?

A. No. They got the records. They know what the date.

Q. So whatever the records show –

A. Yeah.

Q. – it's correct?

A. Yeah.

Q. Okay.

A. They know what the date, they got the dates, believe me.

Q. Okay.

A. It may – it may take an act of God and Jesus, right, but, yeah, they got it.

Q. Okay. Like we talked about earlier, I represent

Lieutenant Dupree.

A. Okay.

Q. When you were at MRDCC, did you know Lieutenant Dupree.

A. No, I did not.

Q. Would you have recognized him?

A. I don't believe so. I –

Q. Back in September of 2013, when all this [162] happened, did you know what Lieutenant Dupree's job was at MRDCC?

A. He was the gang – the gang – gang coordinator for the jail, being former Black Guerrilla Family and things, you know that and things, right.

Q. Okay. Did Lieutenant Dupree ever directly threaten you with violence?

A. I – I never seen it. If he did, he did it and –

Q. He never directly threatened you?

A. Yeah, from a back door and things, right.

Q. You never talked to the man?

A. No, I haven't.

Q. As far as you know, you never met the man?

A. No.

Q. You wouldn't know him, if you bumped into him

in the street?

A. I seen him walk around the building and things, right. I didn't know him personally. I had no interaction with him and things. He's a – [163] a gang coordinator –

Q. Okay.

A. – you know.

Q. I'm going to ask you, just like Mr. Scott did, in your answers to interrogatories, Number 8.

A. Okay.

Q. You identify Lieutenant Dupree as providing lists to the Goon Squad with names and cell locations of targeted prisoners.

A. Um-hum.

Q. Other than what your lawyer has told you – I don't want to know any of that –

A. Um-hum.

Q. – or what you've read in reports, what – what do you – what makes – what is your evidence of that?

MR. HONICK: Objection.

A. There have been all – I have never – I have not known them to be in the news for any type of –

Q. I'm asking about Lieutenant Dupree.

A. Okay.

[164] Q. Just Lieutenant Dupree.

A. Maryland State police investigative reports. Everything I read came from them, and I believe them because that's a highly professional force right there.

Q. Okay. So whatever it was the state police said –

A. Yeah.

Q. – about Lieutenant Dupree is –

A. Yeah.

Q. – the basis of your information?

A. Correct.

MR. HONICK: Objection.

Q. Okay. And you indicated that Lieutenant Dupree would use his position and use that intelligence, causing prisoners to be assaulted.

Aside from you and the others who were present when Officer Ganiyu was assaulted on the 29th, can you tell me about any other instances where you specifically know Lieutenant Dupree directed the Goon Squad to attack anyone?

* * *

[(Dec. 2, 2019)
(ECF No. 195)]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

KEVIN YOUNGER Plaintiff, v. TYRONE CROWDER, *et al.* Defendants.	Civil No. RDB-16-3269

PLAINTIFF'S COMBINED OPPOSITION TO DEFENDANT CROWDER, DUPREE AND SINGLETARY'S MOTIONS FOR SUMMARY JUDGMENT AND REQUEST FOR HEARING[1]

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Counsel for Plaintiff Kevin Younger

December 2, 2019

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[1] Younger recognizes that Local Rule 105.3 limits the length of his opposition to 35 pages. However, rather than separately responding to each pending motion for summary judgment just for the purpose of page limit compliance, Younger instead opts to combine his oppositions herein.

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[2] **IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND**

KEVIN YOUNGER Plaintiff, v. TYRONE CROWDER, *et al.* Defendants.	Civil No. RDB-16-3269

PLAINTIFF'S COMBINED OPPOSITION TO DEFENDANT CROWDER, DUPREE AND SINGLETARY'S MOTIONS FOR SUMMARY JUDGMENT AND REQUEST FOR HEARING[1]

Plaintiff Kevin Younger, through his undersigned counsel, hereby opposes Defendant Crowder, Dupree, and Singletary's Motions for Summary Judgment, and states:[2]

RELEVANT FACTS AND BRIEF INTRODUCTION

Younger adopts and incorporates the statement of facts on pages 3 to 11 of the Court's recent Memorandum Opinion (ECF 188), except as modified or supplemented herein. Younger also asks the Court to take judicial notice of his contemporaneous action against the State of Maryland, *Younger v. Maryland*, Case No. 24-C-17-004752 (Balt. City Cir. Ct.), filed Sept. 21, 2017 (the "State Case").

To be clear, Younger alleges that Crowder, Singletary, and Dupree knew or should have known that their subordinates were engaged in widespread prisoner abuse at MRDCC,[3] and were [3] either deliberately indifferent to, or tacitly authorized that conduct, which ultimately caused Younger's harm. Crowder also permitted Younger

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[1] Younger recognizes that Local Rule 105.3 limits the length of his opposition to 35 pages. However, rather than separately responding to each pending motion for summary judgment just for the purpose of page limit compliance, Younger instead opts to combine his oppositions herein.

[2] Younger adopts and incorporates his previous Oppositions (ECF Nos. 67, 166), together with Dupree and Singletary's initial motion to dismiss (ECF 60), as if fully set forth herein.

[3] The Maryland Reception, Diagnostic and Classification Center.

to be falsely accused and punished for his alleged involvement in the Ganiyu incident, when Crowder had actual knowledge that these accusations were fabricated. Younger further alleges that Dupree assisted his vigilante subordinate officers in violating prisoners' rights well before the attack by providing those officers with the names and cell locations of prisoners against whom Dupree, or other supervisors, sought retribution. Moreover, Dupree is alleged to have specifically ordered the subject attack on the morning of September 30, 2013.

Crowder's failures are not confined to the two days between the Ganiyu incident on September 29th, and the commencement of Internal Investigative Unit's ("IIU") investigation of the subject attack on October 1, 2013.[4] Even if they were, Crowder's repeated failures within that short time, by themselves, violated Younger's constitutional rights. Indeed, Crowder's repeated failures to intervene, despite his actual knowledge of constitutional violations by his subordinates, predate the attack by many years. And after the attack, Crowder's failures to set the record straight, with actual knowledge that Younger was falsely accused in the Ganiyu incident, caused Younger to be wrongfully administratively convicted and detained in solitary confinement for four months, and to face formal criminal charges of allegedly assaulting an officer.

To prove his allegations, Younger will rely on the testimony of several current and former state employees, and

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[4] IIU is now known as the Internal Investigative Division, or IID. For the purposes of this memorandum, the two acronyms mean the same thing.

on the findings and conclusions of IIU as detailed in official investigative reports. Defendants are well aware of the mountain of evidence supporting [4] Younger's claims, but argue, on pages 11 to 21 of the Crowder motion, that this evidence is not admissible.

In their motions, Defendants ignore, or conveniently omit, the testimony of Felicia Hinton, former MRDCC warden and assistant commissioner for the Maryland Department of Public Safety and Correctional Services ("DPSCS"). Hinton will testify about MRDCC's ruthless and uncontrolled environment, Crowder's actual knowledge of Green and Ramsey's predilection for violence, and Crowder's multiple and repeated failures to intervene, despite Hinton specifically ordering Crowder to do so. Defendants have denied these claims, although not in their pending motions.

Moreover, IIU conducted three lengthy and comprehensive investigations after the attack and produced formal factual findings and conclusions, pursuant to their statutory duties. Each of these reports is the epitome of a public record, under FRE 803(8)(C), as more fully explained below. Moreover, the individual detectives who authored these reports will testify at trial. Defendants ignore the IIU reports in their motions, like they do with Hinton's damning testimony, albeit for different reasons.

Defendants apparently forget that they previously attached one of these three IIU investigative reports (IIU No. 13-35-01334) to their initial motions to dismiss/summary judgment in 2017. *See* ECF Nos. 46-2, 60. The other two investigative reports, IIU Nos. 13-3501347 and

13-35-01359, which are attached hereto as **EXHIBITS 1 AND 2** respectively, conclude in no uncertain terms that the subject attack could have been avoided had Crowder and his underlings responded to Green, Ramsey, and Hanna's unconstitutional conduct at MRDCC in the years prior to the attack. Younger will elicit trial testimony from the detectives who authored these reports to authenticate the documents themselves and to corroborate their findings and [5] conclusions.[5] Moreover, Younger's prison administration expert reviewed and relied on these reports in forming his opinions and conclusions and will testify at trial.

Although the Defendants argue, on pages 16 to 21 of the Crowder motion, that Younger cannot prove their knowledge of constitutionally offensive behavior by their subordinates, the Defendants are actually asking the Court to supplant the jury's function as factfinder and determine that "Crowder acted reasonably" based on the information that he purports to have known prior to the attack. Crowder Mot. at 21. As the record clearly shows, and as more fully explained below, any reasonable juror considering these facts could conclude that each Defendant acted with deliberate indifference to Younger's constitutional rights.

[5] Younger has tried several times to reach an agreement with the Defendants concerning the authenticity of these reports, but Defendants have not responded to those repeated requests as of the date of this filing. Notably, counsel for the Defendants produced these reports to Younger, but now apparently challenges the authenticity of these documents.

STANDARD OF DETERMINATION

Rule 56(a) provides, in pertinent part, that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *See also Danser v. Stansberry*, 772 F.3d 340, 345 (4th Cir. 2014) (noting that facts at the summary judgment stage must be viewed "in the light most favorable to the nonmoving party"). In ruling on a summary judgment motion, the "judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

A motion for summary judgment should not be granted unless the movant can prove, "from the totality of the evidence, including pleadings, depositions, answers to interrogatories, and affidavits, the court believes no genuine issue of material fact exists for trial and the moving [6] party is entitled to judgment as a matter of law." *Whiteman v. Chesapeake Appalachia, LLC*, 729 F.3d 381, 385 (4th Cir. 2013). In opposing a summary judgment motion, the nonmoving party is entitled to have the "credibility of his evidence as forecast assumed, his version of all that is in dispute accepted, [and] all internal conflicts in it resolved favorably to him." *Charbonnages de France v. Smith*, 597 F.2d 406, 414 (4th Cir. 1979).

ARGUMENT

Supervisory liability under § 1983 requires evidence that: "(1) the supervisor had actual or constructive

knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable. risk of constitutional injury to citizens like the plaintiff; (2) the supervisor's response to the knowledge was so inadequate as to show deliberate indifference or tacit authorization of the alleged offensive practices; and (3) there was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff." *Id.* at 25 (quoting *Baynard v. Malone*, 268 F.3d 228, 235 (4th Cir. 2001)).[6] Regarding supervisory liability determinations, the Fourth Circuit long ago clarified that "<u>this issue is ordinarily one of fact, not law</u>." *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994) (emphasis supplied).

Here, there is overwhelming evidence that each Defendant had actual and constructive notice that Green and Ramsey, among many others, were engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to prisoners like Mr. Younger. Indeed, that risk materialized on many occasions before the subject attack. And the Defendants knew about these violations, but failed to intervene. In some cases, they even facilitated the violations, [7] or covered them up after the fact. Even if the Defendants never personally laid hands on prisoners, either prior to, or during the subject attack, that is irrelevant when evaluating their liability under § 1983. Stated somewhat differently, the Defendants' "supervisory indifference or tacit authorization of [their] subordinates'

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[6] Crowder incorrectly states the first prong of this standard on page 15 of his motion by arguing that constructive knowledge of his subordinates' unconstitutional conduct "cannot save" Younger's § 1983 claim from summary judgment.

misconduct" was "a causative factor in the constitutional injuries the[ir subordinates] inflicted] on those committed to their care;" here, on Mr. Younger. *Baynard*, 268 F.3d at 235. The Court can infer both knowledge and deliberate indifference from subordinates' widespread misconduct. *See Owens v. Baltimore City State's Attorney's Office*, 767 F.3d 379, 402 (4th Cir. 2014) (citation omitted).

I. State Case Does Not Preclude This Action[7]

This Court recently held that: 1) "*res judicata* does not bar Younger's claims"; 2) Crowder is not immune from Younger's state-law claims, rejecting that argument as "meritless"; and 3) "judicial estoppel does not foreclose Younger from alleging that Crowder, Dupree, and Singletary acted with gross negligence." Mem. Op., ECF 188, at 13, 19, 21, 22. In the spirit of pleading economy, Younger will not reiterate the arguments raised in his opposition to Defendants' motions to dismiss (ECF 166), but incorporates by reference those arguments herein.

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[7] Singletary joins in Crowder's preclusion arguments, ECF 187-1, at 3, and Dupree relies on his previously filed—and now denied—briefs in support of his motion to dismiss. ECF 186-1, at 3. Accordingly, "Defendants" in this Section refers to Crowder and Singletary, as Dupree makes no new preclusion arguments.

II. Defendants Are Estopped From Disputing Younger's Pretrial Status At The Time Of This Attack[8]

Several facts prevent the Defendants from disputing Younger's pretrial detainee status at the time of the attack. First, Crowder admitted Younger's pretrial status during his State Case testimony:

> [8] Counsel: And I think we all agree, it's actually been stipulated to that Mr. Younger was there at MRDCC only briefly as part of a pretrial process, right?
>
> Crowder: Yes, sir.

Crowder Test. (State Case), attached as **Exhibit 3**, at 266:1-4.

Second, the Defendants in this action are represented by the same counsel that represented the State of Maryland in the State Case, who are also pursuing the appeal. And counsel has represented both sets of defendants since September 2016. During those agency relationships, counsel in the State Case represented to the Circuit Court for Baltimore City, both in written pleadings and in stipulated facts, that Younger was "a pretrial detainee" at the time of this attack. *See* ECF Nos. 166-1 (OAG motion *in limine*, State Case), 166-3 (OAG Jt. Stmt. of Facts, State Case). Counsel represented the moving Defendants when it made these representations to the prior tribunal in a motion and in a stipulated joint statement of facts that the circuit court

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[8] Crowder briefs this issue for all moving Defendants, on pages 2, and 15-16 of his motion.

accepted and read to the jury as part of its instructions. *See* ECF Nos. 166-1, 166-2 (State Case docket summary), 166-3.

Conflicts of interest aside, Maryland Rule 19-301.10 makes clear that "a firm of attorneys is essentially one attorney for purposes of the rules." And Rule 19-303.3 prohibits attorneys from engaging in conduct "that undermines the integrity of the adjudicative process." *Id.* at cmt. 2. That Rule further provides that an attorney's assertion "in a statement in open court, may properly be made only when the attorney knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry." *Id.* at cmt. 3.

Here, Defendants' counsel cannot have it both ways. Either individual counsel in the State Case, or individual counsel for these Defendants, is being less than candid. To find [9] otherwise would endorse counsel taking diametrically opposed factual positions—or speaking out of both sides of its mouth—in substantially related matters, and about the same specific facts.

Third, Crowder offers the Declaration of Judith Hemler, Deputy Director of the DPSCS Commitment Office, to argue that Younger was a convicted prisoner at the time of the attack. *See* ECF 185-7. However, Crowder never identified Ms. Hemler in his initial Rule 26(a)(1) disclosures, the two supplemental disclosures thereto, or in his Rule 26(a)(2) disclosure.[9] In fact, Crowder's mandatory

[9] Even if the Court finds that neither Crowder, nor his counsel, knew about Younger's pretrial status as a result of the State Case, Crowder had actual knowledge of same on September 30, 2019, when

disclosures identify a "representative and/or custodian of records" for DPSCS, but that individual is only expected to testify about the Defendants' employment records, and the authenticity of DPSCS records. *See* Crowder Rule 26(a) disclosures and supplements, attached as **EXHIBIT 4**. Crowder only identified Ms. Hemler on November 18, 2019, five weeks past the discovery deadline and less than sixty days before trial. Moreover, Crowder attaches thirty documents to Ms. Hemler's Declaration, none of which have ever been produced, either in discovery, or in response to Younger's subpoenas to the State of Maryland.[10]

Ms. Hemler's offered testimony is highly specialized. As the Advisory Committee Notes to FRE 702 make clear, "There is no more certain test for determining when experts may be used than the common sense inquiry whether the untrained layman would be qualified to determine intelligently and to the best possible degree the particular issue without enlightenment from those having a specialized understanding of the subject involved in the dispute." Here, a cursory review of Hemler's exhibit makes clear that an untrained layperson cannot intelligently determine Younger's commitment history and status without enlightenment from an expert.

Younger filed his opposition to Defendants' motions to dismiss. *See* ECF 166. Crowder actually filed his last supplemental Rule 26 disclosure on October 15, 2019, more than two weeks after Younger's opposition, and that supplement did not identify Ms. Hemler.

[10] This is a page out of the playbook for counsel in the State Case, who offered an undisclosed witness who was not subject to voir dire, together with approximately 300 pages of never-before-produced documents on the seventh day of trial.

[10] Younger would have to retain his own expert to evaluate and refute Hemler's assertions. In order to do so, Younger would have to depose Hemler. Not only is discovery closed and trial on the close horizon, but <u>Younger's commitment status should not be in dispute.</u> Younger relied on counsel for the Defendants' prior written representations, concessions, and stipulation on this precise point. The Circuit Court for Baltimore City relied on that position throughout the pendency of the State Case. If the Defendants, through their counsel, have their way, Younger and Judge Rubin will have relied on these representations to their detriment.

In sum, counsel for the Defendants continue to play fast and loose with the rules of this Court and with the ethics of their entangled attorney-client relationships. Younger should be able to rely on counsel's prior representations concerning his pretrial status, and the Defendants should be estopped from revisiting that matter. Even if Defendants are not estopped, their discovery violations preclude them from offering Hemler's Declaration at the eleventh hour.

III. Crowder is Not Entitled To Summary Judgment on Any Count Because There is Overwhelming Evidence Supporting Liability[11]

At the time of the attack, Ramsey and Green had four pending criminal assault investigations—all between March and September of 2013. *See* DPSCS IIU Prior Case Histories for Green and Ramsey, attached as **Exhibit 5**. Green had at least one prior excessive use of force sustained. *See id.* And Ramsey had been previously suspended for unauthorized use of force. *See* Fisher Stmt. to Det. Murray (Oct. 24, 2013), attached as **Exhibit 6**, at 25:5-10.

That Crowder—knowing what he knew or ought to have known—kept Green, and Ramsey in circulation as supervisors and in regular contact with prisoners is, by itself, a § 1983 violation. Sadly, that decision permitted untold, constitutional violations, including the brutal [11] attack on Mr. Younger. Crowder's second and third in command, together with his immediate supervisor and the Commissioner of Corrections all admitted that Crowder ignored the obvious warning signs of Green and Ramsey's predilection to violence, and failed to protect the safety of the prisoners in his care, even after knowing that they had been assaulted by his staff.

But Crowder's culpability does not end with his acquiescence to Green and Rarnsey's vigilante behavior.

[11] Singletary and Dupree only raise procedural arguments (exhaustion, *res judicata*, and judicial estoppel) in their respective summary judgment motions, and make no arguments regarding the sufficiency of evidence to support § 1983 supervisory liability against them.

Crowder personally (and solely) committed what may be the most indifferent act in this entire saga; namely, allowing Younger to be administratively charged with, and found guilty of, a crime he did not commit. Which was followed by four months in solitary confinement, and life-altering criminal charges pending for over a year, until the prosecutors finally realized a terrible mistake had been made.

On the night of September 30, 2013, Younger lay in a cell by himself, bloody and broken, when the door suddenly opened. Younger panicked, believing that someone had come back to kill him, and climbed under his bunk, wedging himself between the concrete floor and the metal bedframe and covering himself with his mattress. Younger Test. (State Case), attached as **EXHIBIT 7**, at T-36:1-6. Younger was shocked and surprised to discover that it was a captain and Crowder paying him a visit. *Id.* at T-36:14-21. Younger provided Crowder with details about the attack, including the names of his assailants, and the fact that he had come to Ganiyu's aid during that altercation. *Id.* at T-37:3-23. Crowder acknowledged the information and confirmed with Younger that the supervision knew that he had assisted Ganiyu. *Id.*

Within one week, Younger was administratively charged and convicted of assaulting Ganiyu—all while at MRDCC and when Crowder was still the warden. At his disciplinary hearing, Younger could not call witnesses, present evidence, or rely on investigative documents to show that he helped Ganiyu.

[12] a. Crowder Knew or Should Have Known That his Subordinate Officers Were Engaged in Constitutionally Offensive Conduct That Threatened Prisoners at MRDCC

Crowder attempts to raise the burden of proof for supervisory liability on page 16 of his motion by requiring Younger to prove that Crowder "knew in advance that the three Assailants intended to attack Mr. Younger on September 30, 2013." Although proving supervisory liability is a demanding burden, clairvoyance is not part of that calculus. Rather, Crowder simply needs to have been aware of a risk of constitutional injury "to citizens like the plaintiff." *Shaw*, 13 F.3d at 799 (emphasis supplied). Nothing more is required.

Crowder's actual knowledge of widespread constitutional violations at MRDCC is staggering, and it dates back to his time as assistant warden under Felicia Hinton. That Crowder continues to ignore the facts demonstrating his actual knowledge—including deposition testimony elicited by his own counsel just a few short weeks ago—lends even more support to Younger's claims of Crowder's indifference during his tenure as warden of MRDCC. And Crowder's contradictory positions and revisionist narrative years later when he is finally being held accountable for his failures solidifies his indifference.

Felicia Hinton

Ms. Hinton worked in DPSCS for 32 years before retiring in 2016. Hinton Dep., attached as **Exhibit** 8, at 7:11-18. She began her career as a correctional officer and

retired as an assistant commissioner. *Id.* at 7:19-21, 10:9. Hinton served as warden of MRDCC, with Crowder as her assistant warden, from 2006 to 2009, when Crowder became warden. *Id.* at 9:1510:7, 17:8-11. Hinton "objected" to Crowder's promotion to warden because she "didn't feel like he had enough experience." *Id.* at 17:16-21.

[13] Hinton clearly recalls Green's decline from an officer with "all the right stuff' to an "arrogant" guard with "relationship[s]" and "baby mama drama" with female shift members. *Id.* at 24:12, 26:14-19, 1 0 1 :10-19. In fact, Hinton further recalls that "one or two" female correctional officers at MRDCC "had children by him," meaning Green, and these female officers worked on Green's shift. *Id.* at 166:17-167:7. Singletary and other supervisors "tried to make [Green] a god" because of his confidence and physical stature: "Nobody would put boundaries on this young man." *Id.* at 24:17-22.

As both warden and assistant commissioner, Hinton "saw a particular officer's name [Green] flagged as having engaged in excessive force" such that he required reassignment to a "shift where they will be less engaged with the inmate population." *Id.* at 20:5-15. Hinton specifically recalls two incidents with Green prior to 2013, where he "body slammed an inmate onto the floor" in one, and another where a prisoner "was handcuffed and [Green] swept his legs from underneath him." *Id.* at 24:1-5.

Green's rule-breaking became such an issue that Hinton intervened herself She first had several "conversations" with Green's direct supervisors, including Singletary, "about more guidance and reigning him in." *Id.*

at 25:5-10. Hinton remembers discussing with Crowder her concerns about Green prior to 2013. *Id.* at 133:8-12. In one of her final acts as warden of MRDCC, Hinton transferred Green to the overnight shift where he would have less prisoner contact. *Id.* at 25:16-21, 113:14-17. But Crowder transferred Green back to the dayshift "as soon as [Hinton] left MRDCC." *Id.* at 113:14-2.

Hinton recalls certain red flags in prisoner medical reports, like an injured prisoner reporting that "I fell out of my bunk." *Id.* at 131:22-133:1. And Hinton agrees that repeated instances of that statement in medical reports is "a problem." *Id.* at 133:1. Notably, Pere told [14] Det. Murray in October 2013 that before the attack, he saw "A lot of it. I fell off my bunk. I hit my head." Pere Stmt. to Det. Murray (Oct. 12, 2013), attached as **EXHIBIT 9**, at 12:10-20.

Hinton also recalls Crowder describing how he personally "beat up" prisoners in the past, both in Texas and at the old MCAC Supermax facility in Baltimore,[12] where Crowder briefly served as warden prior to arriving at MRDCC. Ex. 8 at 82:20-84:1. In fact, Crowder was investigated for the MCAC incident, "excessive force was founded," *id.* at 84:6-13,[13] and that case was referred to the Baltimore City State's Attorney's Office for further review, although no criminal charges appear to have been

[12] Now, the Chesapeake Detention Center, a federal pretrial holding center.

[13] In addition to Ms. Hinton, a DPSCS records custodian will testify at trial and confirm this sustained excessive use of force finding against Crowder, absent counsel stipulating as to the authenticity of the underlying investigative documents—which counsel produced to Younger in previous discovery.

pursued. *See IIU* Report No. CIR 020600199 is attached as **EXHIBIT 10**.

Hinton remembers that "not long after" Crowder became warden, she "received some complaints when Crowder first became warden about they didn't—at that time, I thought it was people not understanding his leadership style—That he might not accept reports on everything because he didn't feel like they rose to—incidents rose to the level of necessary reporting." Ex. 8, at 47:15-48:3. Hinton would address with Crowder her specific complaints about Green: "When we'd have our meetings, we'd have one on ones, he and I, because, again, he was a new warden and I was mentoring him. I would go down to his office. I would call him down to my office and we'd talk about the complaint that I'd hear." *Id.* at 49:1-10.

Hinton recalls as warden disciplining Singletary for using a weapon without permission. *Id.* at 106:9-15. Hinton describes Singletary as having "blinders on" in overlooking Green's shortcomings and rule violations: "You can call it mother intuition or just years of experience, [15] there was just something there [between Singletary and Green], and I told them, that, you know, this is not going to end well." *Id.* at 108:6-10, 113:5-9.

Hinton describes MRDCC when she first arrived there in 2006 as "the opposite" of an "elite" institution with "very little discipline." *Id.* at 129:11. She worked hard to change that culture in her time as warden and felt that she achieved some progress over time. *Id.* at 129:12- 17.

Hinton remembers investigative captain Pere who, in the spring of 2013 at his first staff meeting at MRDCC,

described staff as "liking to put their hands on inmates." *Id.* at 165:9-14. And Hinton testified that she observed that same problem when she became warden of MRDCC in 2006. *Id.* Hinton also remembers Pere raising concerns about Green to Crowder in spring 2013, describing Green's involvement in several uses of force that were "unnecessary," if not excessive." *Id.* at 166:1-6. In fact, Hinton told Pere to "go back and look at one of those uses of force . . . the one that [Green] body slammed the inmate." *Id.* at 166:8-11.

Hinton testified that a warden can reassign an officer within a facility if, for example, "they needed to be kept out of . . . inmate contact whatsoever." *Id.* at 159:16-160:6. Indeed, there were specific "posts that were designated for no inmate contact. The metal detector would be one." *Id.* at 160:4-6. And this reassignment could last thirty days pending an investigation into the officer, which then required findings before that officer could reintegrate to a post "inside the facility." *Id.* at 161:1-7.

When asked if she ever told Crowder to reassign Green to a post with no prisoner contact, Hinton responded: "I shouldn't have to. The warden should know what to do." *Id.* at 169:12- 170:3. Anyway, Hinton remembers specifically telling Crowder that Green "was trouble." *Id.* at 170:19-21. And as to Green's supervising commander's (Singletary) knowledge, Hinton was [16] clear: "I do know . . . that if I moved [Green] off the shift, I've done everything I could possibly do . . . before I got to that point" and "the shift commanders and the lieutenants, the captains, and the majors, they should know the same—they should have the same information that I have about

this particular officer. They should know better. They should know more than I know." *Id.* at 170:9-18.

As Hinton's assistant warden with regular daily contact, meetings, briefings, and access to investigative documents, Crowder knew or should have known that Green was posing a risk during Hinton's tenure as warden, so much so that Hinton felt it necessary to reassign Green to a shift with no direct prisoner contact. And as Hinton's successor, Crowder had actual or constructive knowledge of the facts described above. These facts alone prove Crowder's knowledge that his subordinate officers were engaged in widespread violations that posed a risk of constitutional injury to prisoners at MRDCC.

Suzanne Fisher

Ms. Fisher worked for DPSCS for 42 years before retiring in 2015. Fisher served as Crowder's assistant warden at MRDCC from 2010 until 2013. Fisher Dep., attached as **Exhibit 11**, at 11:9-20. Fisher assumed the warden position at MRDCC after Crowder's demotion and discipline in October 2013. *Id.*

Fisher spoke to state investigators several times in October 2013 as part of the internal affairs investigations of the subject attack. During her interview with Detective Carolyn Murray, Fisher described the culture at MRDCC before the attack as one where supervisors did not report incidents within the institution. Ex. 6, at 24:16-19. In Fisher's words: "Well, what I found was when I first went to MRDCC, Ms. Hinton used to be the warden and she was doing—changing [17] the culture," but then "Hinton left

and it just wasn't picked up and then when I came to try to pick it back up, I think people felt that it wasn't from the top down." *Id.* at 32:19-33:5.

Fisher "talked about [this culture change] at roll call, I told them, I said, you know, you're sitting here, talking about what the mission of this Department is, but yet you're not reinforcing the mission. That's to protect the employees, and that's your co-workers. And the offenders under our supervision. I said, you know, you're not doing any of that. So all you're doing is sitting here reciting what you think everybody wants to hear but you don't—you're not doing it." *Id.* at 33:25-34:9. Fisher told officers that if they were doing their jobs properly, they "wouldn't have the complaints." *Id.* at 35:9-14. Fisher described the bad culture that Hinton started to change as one "that's come back. It's changed back, and it will take a while" to change. *Id.* at 36:13-37:4.

Fisher specifically recalled several problematic officers whose "names always appeared in uses of force" and those officers included Green and Ramsey. *Id.* at 24:20-25:2. These "yahoos" were the subject of "discussions" among supervisors, including Crowder, before the attack. *Id.* However, Crowder would shrug off these concerns by saying that these officers were often first responders to tense situations within the institution. *Id.* But Fisher did not accept this explanation, responding to Crowder: "I know, but if you're suspending 'em [sic] for uses of force, then you know you've got an issue. Excessive use of force, when you're suspending people, then you know you have

an issue." *Id.* at 25:5-10.[14] Fisher remembered Ramsey [18] receiving a suspension for this conduct one year prior to the subject attack. *Id.* at 26:2-8. Green, however, "has always been able to tap dance around some things." *Id.*

When asked if anything was ever done to aggressively address these concerns, Fisher replied "No." *Id.* at 26:2-5. Fisher also recalled that when Hanna arrived at MRDCC in spring 2013, Green "pulled him under his wing" and Hanna's "name started circling with 'ern [sic] too." *Id.* at 26:9-18. In fact, Hanna was transferred to MRDCC from another institution because he was "suspected of something but [DPSCS] really couldn't prove it." *Id.* at 26:14-15.

Fisher also reported to IIU Detective Johnathan Wright her concerns regarding Green and Ramsey that began one year prior to the attack: "I had issues with how some of the use of force reports that were written in past incidents," telling Crowder at that time that "the same

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[14] This directly contradicts Crowder's assertion, on page 22 of his motion, that Fisher "did not believe" that Green and Ramsey "might deliberately harm an inmate." Moreover, in her State Case testimony, Fisher admitted that she had concerns about staff retaliation against prisoners after the Ganiyu incident, but that her concerns did not include physical violence: "What I ..- what kind of retaliation was in my mind was maybe not going to medical on time; messing with their food, not giving them their trays on time; not handling their mail." Fisher Test. (State Case), attached as **Exhibit 24**, at T-230:4-14. Fisher's attempts to revise her previous statements, together with Crowder's outright denial that Fisher's concerns placed him on notice of Green and Ramsey's unconstitutional behavior, squarely places material facts in dispute; *i.e.* whether Crowder knew or should have known that his subordinates were engaged in widespread prisoner abuse at MRDCC.

officer's [sic] names are appearing in the use of force report [sic] and this will be a problem." ECF Nos. 46-2, 60 (IIU Report, CIR 13-35-01334), at 20-21. Those names included Green and Ramsey. *Id.* Fisher told Det. Wright that "she talked to the Warden [Crowder] a year ago about the problem." *Id.* Fisher further recalled that in the spring of 2013, Pere told supervisors, including Crowder, that "we had officers at MRDCC who liked to put their hands on inmates and that we needed to address—well, the warden needed to address it." Ex. 6, at 26:19-22.

Despite his senior staff repeatedly bringing these concerns to his attention, Crowder did nothing to intervene. According to Fisher, "the problem is the communication" between officers, captains, majors, and the supervision. *Id.* at 39:4-20. Fisher concluded that "if we had better communication [before the subject attack], I don't think this would have gotten to where it is." *Id.* at 39:6-8. Fisher reiterated these concerns to Detective Wright on October 25, 2013, who wrote in his final report that Fisher "advised it the communication was better after the Sunday [19] [Ganiyu] incident that this (Inmates being assaulted) would not have happened." ECF Nos. 46-2, 60 (IIU Report, CIR 13-35-01334), at 21.

Fisher described other supervisory failures before the attack. For example, when Det. Murray asked Fisher, "Do you get the feeling that . . . How can I say this? That supervisors may not reveal incidents that may have occurred in the facility, to the administration?"—Fisher answered "Yes." Ex. 6, at 24:16-19. Fisher described Singletary, who at all relevant times was the shift commander and highest ranking officer overseeing the day

shift, as a supervisor who preferred taking matters into his own hands and not reporting incidents up the chain of command. Fisher told Murray: "And I had a discussion with him [Singletary] before this incident [subject attack] even happened and said, you know, you don't tell us what's going on. I mean, I'm not sure what's going on here. And he said he thought he didn't—because he was the shift commander, if they bumped it up to him and he dealt with it, he didn't need to bump it any higher, and I said that's not true. I said <u>you're not the warden</u>, you're the shift commander." *Id.* at 21:17-25 (emphasis supplied).

Fisher also explained that disciplinary action was "not big down at MRDCC." *Id.* at 37:10-25. Fisher conceded: "I mean, it's an embarrassment that five months later I'm giving a letter of counseling, but I've got to give it because we missed the reprimand . . . Nobody gets reprimanded, so why bother." *Id.* at 37:17-38:7.

In an October 4, 2013 memo to Hinton—just four days after the attack—Fisher concluded her rather scathing commentary on the administration of MRDCC, as follows:

> In hindsight, there are several major issues that exist at MRDCC, and as I stated at our meeting, I feel the major one is that the, team at MRDCC has lost the confidence of the staff. As administrators, we all have an 'open door' policy; however, no one felt comfortable to come to any of us about what is really going on in the facility. It is obvious that no one 'trusts' any of us.
>
> [20] I have worked at MRDCC for over three years and it is my opinion that there is no real understanding of how the core functions of this

> facility impact and overlap albeit whether you oversee or are responsible for the facility, security or program services. The administrators at MRDCC need to be a team and need to reflect this to the staff instead of allowing staff to play one of us against the other. I feel as administrators we failed to ensure the mission of the Department (protecting our employees and offenders under our supervision) was adhered to.

Fisher Memo. to Hinton, (Oct. 4, 2013), attached as **EXHIBIT 12**, at 5.

Raymond Pere

Raymond Pere, a twenty-five year corrections veteran, was the investigative captain at MRDCC for approximately fourteen months between 2012 and 2013. Pere Dep., attached as **EXHIBIT 13**, at 12:8-13:4. At MRDCC, Pere was tasked with investigating staff for a variety of wrongdoings, and he reported directly to Crowder. *Id.* at 15:1-15. Pere was inundated with staff investigations almost immediately after arriving at MRDCC, conducting over 170 active investigations of staff misconduct at any given time. Pere Test. (State Case), attached as **EXHIBIT 14**, at T-222:5-12. Crowder ultimately decided whether to recommend discipline. Ex. 13, at 18:15-19:9.

When Pere arrived at MRDCC in 2012, he told supervisors in his first staff meeting that "<u>your staff is not doing their job</u>. They're not dealing with the inmates' issues, and when you don't deal with the inmates' issues, the inmates act like buttheads and then you have problems, so you need to make sure the staff are doing what they're

supposed to be doing." Ex. 9, at 30:18-31:1 (emphasis supplied). Amazingly though, the supervisors "just blew me [Pere] off like I don't know what I'm talking about. This is MRDCC you know." *Id.* at 31:1-2.

Pere approached Crowder in the spring of 2013 with specific concerns about Green and Ramsey's involvement in "unnecessary or avoidable uses of force." Ex. 13, at 29:2-13. Pere gave Crowder specific examples of misconduct, like when Green and others took a mace can and [21] "sprayed [an] inmate through the [food] slot," when that prisoner was already "in a cell . . . in a secure area." Ex. 9, at 13:1-14:3. Crowder, however, shrugged off Pere's concerns saying "oh, that's a knee jerk reaction." *Id.* at 14:2-3.

Pere testified in the State Case that he noticed "a pattern" with Green and Ramsey's unnecessary and unavoidable uses of force. Ex. 14, at T-185:1-3, T-188:19-24. Pere was a bit more direct with Det. Murray in 2013, describing his conversations with Crowder about Green and others: "they take the opportunity, when it arises, to put their hands on inmates, and I said it may not appear like it's an excessive use of force but when you're dealing with unnecessary uses of force . . . then what the heck." Ex. 9, at 14:11-14, 16:2-25. Pere even described hearing a "special code . . . some kind of funky little squirrely code" that officers, like Green and Ramsey, used over the prison radio system "which means I need my people or some shit, as far as I'm concerned." *Id.* at 9:12-18.

In May 2013, Pere told Crowder "that they needed to be either trained or needed to be some type of intervention

with them to discuss the issues with them." Ex. 13, at 36:6-13. In Pere's own words, "a use of force doesn't have to be excessive to be inappropriate." Ex. 14, at T-186:7-11. Pere did not mince words about a "certain group" of MRDCC staff, including Green: "I think they're dealing out their own justice." Ex. 9, at 29:12-23 (emphasis supplied).

At that time, Pere was leaving for vacation, and Crowder said that he and Pere "would look into it after [Pere] got back." Pere Dep. (State Case), attached as **EXHIBIT 15**, at 18:1-13. But when Pere returned from his vacation in May 2013, "nothing was said about it." *Id.* at 18:14-16; Ex. 14, at T-189:16-T-190:6. So Pere took it upon himself to administer impromptu use of force training to Green and a few other officers. Ex. 9, at 17:13-18. Pere told these problematic officers that he was watching them closely: "I said, look, I'm going to tell you [22] straight up. I said your uses of force are speculative, you know. They're suspect. I said y'all [sic] need to be [sic] start following the use of force manual or you're going to get hemmed up." *Id.* at 18:2-9.

Shortly after this encounter, Pere separately called Ramsey into his office and told him "that he may want to curb his enthusiasm or what have you," meaning that Pere "was keeping an eye on him and that some of his uses of force were questionable." Ex. 15, at 51:6-15. However, Pere confirmed that Ramsey never received any consequences for his pattern of "instances where maybe he utilized force where other means could have been necessary." Ex. 14, at T-183:22-T184:18.

Pere's investigative efforts were often impeded by staff covering for each other, or not cooperating in the investigation at all: "I mean, you know, when I was doing investigations and I needed information about another staff member, I could never get any. As far as I see, obviously they get along pretty well if they covered for each other, stuff like that." Ex. 15, at 60:1-5. Pere testified that he observed incidents prior to the attack where MRDCC officers coerced prisoners to lie or cover up the fact that they had been assaulted by staff: "I had some instances where I was investigating uses of force and when I interviewed the inmates, he [sic] inmates would tell me that they started it, that they threw the first punch at the officer, that they fell out of bed, that they—inmates—if you ever worked in an institution, inmates generally don't take responsibility for the actions . . . I took it as being odd and I took it as being a sign that there was something else going on." Ex. 14, at T-186:17-T-187:18. And after the attack, Pere also told Det. Murray that MRDCC "staff engaged in actions to cover up things at the institution." *Id.* at T-176:6-13.

Pere testified that any use of force at MRDCC was "put in a logbook in the major's office." Ex. 13, at 22:9-11. At the end of every month, Pere transposed these entries and sent [23] them to Hinton, who reviewed them and discussed her concerns with Crowder.[15] *Id.* at 22:15. Pere explained that the use of force logbook's completeness was

[15] These monthly summaries have disappeared, despite the State being required by statute to preserve these documents. DPSCS officials testified in the State Case that they were surprised by the disappearance and had no explanation for same.

somewhat arbitrary, however, because the shift commander determined which incidents would be entered. *Id.* at 25:17-21. Notwithstanding this discretion, the documented uses of force in the year preceding the subject attack revealed a clear pattern that concerned everyone who looked at it, except Crowder.

In fact, during her post-attack investigation, Det. Murray remarked: "During this investigation, I requested and received a copy of the Use of Force reports that had occurred at MRDCC between September 2012 and October 2013. There were approximately thirteen (13) Use of Force incidents during that period of time. Out of those thirteen (13) Use of Force incidents, one incident did not include Sergeant Ramsey, Sergeant Green, or CO II Hanna." Ex. 1, at 14.

Richard Hanna

Hanna—one of Younger's assailants—initially denied any involvement in the attack, but had a change of heart as the reality of a thirteen count criminal indictment set in. In February 2015, Hanna gave a recorded statement to IIU Detective Johnathan Wright, and confessed to the subject attack. *See* Hanna Stmt. to Det. Wright (Feb. 26, 2015), attached as **Exhibit 16**. Hanna described the culture at MRDCC before the attack as one where staff ignored the rules, vigilante justice was normal, and where extrajudicial retaliation by officers against prisoners was not only ubiquitous, but sanctioned or tacitly authorized at the highest levels: "Females were dating inmates. There was always [sic] drugs being brought into the facility. It

was pretty lawless there." Hanna Test. (State Case), attached as **EXHIBIT 17**, at T-22:13-17.

[24] For example, Hanna recalled that before the attack, Singletary "would always come and get us . . . when inmates get out of line." Ex. 16, at 50:6-16. Hanna told Det. Wright about an incident where he "watched a lieutenant break—break his hand on this inmate's face" because "if any inmate back talked a lieutenant, the lieutenant would bring him down to the bullpen and cuff the inmate and beat the crap out of 'em [sic]." *Id.* In that particular incident, the lieutenant "instructed [Hanna] to go get the inmate." *Id.* at 52:3-5.

Hanna also described "something called the goon squad," a "term given to us by the major [Singletary]." *Id.* at 53:16, 54:15-19. This squad of "designated officers" included Ramsey and Green. *Id.* at 54:1-6. Singletary oversaw this hit squad, and directed the squad's extrajudicial activities—"it came from Major Singletary on down." Ex. 17, at T-17:3-9. The goon squad quickly adopted Hanna into its ranks when he arrived at MRDCC in the spring of 2013. *Id.* at T-12:22-T-13:22. Hanna believed he was selected for this service because of his "physical stature" because at that time, he "was 255 pounds" and a "former fighter and bodybuilder" who "just kind of fell into the role." *Id.* at T-13:17-22. Ramsey explained to Hanna that at MRDCC, "We take care of problems the old school way . . . we handled stuff with our fists, we don't handle stuff with our—on pen and paper. We don't write tickets." *Id.* at T-16:18-T-17:2.

The goon squad operated on the day shift: "It's like this. On first shift [da.7 shift], it was your bruisers was the guy that was fight back [sic], was your problem solvers who worked outside the lines of duty, I guess you could say. And if you weren't on that, you would have been put on the night shift." *Id.* at T-12:25-T-13:4. Hanna told Det. Wright that once this squad "came on the tier, something was going to happen . . . Like whenever an incident happened, always the same people came to help. Like always the same people took care of it." Ex. 16, at [25] 54:4-12. Hanna's description corroborates Pere and Fisher's concerns about the same officers always showing up in uses of force—the concerns that Crowder repeatedly ignored and explained away as "knee jerk reactions." Ex. 13, at 14:2-3.

Hanna was clear that the goon squad's activities were not isolated: "This happens all the time. This [subject attack] is just one that just happened to be recorded and got out. This happens all the time. MRDCC is like they call a fighting jail. Like there's not going to be too many reports written. They're going to pop the cell and the inmates are going to deal with the officers one-on-one. That's how a lot of that stuff gets taken care of at MRDCC." Ex. 16, at 55:14-21. Hanna and his cohorts had no concerns about getting caught: "I wasn't afraid of getting in trouble because it was always taken care of." Ex. 17, at T-17:6-9.

Hanna gave specific examples during his State case testimony: "We beat an inmate in a three-piece [restraint] and then drug him down the stairs. He was unconscious. We don't know what happened to him. He was sent out, 911. His report was written for him. We've left guys in showers for over—for hours on end." *Id.* at T-17:14-18.

Hanna was clear when asked who was present during these prior incidents, "Ramsey, Green, and Singletary." *Id.* at T-19:4-5.

Hanna further testified that Dupree was "how we got the information" about the prisoners that the supervisors wanted the goon squad to target. *Id.* at T-19:8-13. Hanna described that process: "Dupree was our intelligence officer. He got the—the inmates would talk to him or the female officers would talk to him about a problem with an inmate or situation that would have to be dealt with and he would always give us a list of different inmates that we had to take care of that day." *Id.* at T-19:17-22. Hanna continued: "Well, we would get the list from Lieutenant Dupree. Myself, Sergeant Ramsey, Sergeant Green would carry out these—the acts of what we had to do and Major Singletary would come and clean it up for us." *Id.* at T-49:1-4.

[26] These prisoner victims received different types of punishment: "It all depends on what they were getting taken care of for. Like, we had one inmate. He slapped a female officer's butt, and we ended up—we broke his jaw and left him in the cell . . . And then we empty a can of mace into it." *Id.* at T-20:1-9. In Hanna's words, this nauseating conduct "was part of the daily job . . . the daily work." *Id.* at T-20:16-17. These incidents, or ordered hits, occurred "twice a week on average" before the subject attack. *Id.* at T-22:4-9. Hanna confirmed that tampering with MRDCC logbooks was commonplace, admitting that he had personally "took pages out of them before" to remove "damning evidence on other officers . . . to protect them." *Id.* at T43:17-25.

Hanna described the staggering level of complicity by other MRDCC staff in this vigilante conduct. For example, Hanna testified that the squad would bring some prisoner victims to the medical unit after a beating "if it was severe enough . . . but the report would be written for [the prisoner] and they would just sign it." *Id.* at T-20:21-T-21:6. Often times, the nurses "wouldn't write [these incidents] up in the system. They would just treat [the prisoner] and send them right back." *Id.* at T-21:10-15. Hanna testified that Ramsey "would always talk to the medical staff for us. The medical staff knew what was going on." *Id.* at T-21:15-23.

Hanna explained that he and his fellow goon squad members were never disciplined for these acts. In fact, Crowder ensured the squad's protection: "Warden Crowder knew about it. Because he got us out of a lot of trouble. He's the one who sent all the inmates to the different parts of the State when this happened." *Id.* at T-49:5-8. And Hanna believed that he, Green, and Ramsey would get away with the subject attack "because we have gotten away with everything else. Everything else was covered up." *Id.* at T-59:25-T-60:4. Fortunately, even the goon [27] squad's sophisticated cover-up mechanism could not hide their widespread lawless, and sanctioned, conduct within the walls of MRDCC.

Hanna also served as the State's primary witness in the criminal prosecution of Green and Ramsey. Hanna's testimony and recollection of his time at MRDCC has remained the same since his 2015 interview with Det. Wright. Indeed, the State relied on this testimony in securing convictions for Green and Ramsey.

Most notably though—and rather chillingly—Hanna explained to State's counsel how his conscience never impeded his participation in the goon squad until he was caught:

> Q: And this time, in your direct, you mentioned—in your testimony, you mentioned something about you had done this thing a lot. This time is when you decided your conscience weighed on you?
>
> A: No, it's the only time that we actually got in trouble for it.
>
> Q: So you're sitting here today saying that if you didn't get caught, for you, in your head, it would be business as usual?
>
> A: Yeah, it was business as usual.

Ex. 17, at T-50:5-14.

"Business as usual"—where "arrogant" guards with "relationship[s]" and "baby mama drama" with female shift members, those "yahoos," "take the opportunity, when it arises, to put their hands on inmates" in "unnecessary or avoidable uses of force"—so supervisors tell Crowder and Singletary: "<u>your staff is not doing their job . . . I think they're dealing out their own justice</u>"—But to Crowder, "oh, that's a knee jerk reaction." *Id.*; *see also* Ex. 8, at 24:12, 26:14-19, 101:10-19; Ex. 6, at 24:20-25:2; Ex. 9, at 14:2-14, 16:2-25, 30:18-31:1.

In sum, the Defendants now ask this Court to ignore these material facts. Or, to view each prior notice event in

isolation and find that these facts "are insufficient as a matter of law to [28] support supervisory liability in this case." Crowder Mot. at 23. The Court should reject these hopelessly absurd arguments, in the same way that the myriad internal affairs investigators did after the subject attack, and leave this determination to the jury.

b. Crowder's Inadequate Response to His Actual and Constructive Knowledge of Pervasive Constitutional Violations by his Subordinates Shows His Deliberate Indifference or Tacit Authorization of the Offensive Conduct

Hinton testified that as warden of MRDCC, she noticed a pattern of improper uses of force by Green, "Because we did excessive force reports and there were . . . those that stood out. Those were people who went above and beyond—I won't say above and beyond, because that's making it seem like they did good things, but they exceeded the force that was in our training module." Ex. 8, at 19:12-20:4. Hinton recalls identifying Green as "having engaged in excessive force" before 2009, which caused Hinton to conclude that "<u>enough was enough, he had to get off the [day] shift</u>," and she reassigned Green to the overnight shift "where [he] will be less engaged with the inmate population." *Id.* at 20:7-21, 27:1-4 (emphasis supplied). Then, as assistant commissioner, Hinton recalls meeting with Crowder "at least weekly" to discuss, *inter alia*, her concerns about Green's problematic tendencies, and even recommending to Crowder that Green be moved off of the day shift. *Id.* at 17:3-20:22.

Hinton demonstrated what a reasonable warden should do when faced with actual knowledge that a subordinate officer is engaged in constitutionally prohibitive conduct—identify the concern, speak to the officer and his supervisors, and intervene when those measures are unsuccessful in curbing the problematic behavior.

Crowder, however, reversed course almost immediately after taking over the position of warden from Hinton, and moved Green from the overnight shift back on to the dayshift. *Id.* at 167:20-168:12. According to Hinton, "three people could have moved" Green, "The chief, the [29] assistant warned, or the warden. And only if they were acting in the warden's capacity. <u>Ultimately, it's the warden's decision</u>." *Id.* (emphasis supplied). Crowder's decision to reassign Green back to the dayshift, after knowing the Hinton had just moved Green to a shift with little to no prisoner contact, was at a minimum tacit authorization of Green's unconstitutional conduct.

Fast forward to the fall of 2012 when Fisher warned Crowder about several "yahoos" whose "names always appeared in uses of force," including Green and Ramsey. Ex. 6, at 24:2325. Crowder shrugged off Fisher's concerns and rationalized that Green and Ramsey only appeared because they are often first responders. *Id.* at 25:4-8. Not accepting this response, Fisher replied, "yeah, I know, but if you're suspending 'em [sic] for uses of force, then you know you've got an issue." *Id.*

When Det. Murray asked Fisher: "Has there ever been—to your knowledge has there ever been anything done to aggressively address that issue? The fact that

they're—?" *Id.* at 26:2-4. Fisher responded, "No, just I know they got suspended . . . maybe a year ago or whatever," but "Green has always been able to tap dance around some things." *Id.* at 26:5-8 (emphasis supplied).

Hinton and Fisher clearly recognized, in real-time, a pattern of unconstitutional conduct with respect to Green and Ramsey. And Crowder as warden "read each use-of-force report"—the same reports that caused Hinton and Fisher to be so concerned. Ex. 3, at 284:24. Crowder simply chose to disregard these clear warning signs.

When Pere approached Crowder in the spring of 2013 with additional concerns about Green and Ramsey's "unnecessary uses of force," Crowder excused that behavior as "knee jerk reaction[s]" that did not require any intervention. Ex. 9, at 16:5-20.[16] To Pere, the appropriate [30] course of action in that moment was to move those officers off of the day shift because when "you've got people that are on the use of force all the time . . . <u>they've got to be moved</u>." *Id.* at 17:2-12 (emphasis supplied). Pere was exasperated by the lack of supervisory response: "1 don't want

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[16] Pere did not even have the benefit of knowing about Green and Ramsey's prior assault charges, the ongoing criminal assault investigations, or the goon squad's activities, but was still concerned enough to report Green and Ramsey's problematic behavior to Crowder. *See* Ex. 14, at 1-231:8-19. In fact, out of the tens of thousands of documents associated with this matter, and most held by the State of Maryland, some of the most crucial documents, like Crowder's recorded interview to Det. Sage, the Scrutinized Staff Reports, and the monthly use of force summaries are all gone with no explanation. Except that documents previously "gone" have now materialized—some from counsel (like the exhibits to their motions, as described herein), and some purported to be from Dupree (Younger's correspondence with IGO), which Dupree testified he had never seen.

to hear everybody's excuses and all that mess because I'd gone around and I'd told . . . all the supervisors . . . [that] your staff is not doing their job." *Id.* at 30:15-25. Crowder, however, did nothing. Ex. 14, at T-205:1-13.

Pere approached Crowder again in early September 2013 with a specific instance of Green's misconduct, for which Pere could not impose a sanction because another officer lied to protect Green.[17] Ex. 9, at 10:16-12:13. Crowder again did nothing, and claims to not remember Pere bringing the September incident to his attention. *See* Ex. 3, at 293:12-25.

Crowder actually testified that he could do "nothing," even after hearing Fisher and Pere's concerns. *Id.* at 254:21-25. Hinton, Fisher, Det. Murray, and the internal affairs investigators all disagree with Crowder's assertion.[18] Amazingly though, Crowder admitted that he could reassign an officer who had not completed the annual in-service training and "put them like in a lobby or at the mezzanine door or somewhere where they didn't have to directly supervise inmates." *Id.* at 226:11-227:8.

The State of Maryland's prison administration expert in the State Case, George Hardinger—a career warden at the Carroll County Detention Center—agreed that Fisher's warnings triggered a duty for the warden to

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[17] Perhaps this female officer lied because she was one of Green's "baby mama[s]". Ex. 8, at 26:14-19.

[18] The Seventh Circuit also confirmed that summary judgment for a § 1983 claim is not appropriate when the defendant simply refuses to intervene in any way. *See Lewis v. Richards*, 107 F.3d 549, 553 (7th Cir. 1997).

intervene. When asked if an "assistant warden [31] comes to you a year earlier and says there are issues, you would do something, right?;" Hardinger responded, "I would." Hardinger Test. (State Case), attached as **Exhibit 18**, at 127:7-12. And when asked if it was reasonable for a warden not to intervene or reassign officers who are actively being investigated for criminal assaults, Hardinger replied, "it's not reasonable to do nothing." *Id.* at 123:7-15.

Younger's prison administration expert also agrees with the IIU conclusions: "In sum, my opinion is that but for Warden Crowder's failure to exercise an acceptable level of correctional supervision over the custody staff, as would be expected by a reasonable correctional administrator, that the assault of Mr. Kevin Younger while in the Maryland Reception, Diagnostics and Classification Center on September 30, 2013, would more likely than not, have not occurred." Report of Donald L. Leach, attached as **Exhibit 19**, at 12.

c. Crowder Did Not Respond Reasonably to the Ganiyu Incident

To make matters worse, Crowder knew by the late morning of September 30, 2013, that at least five prisoners were injured in an attack that morning. *See* Ex. 3, at 247:7-12. In fact, Crowder "admitted knowing that the five inmates referred to as being '*jacked up*' were the five inmates that were alleged to have assaulted Officer Ganiyu on the previous day." Ex. 2, at 4 (alteration in original). Yet, Crowder "acknowledged that he did not take any actions to check on the welfare of the five injured inmates

accused of assaulting Officer Ganiyu nor did he instruct any of his staff to do so upon learning that the five inmates had injuries." *Id.* at 4-5. Instead, Crowder waited until approximately 5:30 p.m. on October 1, 2013-36 hours after the attack—to report the incident to IIU. *Id.* at 2.

Had Crowder done anything at all with this knowledge, "the assault [on the prisoners] would have been discovered more than a day before it had been reported to the Internal [32] Investigative Unit." *Id.* at 5. And it was during this extra day that almost all physical evidence was destroyed, Younger was denied proper medical care, and Younger was falsely accused of and charged with assaulting Ganiyu.

When IIU detectives asked Crowder why he did not speak with or view the prisoner victims "even when he and his staff were actually at the inmates' cells," Crowder "made the comment that '***as long as they're breathing***' which would constitute a check on the inmates." *Id.* at 6 (emphasis supplied). Crowder further acknowledged that he never ordered his staff to check on these prisoners' well-being, and "admitted that attention should have been given to the inmates involved" in the Ganiyu incident. *Id.* This by itself is absolute proof of Crowder's indifference to the health and welfare of the prisoners under his custody, including Younger.

Between the Ganiyu incident and October 1, 2013 when Crowder finally contacted IIU, "routine security rounds" of every housing tier were supposed to occur "every hour by custody staff and twice per shift by supervisory staff." *Id.* During that time, "a total of over 24

rounds should have been conducted by the supervisory staff." *Id.* But "Crowder admitted that he did not inform his staff to provide attention to these inmates." *Id.*

Crowder argues on pages 23-25 of his motion that he responded reasonably to the Ganiyu incident based on the information provided to him at that time. Even if that was true as to Crowder's reaction on September 29th, when Crowder arrived to MRDCC on the morning of September 30, 2013, the Ganiyu incident reports were "incomplete and lacked detail." Ex. 2, at 4. Crowder "stated he was aware of the complete lack of information in the SIR, which he claimed he had discussed with his supervisory staff upon initially reading the SIR the day after the assault on September 30, 2013." *Id.*

[33] However, in the eight days that Crowder remained warden after the Ganiyu incident, "he failed to ensure his staff completed the SIR in a manner that contained all necessary information." *Id.* Indeed, "Crowder admitted that he did not ensure that the SIR was corrected and that he, as Warden, was responsible for the actions of his staff." *Id.* Crowder admitted that no use of force reports were issued for the Ganiyu incident at any point before Crowder was disciplined and left MRDCC on October 7, 2013. Ex. 3, at 276:14-277:5.

Sadly, had Crowder followed up with CO Curry, the officer who responded to the Ganiyu incident, he would have learned that Younger was not involved. Curry witnessed the Ganiyu incident and wrote a report dated September 29, 2013, a copy of which is attached as **EXHIBIT 20**. In his report, Curry states that he "witnessed . . .

Ganiyu on the floor with blood on his face while inmate Raymon Lee was standing over him with his right hand balled up trying to punch Ganiyu. At this time I Cpl. Glenn Curry III hand cuffed inmate Raymon Lee and escorted him off the dorm." *Id.* Moreover, the prisoner who actually assaulted Ganiyu provided a written statement to MRDCC supervisors on September 29, 2013, and admitted that he acted alone. *See* Stmt. of Raymon Lee, attached as **EXHIBIT 21**.[19]

Crowder later admitted that it would have "absolutely" been useful to have seen the Curry report when it was prepared. Ex. 3, at 277:22-278:6. Crowder further admitted that someone at MRDCC knew that only one prisoner was actively involved in assaulting Ganiyu. *Id.* at 278:19-21. When asked: "And had you had this piece of communication, that would have made a big difference in your actions as Warden, right?"; Crowder replied: "Absolutely." *Id.* at 278:22-25.

[34] So even if Crowder is correct in asserting, on page 24 of his motion, that his subordinates reported the Ganiyu incident to him "incorrectly" on the night of September 29th, Crowder should have learned the actual facts by following up with his staff in the hours and days after that incident. After all, Crowder remained warden of MRDCC for over a week after the Ganiyu incident, until he was placed on administrative leave on October 7, 2013.

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[19] Lee's written statement is an exhibit to IIU Report No. 13-35-01347 and, accordingly, is encompassed by the public record exception under FRE 803(8).

Id. at 299:4-7. Instead, Crowder "simply failed to perform his duties." Ex. 2, at 7.

Crowder justifies his non-action, on pages 8 and 24 of his motion, by stating that he "notified" Hinton on after learning about the Ganiyu incident September 29, 2013, "and she did not give him any additional instructions." However, Hinton has a different recollection. Hinton recalls first receiving a call from Crowder on the evening of October 1, 2013, after Ramsey confessed to the attack. Ex. 8, at 64:16-65:9. After hearing this information, Hinton gave Crowder two orders: "put [Ramsey] into the board room, have him write his report and [ ] get him union representation," and "make sure that all the inmates got to medical." *Id.* at 67:568:12.

On page 9 of his motion, Crowder further contradicts the record, his own testimony, and his admissions to IIU, when he states that he "and his staff did not discover that the Assailants had assaulted Mr. Younger until Tuesday, October 1, 2013." But Crowder admitted during the State Case that he knew about the prisoner attack in the "late morning, mid-morning, somewhere around in there" on September 30, 2013. Ex. 3, at 247:7-13. Crowder's argument also directly contradicts an affidavit that he submitted to this Court in support of his last summary judgment motion: "When I became aware of the assault on the inmates, I called IID to report the incident and commence the investigation." ECF 46-3, at 2. IIU also confirmed Crowder's knowledge of the prisoner attack on September 30, 2013:

> [35] When questioned about that information, Mr. Crowder acknowledged that he did receive the information in the morning of 9/30/13 as written by Ms. Fisher but denied calling Nurse White in the afternoon to verify the information. Mr. Crowder further admitted knowing that the five inmates referred to as being "jacked up" were the five inmates that were alleged to have assaulted officer Ganiyu the previous day. As a result, Mr. Crowder was questioned as to why he did not inquire as to why the inmates that suffered injuries, most likely due to being assaulted, when he was first made aware and having knowledge that during the previous nights [sic] altercation no injuries were suffered by the inmates. Mr. Crowder stated, "*I didn't know that. From putting all that information together I should have known that, in not doing due diligence you're absolutely right*".

Ex. 2, at 4 (alterations in original).

Regarding Crowder's numerous failures between the Ganiyu incident and October 1, 2013, and based on an extensive investigation and "Crowder's own admission," IIU concluded:

- Mr. Crowder failed to transfer the inmates suspected of assaulting Officer Ganiyu for the safety of both the staff and inmates in a timely manner especially due to the severity of the injuries suffered by the officer.

- Mr. Crowder failed to ensure the proper documentation of both the assault on the officer and the subsequent assault on the

inmates. The Serious Incident Report severely lacked the detail and necessary information from the time of the incidents and was still not corrected at the time Mr. Crowder was placed on administrative leave on October 7, 2013.

- Mr. Crowder did not ensure the safety of the five inmates and he failed to instruct staff to cheek the welfare of the five named inmates in the assault.

- Furthermore, Mr. Crowder and his staff failed to personally view the inmates properly during the segregation review. Both actions resulted in the assault on the inmates not being discovered until two days after the incident.

- Mr. Crowder allowed members of a Security Threat Group, specifically the Black Guerilla Family (BGF), to meet alone and without the presence of any staff. A ranking member of the BGF was allowed to discuss the incident and the potential for retaliation with two of the suspect inmates who are also BGF members potentially creating a security and safety risk.

Mr. Crowder did not perform his duties as the Warden of MRDCC by either willfully or negligently failing to perform his duties or by performing them in a culpably inefficient manner resulting in a diminished level of safety and security to the inmates, staff, and the institution. His unwillingness or inability to perform his

> duties as the warden is unprofessional, and his actions failed to conform to standards, therefore Mr. Crowder failed to properly to discharge the duties of his office.

Id. at 7-8 (emphasis supplied).

[36] During the State Case, Crowder testified that Detective Sage was "probably lying" in his report. Ex. 3, at 300:8-19. Crowder also disputed Detective Sage's conclusions: "I didn't say all those things at all . . . Those are his facts, those aren't the facts in this case. . . ." *Id.* at 301:24-302:7, 306:22-307:6.

Crowder's admissions and later recantations epitomize genuine disputes of material, indeed diapositive, facts, that render summary judgment inappropriate. Crowder will now have the opportunity to cross-examine Detective Sage on these alleged fabrications. A jury must then weigh the evidence and credibility of the witnesses. Summary judgment is thus far from appropriate, and there are sufficient facts to establish Crowder's supervisory liability under § 1983.

Accordingly, Defendants' motions must be denied.

d. Binding Precedent Mandates Denial of Defendants' Motions

In *Spell v. McDaniel*, 824 F.2d 1380 (4th Cir. 1987), the plaintiff sued individual (§ 1983) and municipal (*Monell* claim) defendants for an excessive force incident during his arrest. *Id.* at 1383-84. A jury found the defendants liable and returned a verdict of $900,000 in compensatory

damages. *Id.* at 1385. The municipal defendant appealed, arguing that the evidence of its knowledge and condonation of widespread violations was insufficient to submit the matter to the jury.[20] *Id.* The Fourth Circuit affirmed, finding that the officers of the defendant municipality "were tacitly encouraged to continue self-developed practices of [excessive force and cover-ups] by the deliberate failure of responsible municipal officials to [37] exercise discipline or corrective supervision to halt the widespread, known practices. . . ." *Id.* at 1392.

At trial, the plaintiff relied on evidence "concentrated upon a period of time of three years preceding" the subject assault, including several facts witnesses and internal affairs reports. *Id.* at 1392-94. As to the internal affairs reports, the district court noted "that the instances of confirmed and uncontradicted [sic] misconduct demonstrated in Defendant's own internal affairs documents was devastating to defendant's [sic] case." *Id.* at 1394. The evidence also showed that the police chief—like Crowder—had general authority to establish and implement supervisory policy, and in exercising that authority, "he established a pattern of condonation, cover-up and disregard of reported police misconduct of the specific type charged" in that case. *Id.* The evidence further revealed that the police chief's general authority "was necessarily shared, both in the setting and the implementing of policies and programs, with subordinate officials." *Id.* at 1394-95. The Fourth

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[20] Although *Spell* involved a *Monell* claim, that claim shares the notice element with individual supervisory liability under § 1983, and merely extends, or imputes that notice from an individual supervisor to the greater municipality. *Spell*, 824 F.3d at 1387.

Circuit found that the evidence was sufficient to support that the plaintiff's injuries were caused by the supervisors' deliberate indifference to, or tacit authorization of their subordinates' known patterns of misconduct. *Id.* at 1395.

Here, Crowder admitted that "warden" is "basically another way of saying the chief executive officer of the institution," who was responsible for implementing "all of an institution's policies and procedures. Ex. 3, at 207:12-15. The record here, like in *Spell*, includes fact witnesses and documentary evidence that show "specific instances" of misconduct by certain officers, and "that complaints about them were consistently dismissed or disregarded, frequently with but cursory investigation. *Spell*, 824 F.2d at 1394. The only difference between *Spell* and this case is the extension of the individual supervisory liability to a municipal entity. [38] However, the underlying constitutional violations and the rationale for extending that liability to individual supervisors are identical to Younger's claims.

Accordingly, Younger is entitled to have a jury determine whether Defendants' admitted conduct is sufficient to impose liability.

e. Recent Decision Further Supports Denying Defendants' Motions

In *Doe-4 v. Horry County, South Carolina*, No. 4:16-cv-03136-MGL, 2019 WL 1003136 (D. S.C. Feb. 28, 2019), the plaintiff sued several individual and municipal defendants for a sexual misconduct over four months by a police officer, who was indicted for this conduct. *Id.* at *1-2. The defendants included the perpetrator's chief and four of his

supervising officers. *Id.* at *2. The supervisory defendants moved for summary judgment, arguing that the allegations "fail[ed] to rise to the level of a violation of state or federal law, or that they were entitled to sovereign and qualified immunity. *Id.* at *3. The district court denied those motions, finding sufficient evidence to support each of the three *Shaw* prongs for supervisory liability under § 1983. *Id.* at *3-6.

The *Doe-4* court relied on four notice facts to infer that the supervisors knew or should have known of their subordinate officer's misconduct. First, a letter from the perpetrator's father-in-law to police supervisors several years before the assault that raised concerns about the perpetrator's inappropriate interactions with crime victims. *Id.* at *4.[21]

Second, an "in-house, off-the-books investigation" into the perpetrator a few months prior to the assault prompted by another victim's verbal report to the supervising officers. *Id.* The investigation "should have" prompted a "formal investigation," but the supervisors "neglected to report the incident to" internal affairs. *Id.* at *5.

[39] Third, a formal internal affairs report from a few months before the assault in which the perpetrator admitted to inappropriate conduct with a crime victim. *Id.* The

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[21] Defendants argued that this letter constituted inadmissible hearsay, which the court rejected for the purposes of the summary judgment motion, finding that the letter was "not being offered for the truth of the matter asserted, but instead to demonstrate Defendants' notice of [the perpetrator's] alleged bad conduct." *Id.* at *4.

chief of police, however, "directed [internal affairs to] close the investigation as unfounded." *Id.* The *Doe-4* plaintiff's expert opined that this evidence alone was "sufficient to put a reasonable supervisory officer on notice" of the offensive conduct. *Id.*

Fourth, verbal complaints from the plaintiff's mother to the police department voicing her concerns about the perpetrator's behavior with her daughter during the period in question. *Id.*

The court concluded that a jury presented with this evidence "might well conclude" that the defendant supervisors had actual or constructive knowledge of their subordinate's misconduct because the alleged assault was "not of a single or isolated incident," and that the supervisors' "continued inaction" supported "finding that they either were deliberately indifferent or acquiesced in the constitutionally offensive conduct." *Id.* at *5-6. The court extended basic foreseeability principles to the causation prong, holding that the perpetrator's constitutional violations—despite their criminal nature—"were a natural and foreseeable consequence of Defendants' failure to address his purported pervasive propensities of the misconduct" alleged. *Id.* at *6.

Here, the notice facts begin in 2006 when Hinton became warden of MRDCC, and continue to a few short weeks before the attack when Pere again told Crowder about Green's misconduct. The evidence shows that Hinton, Fisher, and Pere repeatedly warned Crowder about Green and Ramsey, but that Crowder never intervened. Singletary and Dupree had actual knowledge of their

subordinates' misconduct because they encouraged that behavior and covered for their officers.

[40] Internal affairs reports corroborate that Crowder never disciplined Green or Ramsey, despite clear warning signs and specific reports from his supervisors. And after the attack Crowder knew that Younger helped Ganiyu, but failed to intervene. Any jury presented with these facts can reasonably conclude that the Defendants' "continued inaction in the face of documented widespread abuses" prove that they were "either deliberately indifferent or acquiesced in the constitutionally offensive conduct." *Shaw*, 13 F.3d at 799.

Accordingly, Defendants' motions must be denied.

f. IIU Reports are Admissible Public Records

FRE 803(8) states that public records and reports are not excluded by the hearsay rule. Such admissible public reports include a "record or statement of a public office if it sets out the office's activities" about "a matter observed while under a legal duty to report," to include "factual findings from a legally authorized investigation," unless "the source of information or other circumstances indicate a lack of trustworthiness." Public records have justifiably carried a presumption of reliability, and it should be up to the opponent to "demonstrate why a time-tested and carefully considered presumption is not appropriate." *Ellis v. International Playtex, Inc.*, 745 F.2d 292, 301 (4th Cir. 1984).

The Fourth Circuit explained that “the admissibility of a public record . . . is assumed as a matter of course, unless there are sufficient negative factors to indicate a lack of trustworthiness.” *Zeus Enterprises, Inc. v. Alphin Aircraft, Inc.*, 190 F.3d 238, 241 (4th Cir. 1999) (emphasis supplied); *see also Jones v. Ford Motor Co.*, 204 Fed. App’x 280, 284-85 (4th Cir. 2006) (holding NHTSA report and conclusions “fit snugly within” FRE 803(8); *Kennedy v. Joy Technologies, Inc.*, 269 Fed. App’x 302, 308-10 (4th Cir. 2008) (MSHA report and conclusions properly admitted because of “presumptive admissibility created by Rule 803(8)”). [41] The opposing party “bears the burden of establishing its unreliability.” *Ellis v. Int’l Playtex, Inc.*, 745 F.2d 292, 301 (4th Cir. 1984). Thus, FRE 803(8) “is not a rule of exclusion, but rather is a rule of admissibility,” provided that the proffered report satisfies the requirements of the Rule. *Zeus*, 190 F.3d at 241.

Here, the IIU reports were prepared pursuant to a legal duty. *See*, *e.g.*, DPSCS Exec. Dir., ADM.050. 0052(B)(1) and (C)(7) (requiring IIU to investigate, document, and summarize by report certain acts of employee misconduct); *see also* DP S CS.010.0017.06(A)(1) (“"IIU shall investigate”), and (C) (“Incidents required to be Reported to the IIU”), and (E)(3)(e) (“**Preparing an investigative report** that, at a minimum, contains: (i) Complete and detailed information regarding the complaint or incident; (ii) A clear account of investigative actions; and (iii)

All relative information supporting the finding.") (emphasis supplied).[22]

In a last-ditch attempt to avoid liability, Defendants preview their intent to exclude the formal IIU reports and conclusions, but neglect to offer any facts even hinting at the reports' unreliability. *See* Crowder Mot., at 16-21 (arguing there is "no admissible evidence" to support Younger's claims). IIU detectives prepared the reports pursuant to a duty imposed by law. The reports document IIU' s investigative activities following the subject attack and contain factual findings and conclusions resulting from the statutorily mandated investigation. The State of Maryland relied on these reports in its disciplinary action against Crowder. IIU's factual findings form the basis for this lawsuit and are necessary for Younger to prove the material elements of his claims.

Moreover, the reports are the best and most relevant evidence to prove the elements of Younger's claims. The reports paint the clearest picture of the culture at MRDCC in the years [42] preceding the attack, the attack itself, and the supervisory failures that allowed the attack to occur. A plain reading of the reports forecloses any argument to the contrary.[23]

Accordingly, the IIU reports and their conclusions are presumptively reliable, especially given that

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[22] Copies of the cited regulations and directives are attached hereto as **EXHIBIT 22**.

[23] Younger does not plan to introduce medical records of any other prisoner, or other protected health information that may be contained in the reports.

Defendants have offered no evidence to the contrary. Younger can thus rely on those reports because their "admissibility . . . is assumed as a matter of course." *Zeus*, 190 F.3d at 241.

IV. Crowder Is Not Entitled to Qualified Immunity for Count I (§ 1983)[24]

Qualified immunity shields public officials from liability "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Tobey v. Jones*, 706 F.3d 379, 385 (4th Cir. 2013). The qualified immunity defense is not available where the defendant's conduct violated an individual's constitutional rights and those rights were "clearly established" at the time of the alleged violation. *See*, *e.g.*, *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Doe v. S.C. Dep't of Soc. Servs.*, 597 F.3d 163 (4th Cir. 2010). Qualified immunity requires a determination as to 1) "whether a constitutional violation occurred," and 2) "whether the right violated was clearly established." *Tobey*, 706 F.3d at 385. The Fourth Circuit recently confirmed that reasonable prison officials should understand that prisoners "have an Eighth Amendment right to be protected from malicious attacks, not just by other inmates, but also from the very officials tasked with ensuring their security." *Thompson v. Commonwealth of Virginia*, 878 F.3d 89, 109 (4th Cir. 2017).

Here, Younger "has undoubtedly alleged a violation of his constitutional rights." Mem. Op., ECF 188, at 24. As

[24] Dupree and Singletary offer no qualified immunity arguments in their motions.

this Court previously held: "It is well-established that beating a prison inmate for purposes other than to restore or maintain prison security or for the prisoner's own safety violates the prisoner's rights under the Eighth and Fourteenth Amendments to the United [43] States Constitution. And as this Court recently confirmed in *Jones v. Chapman*, No. ELH-14- 2627, 2017 WL 2472220, at *34 (D. Md. June 7, 2017), 'although the burden is on the plaintiff to prove that a constitutional violation occurred, the *defendant must prove* that the right was not clearly established.' Mem. Op., ECF 72, at 17 (alteration in original) (citation omitted).

On page 26 of his motion, Crowder asserts that Younger "cannot meet either of the qualified immunity "requirements." Amazingly, Crowder argues that "the law was not so clearly established that any reasonable official in Mr. Crowder's shoes would have understood that they were violating it." *Id.* (quotation and citation omitted). Perhaps this explains why Hinton did not think Crowder was qualified to be a warden. Perhaps this explains why Crowder felt justified in not intervening. Or, perhaps Crowder misunderstands the rights that he is alleged to have violated.

Younger does not "urge[ ]," as Crowder suggests on page 26 of his motion, that the only right Crowder violated "is the right to protection from an objectively serious risk that rogue correctional officers would retaliate and deliberately assault inmates." This Court recently disposed of this enhanced burden argument, concluding that "the law does not impose this requirement—only that the defendant in question is alleged to have been aware of a risk of

constitutional injury to citizens *like* the plaintiff." Mem. Op., ECF 188, at 26 (emphasis in original) (quotation and citation omitted).

Younger alleges that Crowder violated several of his basic constitutional rights, including the right to be free from: a) excessive force; b) deprivation of life and liberty without due process; c) known risks of serious physical harm; d) deliberate indifference for a serious medical need; and e) objectively unreasonable conduct that causes, or has the potential to cause, constitutional harm. *See* Am. Compl., ECF 140, ¶ 113. In essence, Younger asserts two general [44] categories of Crowder's constitutional violations. First, Crowder's failures to intervene, as warden, despite his actual and constructive knowledge of his subordinates' unconstitutional conduct. Second, Crowder's personal acts that violated Younger's rights. Crowder simply ignores these allegations, and the mountain of evidence supporting them.

Crowder further argues on page 27 of his motion, that "the law did not give" him "fair warning that his conduct was unconstitutional," and that "it was not sufficiently clear" to Crowder that his acts and failures "violated Mr. Younger's Eighth and Fourteenth Amendment rights under the circumstances of this case." In support, Crowder states that "none of the supervisory MRDCC officials deposed in this case . . . thought the Assailants might commit a premeditated retaliatory assault on inmates." *Id.*

The record, however, tells a different story. Anyway, Crowder's myopic focus on the period of time between the Ganiyu incident and the subject attack misunderstands the

nature of the constitutional allegations against him. Stated somewhat differently, even if every former MRDCC supervisor agreed that officer retaliation was not a concern after the Ganiyu incident—which they do not—Crowder's numerous and repeated failures in the seven years before the attack, and in the seven days that followed, preclude a qualified immunity defense.

Accordingly, Defendants motions must be denied.

V. YOUNGER PROPERLY EXHAUSTED HIS ADMINISTRATIVE REMEDIES BECAUSE IIU'S INVOLVEMENT RENDERED THOSE REMEDIES UNAVAILABLE[25]

At least three important reasons prevent Defendants from prevailing on a failure to exhaust defense. First, IIU's involvement in this matter stripped IGO's jurisdiction, thus making the administrative remedy process unavailable to Younger. The Supreme Court confirmed this in 2016, and this Court has repeatedly found a prisoner's administrative remedies unavailable as [45] a matter of law when IIU becomes involved. Second, various prison administrators, including Crowder, thwarted Younger's ability to pursue an administrative remedy by repeatedly telling Younger that his claims were fully preserved. Notwithstanding these representations, Younger still filed an administrative grievance within the required period. But Younger was then wrongfully charged and convicted for the Ganiyu incident, transferred from MRDCC, and had his personal property confiscated and never returned to

[25] Dupree offers the failure to exhaust argument on behalf of all moving defendants. ECF 186-1, at 3-16.

him, including his initial grievance paperwork. Third, as with their pretrial versus convicted prisoner argument, Defendants again offer—for the first time—individuals and documents that were never disclosed or produced to Younger.[26] Specifically, Defendants offer two newly-identified witnesses, and over 100 pages of new documents in support of their arguments.[27] Younger is severely prejudiced by Defendants' eleventh hour disclosure because he could not conduct discovery on these matters. FOr these reasons, Defendant's exhaustion argument must fail.[28]

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[26] The Declarations offered in support of Defendants' pretrial versus convicted prisoner status and administrative exhaustion arguments should also trigger FRCP 56(h).

[27] Included in these documents from Dupree—which Dupree testified he had never seen before—was correspondence from Younger to various state agencies about the attack, his assailants, and his lack of access to medical care. The documents are all dated within one year of the subject attack. Clearly, these documents were in the possession of the State of Maryland, not Dupree. Problematically, counsel for the State not only never produced these to Younger and even stipulated to their non-existence, but also raised a notice defense in the State Case, arguing that Younger had failed to notify the State of his injuries within one year of the attack. That notice defense was the subject of two motions to dismiss, a motion for reconsideration, a motion for judgment, and a motion for judgment notwithstanding the verdict. For these documents to now appear for the first time from an individual defendant who has never seen them is further proof that Defendants, and their counsel, are engaged in a sophisticated game of hide-the-ball in an effort to prejudice Younger and his ability to seek redress. Simply put, this conduct cannot be explained as a mere oversight.

[28] Younger incorporates his Opposition to Renewed Motion to Dismiss, State Case, Paper No. 8/1, attached as **Exhibit 23**, as if fully set forth herein.

a. IIU Investigation Rendered Administrative Remedies Unavailable to Younger

Maryland requires prisoners to exhaust claims for excessive force through a three-step administrative procedure, as described on pages 5 to 7 of Dupree's motion.

[46] In *Ross v. Blake*, 136 S. Ct. 1850 (2016), the United States Supreme Court concluded that a prisoner must only exhaust "available" remedies that "are capable of use to obtain some relief for the action complained of." *Id.* at 1859 (quotation and citation omitted). The Court identified three circumstances in. which a remedy may be unavailable: 1) if it operates as a simple "dead end-with officers unable or consistently unwilling to provide any relief to aggrieved inmates"; 2) if the administrative scheme is "so confusing" or "opaque that it becomes, practically speaking, incapable of use"; or 3) if prison administrators "thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Id.* at 1859-60.

Ross indirectly affirmed the prior decisions of several judges in this district that an IIU investigation "shuts down the ARP process and thus exhausts administrative remedies" when the grievance is subject to ARP jurisdiction. *Brightwell v. Hershberger*, No. DKC-11-3278, 206 WL 4537766, at *9 (D. Md. Aug. 31, 2016).[29] Since *Ross*,

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[29] *See Kitchen v. Ickes*, 116 F.Supp.3d at 625 ("The court is aware that once a claim of excessive force is referred to HUM no further administrative remedy proceedings may occur."); *see also Shiheed v, Shaffer*, No. GLR-14-1351, 2015 WL 4984505, at *3 (D. Md. Aug. 18, 2015); *Manzur v. Daney*, No. PWG-14-2268, 2015 WL 1962182, at *3 (D. Md. Apr.2.9, 2015); *Chew v. Green*, No. DKC-13-2115, 2014 WL

judges in this district have likewise found that prisoners do not have an available administrative remedy to exhaust where there was a pending IIU investigation. *See*, *e.g.*, *Oakes v. Dep't of Public Safety*, No. GLR-14-2002, 2016 WL 6822470, at *4-5 (D. Md. Nov. 18, 2016); *Brightwell*, 2016 WL 4537766, at *7-9; *Carmichael v. Buss*, No. TDC-14-3037, 2017 WL 2537225, at *5 (D. Md. June 9, 2017). Judge Chasanow recently confirmed that "claims for excessive force fall within ARP jurisdiction." *Oakes*, 2016 WL 6822470, at *4 n.2 (citing COMAR 12.07.01.01B(8)).

[47] These decisions all point to a DPSCS regulation—which Dupree attached as exhibit 2 to his motion—that mandates dismissal of a prisoner grievance if it shares the "same basis" as an IIU investigation. ECF 186-3, at 65 (DCD 185-003.VI.N.4) (providing that warden "shall issue a final dismissal"). In fact, this mandatory dismissal must state: "Since this case shall be investigated by IIU, no further action shall be taken within the ARP process." *Id.* (emphasis supplied). Here, Younger did not have an available administrative remedy to exhaust because his grievance would have been subject to the ARP process absent the IIU investigation.

Defendants' argument on pages 11 and 12 of Dupree's motion regarding another prisoner victim's successful pursuit of his administrative remedy for injuries caused by the

4384259, at *13 (D. Md. Sept. 2, 2014); *Henderson v. Simpkins*, No. CCB-13-1421, 2014 WL 3698878, at *6 (D. Md. July 24, 2014); *Bogues v. McAlpine*, No. CCB-11-463, 2011 WL 5974634, at *4 (D. Md. Nov. 28, 2011); *Williams v. Shearin*, No. L-10-1479, 2010 WL 5137820, at *2 n.2 (D. Md. Dec. 10, 2010); *Thomas v. Bell*, No. AW-08-2156, 2010 WL 2779308, at *4 (D. Md. July 7, 2010).

subject attack is similarly unavailing. This Court recently rejected this exact argument: "To the extent that the IGO has considered the merits of appeals of ARPs filed when there was a parallel IIU investigation, they appear directly to contradict the policy as stated in the DCD. The Supreme Court labeled this anomaly 'perplexing in relation to normal appellate procedure' and exposes the absurdity of this approach." *Carmichael*, 2017 WL 2537225, at *5 (emphasis supplied). And in *Brightwell*, this Court also rejected this argument as "disingenuous" and offending basic "common sense." *Brightwell*, 2016 WL 4537766, at *9. In sum, Younger "met his burden to exhaust upon the initiation of that [IIU] investigation." *Id.*

Troublingly, Defendants' counsel has repeatedly recognized the point Younger presses here—that IIU's involvement "supercede[s] [sic] an ARP investigation." Mem. at 3-4, Dkt. No. 14-1, *Wilkerson v. Farmer*, No. 06-cv-575 (D. Md. July 14, 2006); *see also* Mem. Ex. 5, Dkt. No. 13-5, *Bacon v. Merchant*, No. 07-cv-2033 (D. Md. Feb. 27, 2008); Memo. Ex. 8, Dkt. No. 33-12, *Gladhill v. Shearin*, No. 08-cv-3331 (D. Md. Aug. 19, 2010); Mem. Ex. 7, Dkt. No. 31-7, [48] *Wagner v. Galley*, No. 06-cv-1130 (D. Md. Dec. 1, 2006); Mem. Ex. 5, Dkt. No. 12, *Green v. Sacchet*, No. 02-1835 (D. Md. Aug. 30, 2002).[30]

Younger repeatedly testified that he filed numerous grievances within the required time period, but "never heard back" because he was transferred from MRDCC to another institution to serve his 120 days in solitary

[30] Ironic is too gentle of a word to describe Defendants, through their counsel, arguing that judicial estoppel bars Younger's claims.

confinement for the erroneous charges from the Ganiyu incident. *See* ECF 186-5, at 4 (157:5-158:13). Younger saved his grievances from MRDCC, but DPSCS staff confiscated his personal property when he was transferred to serve his punishment. *See* Ex. 7, at 51:16-25. So when IGO asked Younger for copies of his previously-filed ARPs, he could not produce them, but only because DPSCS staff confiscated those documents, not because Younger failed to follow the administrative procedure. Indeed, to now suggest that Younger should have participated in an admittedly unavailable process is exactly the type of "game-playing" that "thwarts the effective invocation of the administrative process." *Ross*, 136 S. Ct. at 1862.

Finally, on pages 14 to 16 of Dupree's motion, Defendants attribute to this Court findings that it never made. Defendants cite *Mitchell v. Williams*, No. WMN -14-1781, 2016 WL 3753726 (D. Md. July 7, 2016), as a "virtually identical fact pattern as here." However, the plaintiff in *Mitchell* "failed to respond to Defendants' motion" and did "not refute the evidence" of his alleged failure to exhaust. *Id.* at *4. Had the *Mitchell* plaintiff responded, the Court would have been compelled to find his claims to have been properly exhausted because of IIU's involvement.

Accordingly, Younger properly exhausted his administrative remedies because those remedies were unavailable to him as a matter of law, and Defendants' motions must be denied.

[49] **CONCLUSION**

For these reasons, summary judgment is not appropriate on any count, and Defendants' motions must be denied.

Respectfully submitted,

/s/ David Daneman

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[Certificate Of Service Omitted]

[Plaintiff's Opposition to Motion for Summary Judgment
(Dec. 2, 2019)
(ECF No. 195-23)]

EXHIBIT 22
(DPSCS Regs. & Directives)

CONFIDENTIAL ATTORNEY'S EYES ONLY

[SEAL] **Executive Directive**

Title: **Employee Discipline – Case Processing**	**Executive Directive Number:** **ADM.050.0052 Revised**
Related MD Statute/Regulations: Correctional Services Article, §2-103, Annotated Code of Maryland; Executive Order 01.01.2015.08, State Personnel and Pensions Article, §§ 11-101 through 11-402, Annotated Code of Maryland, and Department of Budget and Management Regulations (COMAR 17.04)	**Supersedes:** **ADM.050.0052, dated 10/15/15**
Related ACA Standards: **4-4048, 4-4069; -CO-1C-04; 4-ALDF-7E-01**	/s/ [Illegible] **Services Division**
Related MCCS Standards: N/A	**Effective Date:** **February 22, 2016** **Number of Pages: 10**

/s/ Stephen T. Moyer	/s/ William G. Stewart
Stephen T. Moyer	William G. Stewart
Secretary	Acting Deputy Secretary for Administration

.01 Purpose.

This directive establishes procedures for the Department of Public Safety and Correctional Services (Department) and assigns responsibilities for reporting and processing a complaint of employee misconduct.

.02 Scope.

This directive applies to all units of the Department.

.03 Policy.

A. The Department shall implement standards related to employee conduct and an administrative process for enforcing those standards to ensure that employee personal conduct within, and outside, the workplace reflects favorably on the employee, the Department, and State government.

B. The Department shall receive and investigate each complaint of employee misconduct in a thorough, fair, and expeditious manner consistent with applicable statutory and regulatory requirements.

C. The Department shall take appropriate disciplinary action, up to and including termination and, if warranted, referral to the appropriate authority for criminal prosecution, if it is determined that the employee did not comply with federal and State laws, regulations, policy, or procedure.

.04 Definitions.

A. In this directive, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Appointing authority" means a Department official designated by statute or by the Department of Budget and Management to have the authority to hire, discipline, and conduct other personnel actions involving an employee.

(2) "Criminal charge" means that an individual has been accused of committing a violation of law as indicated by the existence of an official court charging document that includes documents known as a:

(a) Statement of charges;

(b) Criminal summons;

(c) Criminal citation; or

(d) Civil citation.

(3) Employee.

(a) "Employee" means an individual assigned to or employed by the Department in a full-time, part-time position.

(b) "Employee" does not include a:

(i) Temporary employee;

(ii) Contractual employee; or

(iii) Volunteer.

(4) "HRSD Discipline Review Team" means a group consisting of the Director, Professional Standards, Police/Correctional Officer & Labor Liaison, Secretary's Director, Investigation, Intelligence and Fugitive Apprehension, and the following Human Resources Services Division (HRSD) staff positions:

(a) Executive Director, HRSD, or a designee;

(b) Manager, Employee Relations Unit (ERU); and

(c) Attorney Advisor.

(5) "May not" means an absolute prohibition and does not infer discretion.

(6) "Misconduct" means behavior that is in violation of federal, State, and local law, regulation, the Department's Standards of Conduct and Discipline Administrative Procedures Manual (Standards of Conduct), or other applicable Department policy or procedures.

.05 Responsibility/Procedures.

A. Reporting Employee Misconduct.

(1) Except under §.05A(4) of this directive, an employee present during, observing or having knowledge of a violation of the Standards of Conduct, law, regulation, policy or procedure shall report the violation to a supervisor.

(2) Except under §.05A(4) of this directive, a supervisor present during, observing a, having knowledge of, or is advised of a violation of the Standards of Conduct, law, regulation, policy or procedure shall notify the supervisor's appointing authority, or a designee:

(a) Immediately, if the circumstances demand immediate intervention, including, but not limited to, circumstances such as:

(i) Arrest of an employee;

(ii) Employee receives a criminal summons or citation;

(iii) Employee is charged with a violation of the Transportation Article with a penalty of $500 or more, incarceration, or both; or

(iv) The employee's actions pose an immediate threat to safety and security of the workplace; or

(b) Within 24 hours of the supervisor's knowledge of the incident if the circumstances are such that there is no potential for loss of evidence, no harm will come to the victim or suspect employee, or hampering an investigation of the incident if action is delayed.

(3) An appointing authority, or a designee, notified under §.05A(2) of this directive shall, using the same criteria established under §.05A(2)(a) or (b) of this directive, notify the

Internal Investigative Division (IID) Duty Officer.

(4) An employee or supervisor who has knowledge of misconduct that implicates the employee's or supervisor's appointing authority, shall notify the lID directly as required under §.05A(3) of this directive.

B. Investigating Employee Misconduct.

(1) The lID Duty Officer receiving notification under §.05A of this directive shall:

(a) Assign a case number to the incident of employee misconduct.

(b) Record the following information concerning the incident of employee misconduct:

(i) The name of the employee allegedly committing the violation;

(ii) Available pertinent details concerning the alleged violation, for example location, date, time, witnesses, if the incident is still occurring or in the past, or law enforcement involvement; and

(iii) The employee's current work and pay status resulting from the incident, such as suspended with or without pay or temporary re-assignment.

(c) If the alleged employee misconduct is a newsworthy event as defined under

Department policy for reporting a newsworthy event, ensure that the notifications required for reporting a newsworthy event are made, as well as notifying the:

(i) Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee; and

(ii) Executive Director, Human Resources Services Division, or a designee.

(d) Assign an investigator to take appropriate steps based on the degree of urgency required by the incident.

(2) Each day the Director, IID, or a designee, shall:

(a) Review newly assigned IID case numbers; and

(b) If a new case involves employee misconduct, ensure that the Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee, and Executive Director, Human Resources Services Division, or a designee, have been notified of the incident.

(3) As soon as possible, but not more than 24 hours after notification under §.05B(2) of this directive, the Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee, shall:

(a) Review the case to determine if a criminal investigation is to be conducted by IID in addition to an administrative investigation.

(b) Consult with the Director, IID to determine if an IID investigator or a field investigator is to conduct the administrative investigation.

(4) As soon as possible, but not more than 24 hours after notification under §.05B(2) of this directive, the Executive Director, Human Resources Services Division, or a designee, shall:

(a) Ensure that the Manager, HRSD Employee Relations Unit (ERU), or a designee:

(i) Verifies that the case information is appropriately documented in order to track events related to the internal administrative disciplinary process.

(ii) Determines the governing personnel law and the applicable time constraints under State Personnel and Pensions Article, §11-106, Annotated Code of Maryland (30 – day Rule), the Correctional Officer's Bill of Rights (COBR) or Law Enforcement Officer's Bill of Rights (LEOBR).

(b) If applicable, inform the assigned investigator and appropriate appointing

authority of applicable time requirements identified according to §.05B(4)(a)(ii) of this directive.

(c) Assigns an HRSD Management Advocate to the case.

C. Time limit – Administrative Investigation.

(1) If the case involves an employee covered under the COBR or the LEOBR, except under provisions of §.05C(3) of this directive, an administrative investigation of employee misconduct shall be completed within 45 days of the date that incident was reported to a supervisor, or if reported by an employee directly to IID, the date IID received the report.

(2) If the case involves an employee who is not covered under the COBR or the LEOBR, except under provisions of §.05C(3) of this directive, an administrative investigation of employee misconduct shall be completed within:

(a) 25 calendar days of the date that incident was reported to a supervisor, or if reported by an employee directly to IID, the date IID received the report; or

(b) In any case in which the appointing authority intends to impose suspension without pay as discipline, 5 workdays following the close of the employee's next shift after the appointing authority acquires knowledge of the misconduct for which the suspension is imposed

(Workday excludes Saturdays, Sundays, legal holidays, and employee leave days when calculating the 5-workday period under §.05C(2)(b) of this directive).

(3) If requested by an investigator, the Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee; may grant an extension to the time frame established under §.05C(1) of this directive.

(4) Once each week, the following HRSD staff shall meet to discuss open employee discipline cases:

(a) Manager, ERU;

(b) Attorney advisor; and

(c) HRSD Management Advocates.

(5) At least within 21 days of receipt of a report of an incident of employee misconduct under §.05B(2) of this directive, or sooner if circumstances require, the Manager, ERU shall confer with the following staff to ensure the administrative disciplinary process is progressing within applicable timelines:

(a) The investigator assigned to the administrative investigation;

(b) Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee;

(c) Executive Director, Human Resources Services Division, or a designee; and

(d) The Director, Internal Investigative Division.

(6) At the conclusion of an administrative disciplinary investigation the investigator shall:

(a) In addition to the detailed report of investigation otherwise required, prepare, a summary of the investigation, as soon as possible, but not later than 24 hours after the investigator completes

(b) Forward the summary to the Director, IID, or a designee for review and approval.

(7) Within 24 hours of receipt of a summary under §.05C(6)(b) of this directive, the Director, IID, or a designee, shall:

(a) Review and approve the summary of the investigation; and

(b) Forward a copy of the summary to:

(i) Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee;

(ii) Manager, ERU, or a designee; and

(iii) The appointing authority of the employee alleged to have committed the violation.

(8) Criminal investigations related to an allegation of employee misconduct shall be investigated by an IID investigator and processed according to IID policy and

procedures and, if applicable COBR or LEOBR requirements.

D. Administrative Processing – Internal Disciplinary Case.

(1) Administrative processing of an internal disciplinary case shall be in accordance with applicable requirements under COMAR 17.04.05 – Disciplinary Actions, COBR, LEOBR, and Department policy and procedures.

(2) As soon as possible, but not later than 24 hours of receipt of a summary of an administrative disciplinary under §.05C(6)(b) of this directive, the Manager, ERU, or a designee, shall consult with the respective appointing authority to identify a charge and sanction in accordance with the governing personnel statutes, regulations, and the Standards of Conduct.

(3) Unreconciled differences between ERU and an appointing authority concerning charges and sanctions to be applied shall be referred to the HRSD Discipline Review Team to resolve the differences with the appointing authority's Deputy or Assistant Secretary.

(4) If an investigation of an allegation of employee misconduct determines the administrative discipline process involves misconduct that would be a criminal charge, the Manager, ERU, or a designee, shall:

(a) Prepare the required administrative discipline charging documents and

related documentation based on the agreed upon charge and sanction;

(b) Have the HRSD Discipline Review Team review the:

(i) Documents for accuracy and required content; and

(ii) Sanction for consistency with the Standards of Conduct; and

(c) Once the charging documents are approved under §.05D(4)(b) of this section, forward the required documentation to the appropriate appointing authority to administer the agreed upon discipline.

(5) An appointing authority receiving charging documents under §.05D(4)(c) of this directive shall:

(a) Serve the charges consistent with time limits in accordance with applicable requirements under COMAR 17.04.05 – Disciplinary Actions, COBR, LEOBR, and Department policy and procedures;

(b) Serve charges on the employee and the employee's legal counsel or agent of the employee organization selected by the correctional officer as required under Correctional Services Article, §10-908(b), Annotated Code of Maryland; and

(c) Notify the Manager, ERU of the date the charges were served.

(6) If the employee files an appeal for a hearing board, the Manager, ERU, or a designee, shall forward the case to the HRSD Docket Specialist who shall:

  (a) Schedule a date, time and location for the trial board;

  (b) Notify all parties to the case of the date time and location of the trial board; and

  (c) Ensure that a trial board member selected to hear an employee disciplinary case signs a statement that indicates if the selected trial board member ever:

    (i) Worked with the accused employee;

    (ii) Personally associated with the accused; or

    (iii) Worked for the accused's managing official or unit head.

(7) If the case involves a parallel criminal investigation, the IID investigator assigned to the case is responsible for preparation of documents related to criminal prosecution.

(8) Unless otherwise designated a managing official or unit head shall be the designated point of contact for liaison with the Manager ERU, HRSD Management Advocate, and investigator concerning employee discipline at the respective work location.

E. Subpoenas – Internal Administrative Cases.

(1) The HRSD Docket Specialist, or a designee, shall prepare and issue for service by a unit head or managing official subpoenas related to an internal administrative case requested by:

   (a) A Department investigator or Management Advocate; or

   (b) The employee accused of misconduct or the employee's legal counsel or agent.

(2) An individual identified under §.05E(1) of this directive as a party to an administrative disciplinary case that requires a subpoena be issued for the appearance of an individual or presentation of evidence at a disciplinary proceeding shall make the request in writing to the HRSD Docket Specialist as soon as possible to facilitate issuance and service of the subpoena.

(3) Upon receipt of a request under §.05E(2) of this directive, the HRSD Docket Specialist, or a designee, shall:

   (a) Communicate with the party making the request to obtain information necessary to prepare the subpoena.

   (b) Prepare the subpoena so as to facilitate service of the document.

   (c) Record the issuance of the subpoena on the HRSD Master Subpoena Log including the:

      (i) Name of the case;

(ii) Case number assigned;

(iii) Date issued;

(iv) Name of the individual for whom the subpoena is issued;

(v) Name of the investigator assigned to the case; and

(vi) Name of the HRSD Management Advocate assigned to the case.

(d) Once the subpoena is prepared, send:

(i) The subpoena to the named individual's managing official or unit head for service; and

(ii) An e-mail to the party requesting the subpoena indicating that the subpoena has been sent for service.

(4) A managing official or unit head receiving a subpoena for service on a subordinate employee shall ensure:

(a) That the subpoena is served in a timely manner to facilitate the required appearance on the date of the disciplinary proceeding;

(b) Receipt of the subpoena is signed and dated by the individual being served;

(c) A copy of the signed subpoena is made and sent to the HRSD Docket Specialist.

(5) Upon receipt of copy of a served subpoena under §.05E(4)(c) of this directive, the HRSD Docket Specialist, or a designee shall:

(a) Record on the Master Subpoena Log the date of:

(i) Return; and

(ii) Service; and

(b) Make copies of the served subpoena and:

(i) File a copy in the HRSD Docket Specialist's file;

(ii) Deliver a copy to the party making the request for the subpoena.

F. Disposition – Employee Discipline Case.

(1) At any point during the administrative disciplinary process, the Department or the employee accused of misconduct may make a settlement offer.

(2) The HRSD Discipline Review Team shall negotiate a settlement offer on behalf of the Department with the accused employee or the employee's representative and the accused employee's appointing authority.

(3) The Manager, ERU, or a designee, is responsible for documenting dispositions on all employee discipline cases.

(4) The IID investigator assigned to conduct a criminal investigation that is in addition to an administrative investigation shall:

(a) Notify the Manager, ERU, or a designee, of:

(i) The outcome of the criminal investigation;

(ii) Criminal charges filed;

(iii) Arrest, detention, release, or bail resulting from the criminal charges;

(iv) Hearing and Court dates; and

(v) Outcome of the trial.

(b) Ensure that:

(i) The office responsible for prosecution of criminal charges in the jurisdiction where the criminal charge occurred is notified of the investigation;

(ii) Witnesses are summoned to appear;

(iii) Evidence is available at the trial; and

(iv) The investigator attends the trial; and

(v) The accused employee's appointing authority, managing official or unit head and the investigator are

present at court as the Department's representative.

(5) The Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee, is responsible for compiling, analyzing, reporting information related to employee discipline.

G. Sanctions.

(1) An employee who does not comply with requirements established under this directive is subject to disciplinary action up to and including termination of employment.

(2) An employee directed to appear for an administrative proceeding conducted in accordance with the employee disciplinary process who, without proper notification and just cause does not appear as directed is subject to disciplinary action up to and including termination of employment.

.06 Attachment(s).

There are no attachments to this directive.

.07 History.

This directive replaces ADM.050.0052 dated 10/15/15 by correcting time limits requirements related to submission of an administrative investigation; and supersedes provisions of any other prior existing Department communication with which it may be in conflict.

.08 Correctional Facility Distribution Code.

A
B
S Field Investigators

CONFIDENTIAL ATTORNEY'S EYES ONLY

Department of Public Safety and Correctional Services [SEAL] Secretary's Department Directive	**Secretary's Department Directive Number: 04-2005/DPSCS.010.0017**
	Title: Internal Investigative Unit
	Effective Date: March 10, 2005
	Authorized by /s/ Mary Ann Saar Mary Ann Saar Number of Pages: 9

.01 Purpose.

A. The Internal Investigative Unit (IIU) has been established as a unit within the Department of Public Safety and Correctional Services (Department). This directive updates existing IIU policy and procedures.

B. This directive establishes responsibilities for reporting violations of criminal and ethics law by an employee to the Assistant Attorney General and the Office of the Governor.

.02 Scope.

This directive applies to all agencies of the Department.

.03 Policy.

A. A Department employee shall conform to the highest standard of professionalism and integrity when performing assigned duties and at other times when the employee's conduct may reflect on the Department.

B. The Department shall strive to provide a workplace free of violations of laws, rules, regulations, policies, and procedures.

C. The Department shall promptly investigate an alleged infraction of applicable law, rules, regulations, policy, and procedure.

.04 Authority/Reference.

A. Correctional Services Article, §§2-103 and 10-701, Annotated Code of Maryland.

B. Governor's Executive Order 01.01.2003.13.

.05 Definitions.

A. In this directive, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Agency" means an organization, an institution, a division, or a unit established by statute or created by the Secretary of Public Safety and Correctional Services (Secretary).

(2) “Agency head” means the highest authority of an agency.

(3) “Contraband” means any item that an inmate is prohibited from possessing according to law, regulation, or Department or correctional facility policy.

(4) “Controlled dangerous substance (CDS)” has the meaning stated in the Criminal Law Article, §5-101, Annotated Code of Maryland.

(5) “Director” means the Director of the Department’s Internal Investigative Unit.

(6) Employee.

 (a) “Employee” means an individual assigned to or employed by the Department in a full-time, part-time, temporary, or contractual position.

 (b) “Employee” includes:

  (i) A special appointee;

  (ii) A volunteer; or

  (iii) An intern.

(7) “Escape” means any conduct by an inmate that may be charged as an escape under Maryland law.

(8) “Facility” means a structure or space used, owned, or leased by the Department to conduct Department administrative or operational activities.

(9) Inmate.

(a) "Inmate" means an individual in the custody or under the supervision of the Department.

(b) "Inmate" includes an individual:

(i) In pre-trial, sentenced, or pre-sentenced (post guilty finding but before sentencing) status actually or constructively confined by the Department;

(ii) In a Department home detention program; or

(iii) Under the supervision of the Division of Parole and Probation.

(10) "Investigator" means a Department employee permanently assigned to or on special assignment to assist the IIU with the responsibilities specified under Correctional Services Article, §10-701(a)(3), Annotated Code of Maryland.

(11) Non-Agency Employee.

(a) "Non-Agency employee" means an individual who, by contract or other lawful arrangement, provides services to an inmate or the Department.

(b) "Non-Agency employee" includes an employee of the Department of Education.

.06 Responsibility/Procedure.

A. Scope of IIU Investigative Authority.

(1) The IIU shall investigate an alleged:

(a) Violation of criminal law committed by an employee while on duty;

(b) Violation of criminal law committed by an employee while off duty if that violation impacts, or has the potential to impact, negatively on the Department;

(c) Violation of criminal law committed by an inmate, a visitor, a non-agency employee, or another individual that may affect the safety or security of a Department facility;

(d) Violation of Maryland Public Ethics law by an employee or non-agency employee; and

(e) Other alleged misconduct that has a negative impact on the Department.

(2) The IIU shall perform other duties and investigative responsibilities assigned by the Secretary.

B. Director.

(1) The Director reports to the Secretary.

(2) The Director is responsible for:

(a) Oversight of IIU activities;

(b) Assigning IIU employees to perform administrative and investigative duties and responsibilities;

(c) Supervising employees permanently assigned to the IIU;

(d) Ensuring the confidentiality of all reports, records, and documents related to investigations conducted or assigned by the Director, or a designee;

(e) Coordinating, with the Secretary, the release of information regarding investigations conducted or assigned by the Director, or a designee;

(f) Serving as the principal contact regarding IIU operational activities with officials of federal, state, and local agencies, other Department investigative entities, and appropriate government organizations;

(g) If an investigation affects another law enforcement agency, consulting with the appropriate representative of that agency;

(h) Developing and maintaining procedures to manage the IIU administrative and operational activities;

(i) If appropriate, consulting with an agency head concerning an investigation or the potential for public or media interest related to an investigation;

(j) Annually, reporting on trends, status, and results of investigations and related IIU activities in a manner determined by the Secretary;

(k) Ensuring that an employee on special assignment to the IIU properly reports all investigative activities;

(l) Requiring that an investigator permanently assigned to the IIU is certified as a police officer according to requirements under COMAR 12.04.01;

(m) Maintaining a record of all complaints received by the IIU; and

(n) Maintaining a tracking system to monitor activity and disposition of each investigation conducted or assigned by the Director, or a designee.

C. Incidents Required to be Reported to the IIU.

(1) Except for provisions under §.06C(2) of this directive, an employee shall immediately notify the Director, or a designee, if the employee is involved in or has knowledge of:

(a) An alleged violation by an employee of:

(i) the criminal law of the United States, a state, or a political subdivision of a state;

(ii) The Transportation Article of the Annotated Code of Maryland, or another state's equivalent thereto, involving the operation of a motor

vehicle while under the influence of alcohol or a CDS; or

(iii) Maryland Public Ethics law;

(b) An alleged violation of the criminal law of the United States, a state, or a political subdivision of a state committed by an inmate, a visitor, a non-agency employee, or other individual that affects the safety or security of a Department facility;

(c) An allegation of excessive force by an employee or non-agency employee;

(d) The possession or trafficking of contraband by an inmate, employee, or non-agency employee at a Department facility;

(e) An allegation that an on-duty employee or non-agency employee is under the influence of alcohol or a CDS, including the illegal use of a prescription drug;

(f) The death of an employee or non-agency employee while on duty;

(g) The death of an off-duty employee or non-agency employee if the manner of death is:

(i) Connected to the individual's employment with, or services provided to, the Department; or

(ii) Could have a negative effect on the Department;

(h) The death of an inmate;

(i) An attempted suicide by an inmate;

(j) An escape or attempted escape by an inmate;

(k) An incident where an employee displays or handles a firearm in a careless or unsafe manner;

(l) An incident where an employee discharges a firearm, other than on a firing range;

(m) The arrest of, or service of a criminal summons on, an employee or non-agency employee;

(n) The execution of a search warrant on property owned by, or under the control of, an employee or non-agency employee;

(o) An allegation of prohibited social, personal, intimate, or sexual relationship between an inmate and an employee or non-agency employee;

(p) An allegation of prohibited communication, transaction, association, or relationship, between an employee or non-agency employee and the following acting on behalf of an inmate:

  (i) Visitor;

  (ii) Friend;

  (iii) Relative; or

(iv) Other individual;

(q) An allegation involving an employee or non-agency employee which, if publicized, would reflect negatively on the Department or State; and

(r) An allegation involving an agency head or the agency head's staff, which, if handled by the agency head or the agency head's superior, could pose a conflict of interest.

(2) If an allegation required to be reported under §.06C(1) of this directive is discovered during a proceeding properly before the Inmate Grievance Office, as part of the Administrative Remedy Procedure (ARP), or other similar administrative process, the employee responsible for the process:

(a) May notify the IIU if in the employee's judgment, the allegation warrants notifying the IIU.

(b) Shall notify the IIU if, while processing an allegation another allegation required to be reported under §.06C(1) of this directive is discovered that warrants notifying the IIU according to§.06C(2)(a) of this directive.

D. Police Authority.

When performing duties associated with the IIU, an investigator who is certified as a police officer according to requirements under COMAR 12.04.01 is authorized to exercise the authority of

a police officer under Correctional Services Article, §§10-701(b) and (c), Annotated Code of Maryland.

E. Authority and Responsibility of an Investigator.

An IIU investigator:

(1) Shall have unrestricted access to all areas of a Department facility;

(2) In addition to the authority under §.06D of this directive, may:

(a) Access Department records;

(b) Request assistance from an agency employee;

(c) Request assistance from another law enforcement agency;

(d) Inspect facilities, vehicles, or equipment; and

(e) Require an employee to provide testimonial or physical evidence; and

(3) Shall be responsible for:

(a) Conducting an investigation in an impartial and reasonable manner according to the oath of office and laws of the United States and the State;

(b) Being courteous, attentive, and receptive to an individual reporting or providing evidence related to the complaint under investigation;

(c) Ensuring the safety and chain of custody for items and evidence received;

(d) Maintaining the confidentiality of matters related to investigations; and

(e) Preparing an investigative report that, at a minimum, contains:

(i) Complete and detailed information regarding the complaint or incident;

(ii) A clear account of investigative actions; and

(iii) All relative information supporting the finding.

F. Agency Heads.

An agency head, or a designee, shall:

(1) Notify the Director, or a designee, and, if required, local law enforcement of an allegation required to be reported under §.06C(1) of this directive;

(2) Relinquish authority for an investigation undertaken by the IIU, including an investigation initially assigned to an agency head, or a designee, that is subsequently assumed by the IIU;

(3) Provide to the IIU investigator unrestricted access to all areas of the agency head's facility;

(4) Ensure that agency employees cooperate with the IIU investigator;

(5) If requested by the IIU investigator, assign an agency employee to assist the IIU investigator and serve as an IIU liaison;

(6) Coordinate agency employee, non-agency employee, and inmate interviews requested by an IIU investigator;

(7) Provide reports, documents, and information requested by an IIU investigator;

(8) Ensure confidentiality of all reports, records, investigative activities, and documents relating to an IIU investigation;

(9) Provide work space within the facility for use by IIU personnel during an investigation;

(10) Secure and preserve the scene of an incident until released to an IIU investigator or appropriate law enforcement agency personnel; and

(11) Be accountable for investigations conducted at the agency level ensuring that:

(a) Where appropriate, investigative activities are conducted according to requirements established for an IIU investigator;

(b) Required reports are completed; and

(c) Investigative reports are forwarded to the Director, or a designee, for review, filing, and retention.

G. IIU Notification Procedure.

(1) An employee involved in, or with knowledge of, a violation under §.06C(1) of this directive, regardless of whether the employee believes the allegation to be founded shall immediately file a complaint with the Director, or a designee.

(2) The Director, or a designee, receiving notification under §.06G(1) of this directive shall, if possible, identify the employee or individual making the complaint or, if the complaint is anonymous, record it as anonymous.

(3) The Director, or a designee, shall receive and handle an anonymous complaint in the same manner as a complaint where the employee or other individual filing the complaint or the victim is identified.

(4) By the close of the next workday after filing a complaint with the IIU, the Department employee filing the complaint under .06G(1) of this directive shall forward a written report of the complaint, in a form determined by the Director, directly to the Director, or a designee.

(5) An employee, a non-agency employee, an inmate, a visitor, or anyone on behalf of these individuals may file a complaint directly to the Director, or a designee, or a law enforcement agency.

H. IIU Post-Notification Responsibilities.

(1) Once a complaint is filed with the IIU, the Director, or a designee, shall evaluate the information provided and:

(a) Decide whether an IIU investigator shall investigate the complaint; or

(b) Refer the complaint for investigation to the appropriate agency head.

(2) The Director shall establish a system to record each complaint received and track the disposition of each complaint recorded.

I. Report of Investigation.

(1) The Director, with the approval of the Secretary, shall determine the format and content of a report of investigation.

(2) The IIU is the repository for reports of investigations conducted by an IIU investigator or assigned through the IIU to an agency head for investigation.

(3) The Director shall coordinate release of an investigative report with the Secretary consistent with all laws, rules, regulations, policy and procedures.

J. Executive Order 01.01.2003.13 Public Corruption and Misconduct.

(1) If an investigation of an incident under this directive determines that an employee has committed a violation of a criminal or ethics law, the Director, or a designee, shall notify the:

(a) Chief Counsel to the Governor; and

(b) Assistant Attorney General for the Department (Principal Counsel).

(2) An agency head completing an investigation that determines an employee violated a criminal or ethics law shall immediately report the findings to the Director, or a designee, who shall make the notifications as specified under §.06J(1) of this directive.

.07 Attachments.

There are no attachments to this directive.

.08 History.

A. This directive replaces Secretary's Directive 01-99, dated October 1, 1999.

B. This directive supersedes provisions of any other prior existing Department communication with which it may be in conflict.

[(Dec. 16, 2019)
(ECF No. 211)]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

KEVIN YOUNGER,	*	
Plaintiff,	*	Case No.: 1:16-cv-03269-RDB
v.	*	
JEMIAH L. GREEN, ET AL.,	*	
Defendants.	*	

* * * * * * * * * * * * * * * * *

**REPLY MEMORANDUM IN SUPPORT
OF DEFENDANT DUPREE'S MOTION
FOR SUMMARY JUDGMENT**

Defendant, Neil Dupree, by his undersigned counsel, herewith submits the instant memorandum in reply to Plaintiff's opposition (ECF No. 195) to his November 18, 2019 motion for summary judgment (ECF No. 186).

I. PLAINTIFF WAS A SENTENCED PRISONER AT THE TIME OF THE OCCURRENCE.

The records provided with the declaration of the Deputy Director of the Division of Correction's ("DOC") Commitment Office (ECF No. 178-1) make clear that plaintiff was a sentenced inmate in the DOC at the time of the September 30, 2013 assault.[1] As reflected in those records,

[1] Mr. Dupree incorporated by reference Deputy Director Hemler's declaration in his request for summary judgment. (ECF No. 186-1.)

plaintiff's confinement in the DOC dates back to the mid-1990s when he received lengthy sentences from two State courts.[2] (Decl. ¶ 5a.-c.) Incarcerated until he was paroled in 2003, he returned to the DOC in 2006 when his parole was revoked. (Decl. ¶ 5d.-f.) He was then confined until 2008 when he was released to "mandatory supervision." (Decl. ¶ 5g.)[3] Plaintiff returned to confinement in the DOC in September 2009, but was released again to mandatory supervision on December 15, 2009. (Decl. ¶ 5h.-i.) On September 27, 2011, the Maryland Parole Commission issued a retake warrant ordering plaintiff's return to confinement because it had learned of new State armed robbery charges against plaintiff. (Decl. ¶ 5j.) As a result, plaintiff returned to the DOC in October 2011, where he remained until well past the events of September 30, 2013. (Decl.

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[2] As in all criminal matters involving sentences greater than 18 months, each court sentenced plaintiff to the jurisdiction of the DOC and committed him to the custody of the Commissioner of Correction. Md. Code Ann., Corr. Serv. § 9-103(a) (LexisNexis 2017).

[3] Mandatory supervision is essentially parole by operation of law. It is "a conditional release from confinement" caused by the application of earned diminution credits (or days) to the overall length of an inmate's sentences. Md. Code Ann. Corr. Servs. § 7-501(a). "An individual on mandatory supervision remains in *legal* custody" of DOC and "is subject to . . . all laws, rules, regulations, and conditions that apply to parolees." Corr. Servs. § 7-502(a) and (b)(1) (emphasis supplied). When inmates "violate the conditions of their mandatory supervision, they may be returned to prison to complete their sentence[, and h] ow much time they will be required to serve on the preexisting sentence will depend on the extent to which the good conduct credits earned during their previous incarceration (that led to their release) are forfeited, and what, if any, credit is given to them for 'street time'—the time they spent out of prison prior to their current infraction." *Sec'y Dep't of Pub. Safety and Corr. Servs v. Henderson*, 351 Md. 438, 441 (1998).

¶ 5j.-n.) Thus, irrespective of any State or federal charges that may have been pending against him in September 2013, he was a sentenced prisoner in the legal custody of the DOC at that time.

In his opposition, plaintiff never contests the contents of the Deputy Director's declaration or the implication of its attached records, nor does he offer any evidence that he, in fact, was a pretrial detainee at the DOC's Maryland Reception, Diagnostic and Classification Center ("MRDCC") on September 30, 2013. (Opp. at 7-10.) Despite conceding that he was a sentenced prisoner on September 30, 2013,[4] plaintiff nevertheless asserts that this Court and defendants are locked-in to the *fiction* of his being a pretrial detainee due a litany of alleged procedural errors, none of which outweighs the need for the Court to be guided by the actual facts.

For instance, plaintiff argues that because of the existence of the cited stipulation entered in the State case, defendants "should be estopped from revisiting the matter."[5] (Opp. at 10.) That stipulation, however, was between plaintiff and the State of Maryland, which is neither a party to this case nor, as this Court has found, a party that is in privity to any party in this case. (*See* ECF No. 188 at

[4] In his recent deposition, plaintiff stated he was in M RDCC on the date in question because he had violated his "State parole." (Ex. 5—Younger Dep. 63:12-22, 64:1-11, Oct. 3, 2019.)

[5] In a telling omission, plaintiff does not provide or otherwise describe either the factual or legal foundation for the stipulation, nor does he attest to its accuracy. (Opp. at 7-10.)

18.) The stipulation, therefore, should not be construed as binding on these supervisory defendants.

Plaintiff also asserts that the supervisory defendants unfairly presented the issue of plaintiff's custodial status in an untimely and improper way. Plaintiff is wrong. To be clear, defendants raised plaintiff's custodial status in their initial dispositive motions at the end of August based on the allegations of the amended complaint (ECF Nos. 154-56); plaintiff took issue with defendants' arguments in his September 30 opposition (ECF No. 166); and defendants produced the records (along with the appropriate custodial certification) as part of their replies on October 18 and consistent with their obligations under Fed. R. Civ. Proc. 26(a)(1).[6] Thus, the notion that the records relating to plaintiff's custodial status have been presented in an inequitable fashion that "play[s] fast and loose with the rules of this Court" (Opp. at 10) is baseless, disingenuous and should be rejected.

Finally, the Court should deny plaintiff's request that it not consider the records attached to the declaration of Ms. Hemler because her "offered testimony is highly specialized" and "an untrained layperson cannot intelligently determine [his] commitment history and status without

[6] Plaintiff complains that "none of [the records] have ever been produced, either in discovery, or in response to [his] subpoenas to the State of Maryland." Plaintiff, however, did not seek records relating to plaintiff's custodial status in the only subpoena served on the State of Maryland in this case (of which undersigned is aware). (Ex. 6—Aug. 26, 2019 Subpoena Duces Tecum). Moreover, defendants' discovery obligations to plaintiff in this case have been relegated to those under Rule 26(a) (1), as plaintiff propounded his only discovery requests after the time required by Local Rule 104.2.

enlightenment from an expert." (Opp. at 9.) The determination of commitment status is solely a legal one. It is dictated by the directions of the criminal court and the provisions of any applicable State statute. As to plaintiff, those materials clearly prove, on their face, as plaintiff admitted in his deposition, that plaintiff was a sentenced prisoner when he left the DOC in 2009, when he returned to the DOC in 2011 and, of course, when he was confined at the DOC's MRDCC in September 2013.

II. Plaintiff's Claims Are Barred Because He Failed To Properly Exhaust His Available Administrative Remedies.

In his Opposition, plaintiff asserts that this Court should excuse his failure to properly exhaust his administrative remedies because, even though it is undisputed that he, in fact, availed himself of those remedies and presented his claim to the Inmate Grievance Office ("IGO"), "those remedies were unavailable to him as a matter of law."[7] (Opp. at 48). Plaintiff's argument is grounded in two of the three scenarios identified by the Supreme Court in *Ross v. Blake*, 136 S. Ct. 1850 (2016), that can render an administrative remedy process unavailable: (i) active "thwart[ing]" of an inmate's use of the process by prison administrators, and (ii) the administrative regime being "so opaque that it

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[7] Plaintiff complains that the materials supporting defendants' exhaustion argument are the result of a prejudicial "eleventh hour disclosure." (Opp. at 45.) Again, plaintiff is wrong. The materials were timely produced during discovery on October 10, 2019, as part of Mr. Dupree's Third Supplemental Rule 26(a)(1) Disclosures, and they are only "prejudicial" to the extent that they contradict and correct the fiction plaintiff previously created.

becomes, practically speaking, incapable of use." *Id.* at 1859-60. However, properly construed and applied to the facts of this case, neither may be used as a basis for concluding that plaintiff's administrative remedies were unavailable.

Administrative remedies are unavailable when "prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Id.* at 1860. In his Opposition, plaintiff bends the facts to fit this standard. He advances the story that while he filed "numerous grievances" at MRDCC, he was unable to "produce them" to the IGO when requested "because [prison] staff confiscated those documents" when he was transferred at the end of October 2013 from MRDCC to the DOC's Roxbury Correctional Institution ("RCI") in Hagerstown. (Opp. at 48.) Discovery is now concluded and not a single iota of evidence supports plaintiff's bald and baseless assumptions. Even if true, this story does not account for his submission of documents when he "filed again to [sic] the Warden up there in Roxbury" (ECF 186-5 at 4-158:10). Indeed, there is no evidence, let alone any allegation, that staff at RCI did anything to stop plaintiff from pursuing administrative remedies, either within the facility or elsewhere. Likewise, it is undisputed that the IGO deliberatively interacted with plaintiff under its governing statutes and regulations until it dismissed plaintiff's grievance. (ECF No. 186-4 at 6-36.) Thus, there is no "machination, misrepresentation or intimidation," *Ross*, 136 S. Ct. at 1860, that warrants a finding that plaintiff's administrative remedies were unavailable.

Nor can plaintiff credibly argue that administrative remedies were unavailable because the administrative process itself was too opaque. In the availability analysis, "opaque" means "unknowable." *Ross*, 136 S. Ct. at 1859. The focus of the analysis is not on whether the "administrative process is susceptible of multiple reasonable interpretations," in which circumstance the process is available and exhaustion may not be excused, but rather on whether an "ordinary prisoner can make sense of what it demands." *Id.* As *Ross* instructs, the questions to be asked are: "were [the administrative] procedures knowable by an ordinary inmate in [plaintiff's] situation, or was the system so confusing that no such inmate could make use of it." *Id.* at 1862. Here, it is undisputed that plaintiff fully understood the administrative process and, in fact, utilized it to pursue his claim. (ECF No. 186-4 at 6-36.) It is further undisputed that one of the inmates involved in the events of September 2013, Raymond Lee, also experienced no difficulty understanding and negotiating the administrative process to obtain relief. (ECF No. 186-4 at 38-54.) Thus, it is beyond question that the administrative process was knowable and, therefore, "available" as required by the Prisoner Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a).

To find otherwise would be patently illogical, as it would mean that plaintiff's administrative remedies were unavailable as a matter of law even though plaintiff undisputedly presented a grievance before the IGO, where administrative remedies clearly *are* available. Indeed, this illustrates the fundamental flaw of *Brightwell v. Hershberger*, No. D KC-11-3278, 2016 W L 4537766 (D. Md. Aug. 31, 2016), and *Oakes v Dep't Pub. Safety and Corr. Servs*, No. GL R-14-2002, 2016 WL 6822470 (D. Md. Nov. 18,

2016), as in each, the Court found unavailability despite the fact that the administrative remedy process was known and used by the inmate-plaintiff, who is the best example of the "ordinary inmate in [plaintiff's] position." *Ross*, 136 S. Ct. at 1862. Instead, the Court held that remedies become unavailable when a dismissal at an early stage of the process "was rightly decided and [there are] no legal or factual arguments that the complaint was inappropriately dismissed." *Brightwell*, *9; *Oakes*, *5 ("The existence of the IIU investigation provided clear procedural grounds for the prison to dismiss [the inmate's] ARP, leaving [the inmate] no available remedies"). This holding, however, is rooted in the exercise of discretion barred by the PL RA, as it clearly describes a prohibited "special circumstance" to excuse proper exhaustion.

Plaintiff argues incorrectly that "[t]he Supreme Court confirmed" in *Ross* that the "IIU's involvement in this matter stripped IGO's jurisdiction, thus making the administrative process unavailable to [him]." (Opp. at 44.) First, the suggestion that an administrative agency (the DOC) can, by its own internal fiat, divest another governmental agency (the IGO) of its statutorily created jurisdiction is absurd. Second, the DOC's directives at issue here do no such thing, as they govern the first two steps of the administrative process only and contain no language suggesting to the inmate population that they can or should disregard the IGO. (ECF No. 186-3.) Third, the IGO willingly exercised jurisdiction, as it statutorily must, over the grievances brought by plaintiff and inmate Lee. Fourth, *Ross* does not contain the "confirmation" suggested by plaintiff.

In *Ross*, Maryland inmate Blake sued two correctional officers under 42 U.S.C. § 1983 for excessive force. One officer, Ross, asserted failure to exhaust as a defense, and "Blake acknowledged" he did not exhaust "because, he thought, the I IU investigation [that had been commenced] served as a substitute for that otherwise standard process." *Ross*, 136 S.Ct. at 1855. This "Court rejected [Blake's] explanation and dismissed the suit." *Id.* The Court of Appeals for the Fourth Circuit reversed, concluding that Blake's "reasonabl[e]" belief that he did not need to pursue administrative remedies because of the IIU investigation was a "special circumstance" that justified excusing the failure to exhaust. *Id.* at 1856. The Supreme Court then vacated the Fourth Circuit's judgment, holding that the PL RA does not contain a "special circumstances" exception that permits courts to exercise discretion and decide "that exhaustion would be unjust or inappropriate in a given case." *Id.* at 1858. In reaching this result, the Court provided guidance on the only "textual exception to mandatory exhaustion," availability, *id.*, and, after reviewing and commenting on the Maryland administrative regime, remanded the matter for consideration of that issue.

If anything, therefore, *Ross* "confirmed" that the PL RA is to be narrowly construed and its analysis divided into two parts: first, whether the remedies are available, and second, if available, whether they were properly exhausted. In this case, the answer to the first part is yes, illustrated by plaintiff's own demonstrated understanding and unimpeded participation in the administrative process. The answer to the second part is no, as it is undisputed that plaintiff's grievance was dismissed on preliminary review

by the IGO. Plaintiff's complaint, therefore, must be dismissed under the PL RA for his failure to exhaust his administrative remedies.

WHEREFORE, for the reasons set forth herein and in his motion for summary judgment and memorandum in support thereof, Mr. Dupree respectfully requests that this Court grant his motion and enter judgment in his favor as to all claims asserted against him by Plaintiff in this case.[8]

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December 16, 2019

[8] In his Opposition, plaintiff states that Mr. "Dupree makes no new preclusion arguments" in his motion for summary judgment. (Opp. at n.7) This is incorrect, as Mr. Dupree asserted those arguments in Sections I and III of the Argument portion of his Memorandum. (*See* ECF No. 186-1 at 3 (asserting res judicata) and 16 (asserting judicial estoppel)).

2013 Md. CORRECTIONAL SERVICES Code Ann. § 2-201. Units in Department

The following units are in the Department:

(1) the Division of Correction;

(2) the Division of Parole and Probation;

(3) the Division of Pretrial Detention and Services;

(4) the Patuxent Institution;

(5) the Board of Review for Patuxent Institution;

(6) the Maryland Commission on Correctional Standards;

(7) the Correctional Training Commission;

(8) the Police Training Commission;

(9) the Maryland Parole Commission;

(10) the Criminal Injuries Compensation Board;

(11) the Emergency Number Systems Board;

(12) the Sundry Claims Board;

(13) the Inmate Grievance Office; and

(14) any other unit that by law is declared to be part of the Department

2013 COMAR 12.11.01.08. Agency Heads

An agency head or a designee shall:

A. Notify the Director or a designee, and if required, local law enforcement, of an allegation required to be reported under Regulation .05 of this chapter;

B. Relinquish authority for an investigation undertaken by the IIU, including an investigation initially assigned to an agency head, or a designee, that is subsequently assumed by the IIU;

C. Provide to the IIU investigator unrestricted access to all areas of the agency head's facility;

D. Ensure that agency employees cooperate with the IIU investigator;

E. If requested by the IIU, assign agency employees to assist the IIU investigator and serve as an IIU liaison;

F. Coordinate agency employee, nonagency employee, and inmate interviews requested by an IIU investigator;

G. Provide reports, documents, and information requested by an IIU investigator;

H. Ensure confidentiality of all reports, records, investigative activities, and documents relating to an IIU investigation;

I. Provide workspace within the facility for use by the IIU personnel during an investigation;

J. Secure and preserve the scene of an incident until released to an IIU investigator or appropriate law enforcement personnel; and

K. Be accountable for investigations conducted at the agency level ensuring that:

(1) Where appropriate, investigative activities are conducted according to requirements for an IIU investigator;

(2) Required reports are completed; and

(3) Investigative reports are forwarded to the Director, or a designee, for review, filing, and retention.

Federal Rules of Civil Procedure Rule 46. Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

Federal Rules of Civil Procedure Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

(a) JUDGMENT AS A MATTER OF LAW.

(1) *In General.* If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) *Motion.* A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) RENEWING THE MOTION AFTER TRIAL; ALTERNATIVE MOTION FOR A NEW TRIAL. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an

alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) GRANTING THE RENEWED MOTION; CONDITIONAL RULING ON A MOTION FOR A NEW TRIAL.

(1) *In General.* If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) *Effect of a Conditional Ruling.* Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) TIME FOR A LOSING PARTY'S NEW-TRIAL MOTION. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of the judgment.

(e) DENYING THE MOTION FOR JUDGMENT AS A MATTER OF LAW; REVERSAL ON APPEAL. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

Federal Rules of Civil Procedure Rule 56. Summary Judgment

(a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) TIME TO FILE A MOTION. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) PROCEDURES.

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) JUDGMENT INDEPENDENT OF THE MOTION. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) FAILING TO GRANT ALL THE REQUESTED RELIEF. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

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28 U.S.C. § 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. § 1292

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order:

Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1) of an appeal from an interlocutory order or decree described in subsection (a) or (b) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title; and

(2) of an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to the United States Court of Appeals for the Federal Circuit and is final except for an accounting.

(d)

(1) When the chief judge of the Court of International Trade issues an order under the provisions of section 256(b) of this title, or when any judge of the Court of International Trade, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(2) When the chief judge of the United States Court of Federal Claims issues an order under section

798(b) of this title, or when any judge of the United States Court of Federal Claims, in issuing an interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(3) Neither the application for nor the granting of an appeal under this subsection shall stay proceedings in the Court of International Trade or in the Court of Federal Claims, as the case may be, unless a stay is ordered by a judge of the Court of International Trade or of the Court of Federal Claims or by the United States Court of Appeals for the Federal Circuit or a judge of that court.

(4)

(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Court of Federal Claims under section 1631 of this title.

(B) When a motion to transfer an action to the Court of Federal Claims is filed in a district

court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district court's grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Court of Federal Claims pursuant to the motion shall be carried out.

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

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42 U.S.C. § 1997e

(a) Applicability of administrative remedies

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

(b) Failure of State to adopt or adhere to administrative grievance procedure

The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 1997a or 1997c of this title.

(c) Dismissal

(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

(d) ATTORNEY'S FEES

(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988 of this title, such fees shall not be awarded, except to the extent that—

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988 1 of this title; and

(B)

(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of title 18 for payment of court-appointed counsel.

(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 1988 1 of this title.

(e) LIMITATION ON RECOVERY

No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of title 18).

(f) HEARINGS

(1) To the extent practicable, in any action brought with respect to prison conditions in Federal court pursuant to section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.

(2) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.

(g) Waiver of reply

(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

(2) The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.

(h) "Prisoner" defined

As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

U.S. Const. amend VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.