

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**HAL D. BARNES  
ADC #124499**

**PLAINTIFF**

**VS.**

**CASE NO.: 5:08CV00328 SWW/BD**

**ARKANSAS DEPARTMENT  
OF CORRECTION, et al.**

**DEFENDANTS**

**RECOMMENDED DISPOSITION**

**I. Procedure for Filing Objections:**

The following Recommended Disposition has been sent to United States District Judge Susan Webber Wright. Any party may file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If an objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date you receive the Recommended Disposition. A copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite A-149  
Little Rock, AR 72201-3325

## **II. Introduction:**

Plaintiff, who is incarcerated at the Varner Unit of the Arkansas Department of Correction (“ADC”), filed a *pro se* Complaint (docket entry #2) under 42 U.S.C. §1983, along with an Application for Leave to Proceed *In Forma Pauperis* (#1). For the following reasons, the Court recommends that Plaintiff’s Complaint (#2) be DISMISSED with prejudice, and that his Application for Leave to Proceed *In Forma Pauperis* (#1) be DENIED as moot.

## **III. Discussion:**

Plaintiff alleges that officials at the ADC received a check in Plaintiff’s name from the National Union Fire Insurance Company of Pittsburgh. Plaintiff states that the check, in the amount of \$10,000.00, was part of his inheritance. Instead of giving the check to Plaintiff or allowing him to send it back, the check was sent to the ADC Trust Fund Centralized Banking Office and deposited in Plaintiff’s inmate account.

At some point after the ADC received the check, the Arkansas Attorney General brought a Petition for Reimbursement for Cost of Care under the State Prison Inmate Care and Custody Reimbursement Act (“SPICCRA”), ARK. CODE ANN. §§ 12-29-501, *et seq.* In response to the petition, Plaintiff offered to pay \$2,500.00 to settle the matter with the Attorney General. The Attorney General declined, and eventually Plaintiff agreed to accept \$1,500.00 of the \$10,000.00 to settle the petition, forfeiting the balance to the State of Arkansas. Plaintiff brought this action alleging that his right to Due Process was

denied because he was “coerced, shown hostility, and pressure[d]” into settling the petition with the Attorney General (#2). Plaintiff’s allegations fail to state a claim for relief under 42 U.S.C. § 1983.

To state a cognizable claim under 42 U.S.C. § 1983, a plaintiff must allege that the conduct of a defendant acting under color of state law deprived him of a right, privilege, or immunity secured by the federal Constitution or laws of the United States. 42 U.S.C. § 1983. In *Hudson v. Palmer*, 468 U.S. 517, 529-30, 104 S.Ct. 3194 (1984), the United States Supreme Court held that when a state actor deprives a person of personal property, the person does not have a Due Process § 1983 claim if state law provides an adequate post-deprivation remedy. The State of Arkansas provides such a remedy through the Arkansas Claims Commission. See ARK. CODE ANN. § 19-10-204(a) (vesting the Arkansas State Claims Commission with “exclusive jurisdiction over all claims against the State of Arkansas and its several agencies, departments and institutions”). In addition, Plaintiff had the opportunity to address this issue before the state trial court. If he had disagreed with the outcome, he could have appealed the decision to the Arkansas Supreme Court. See *Burns v. State*, 303 Ark. 64, 793 S.W.2d 779 (1990) (Arkansas Supreme Court affirmed trial judge’s determination that the SPICCRRA did not violate a prisoner’s Due Process rights). Accordingly, Plaintiff has not stated a Due Process claim.

The Eighth Circuit Court of Appeals has upheld a pre-service dismissal in a similar case. See *Skinner v. Missouri*, 215 Fed.Appx. 555, 2007 WL 315364 (8th Cir. Feb. 5,

2007) (unpublished) (affirming district court's 28 U.S.C. § 1915A order dismissing prisoner's 42 U.S.C. § 1983 challenge to the confiscation of money in his inmate account under the Missouri Incarceration Reimbursement Act ("MIRA")). SPICCRA and MIRA are strikingly similar. As in *Skinner*, Plaintiff's allegations in the present case do not rise to the level of a constitutional violation. Accordingly, pre-service dismissal under 28 U.S.C. § 1915A is appropriate.

**IV. Conclusion:**

The Court recommends that Plaintiff's Complaint (#2) be DISMISSED with prejudice, and that his motion for leave to proceed *in forma pauperis* (#1) be DENIED as moot. In addition, the Court recommends that the dismissal count as a "strike" for purposes of 28 U.S.C. § 1915(g), and that the District Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action would be frivolous and not taken in good faith.

DATED this 9th day of January, 2009.



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UNITED STATES MAGISTRATE JUDGE