

~~\*\*\*EXECUTIONS SCHEDULED APRIL 17, 20, 24, AND 27, 2017\*\*\*~~

**No. 60CV-15-2921**

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
FIFTH DIVISION**

STACEY JOHNSON, JASON McGEHEE,  
BRUCE WARD, TERRICK NOONER,  
JACK JONES, MARCEL WILLIAMS,  
KENNETH WILLIAMS, DON DAVIS, and  
LEDELL LEE

PLAINTIFFS

v.

WENDY KELLEY, in her official capacity as  
Director, Arkansas Department of Correction, and  
ARKANSAS DEPARTMENT OF CORRECTION

DEFENDANTS

**MOTION TO RECONSIDER ORDER GRANTING DEFENDANTS'  
MOTION TO STRIKE OR DISMISS SECOND AMENDED  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs in this action (“Prisoners”) respectfully request that the Court reconsider its decision to grant Defendants’ Motion to Strike or Dismiss Plaintiffs’ Second Amended Complaint in order to allow the Prisoners to respond in opposition to the motion. In support of this Motion, the Prisoners state as follows:

1. Defendants filed the Motion to Strike or Dismiss on March 16, 2016.

The certificate of service indicated that the motion was filed using the eFlex electronic filing system and a copy of the document was sent to the Prisoners’ counsel via electronic mail.

2. On March 28, 2017, the Court entered a Memorandum Order Granting Defendants' Motion to Dismiss Second Amended Complaint for Declaratory and Injunctive Relief. In that order, the Court also held moot Plaintiffs' Motion for Certification of Partial Final Judgment.
3. In that Order, the Court found that it was prohibited from entering a final judgment on the separation-of-powers and ex post facto claims that would allow the Prisoners to seek appellate review. As to the other claims in the Prisoners' Second Amended Complaint, the Court concluded that the Arkansas Supreme Court mandate issued on February 24, 2017, dismissed the Prisoner's Amended Complaint with prejudice.
4. Under Ark. R. Civ. P. 6(c), a party opposing a motion such as the one filed by Defendants has ten days after service of the motion to respond to it.
5. Pursuant to Ark. R. Civ. P. 6(a), when the prescribed period of time to respond is less than fourteen days, holidays and weekends "shall be excluded in the computation."
6. Furthermore, Ark. R. Civ. P. 6(d) provides that an additional three days shall be added to the prescribed time period where service was accomplished via electronic transmission.

7. The Prisoners respectfully submit that their response to the Motion to Strike or Dismiss was due on Monday, April 3, 2017.
8. The Prisoners have prepared a response in opposition to Defendants' Motion to Strike or Dismiss in accordance with the Arkansas Rules of Civil Procedure and have filed it simultaneously with the present motion.
9. In particular, the Prisoners maintain in their response in opposition that their separation-of-powers and ex post facto claims are appealable. At the very least, the Court should enter a final judgment allowing them to appeal those issues. Moreover, the Prisoners maintain that the Arkansas Supreme Court's mandate dismissing the Amended Complaint was not with prejudice, leaving the Prisoners able to amend their claims as set forth in the Second Amended Complaint.

WHEREFORE, the Prisoners pray that the Court grant their motion for reconsideration and consider the Prisoners' response in opposition to Defendants' motion before issuing a decision on the merits.

Dated: April 3, 2017

Respectfully submitted,

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*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I, John C. Williams, hereby certify that I have served a copy of the foregoing on all counsel of record through the electronic filing system this 3<sup>rd</sup> day of April, 2017.

/s/ John Williams  
JOHN C. WILLIAMS