

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA



BENJAMIN T. MARCUM

3559338

(Enter above the full name of the plaintiff or plaintiffs in this action).

(Inmate Reg. # of each Plaintiff)

VERSUS

CIVIL ACTION NO. 2:21-cv-00107
(Number to be assigned by Court)

JURY TRIAL DEMANDED

CHARLES MOLES

(Enter above the full name of the defendant or defendants in this action)

COMPLAINT

I. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes _____ No X

B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit:

Plaintiffs: _____

Defendants: _____

2. Court (if federal court, name the district; if state court, name the county):

3. Docket Number: _____

4. Name of judge to whom case was assigned:

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

6. Approximate date of filing lawsuit: _____

7. Approximate date of disposition: _____

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

C. Defendant: CHARLES MOLES

is employed as: Correctional officer

at Mount Olive Correctional Complex

D. Additional defendants: _____

IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

SEE ATTACHED Document

V. Relief (continued):

VII. Counsel

A. If someone other than a lawyer is assisting you in preparing this case, state the person's name:

NO ONE

B. Have you made any effort to contact a private lawyer to determine if he or she would represent you in this civil action?

Yes X No _____

If so, state the name(s) and address(es) of each lawyer contacted:

Paul Stroebel at Stroebel & Stroebel PLLC P.O. Box 2582 Charleston, WV 25329

Robert J. Frank at The Law Firm of Robert J. Frank and Assoc. PLLC 920 W. Washington Street Steel Lewisburg, WV 24763
Neither Lawyer contacted me back I even enclosed a SASE to cover cost of postage

If not, state your reasons: _____

C. Have you previously had a lawyer representing you in a civil action in this court?

Yes _____ No X

If so, state the lawyer's name and address:

Signed this 18 day of January, 20 21.

Bryan T. Plow 3559338

Signature of Plaintiff or Plaintiffs

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 18 2021
(Date)

Bryan T. Plow 3559338
Signature of Movant/Plaintiff

Signature of Attorney
(if any)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

BENJAMIN T. MARCUM

Your full name

v.

Civil Action No.: _____

CHARLES MOLES

Enter above the full name of defendant(s) in this action

Certificate of Service

I, BENJAMIN T. MARCUM (your name here), appearing *pro se*, hereby certify that I have served the foregoing 42 USC 1983 Complaint and Summons (title of document being sent) upon the defendant(s) by depositing true copies of the same in the United States mail, postage prepaid, upon the following counsel of record for the defendant(s) on

January 18 2021 (insert date here):

(List name and address of counsel for defendant(s))

Ryan T. Pann 3559332
(sign your name)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

BENJAMIN T. MARCUM

Plaintiff,

v

CASE No. _____

JURY TRIAL DEMANDED

CHARLES MOLES, DEFENDANT

Sued In His Individual Capacity

PLAINTIFF'S VERIFIED COMPLAINT

Comes Now Plaintiff BENJAMIN T. Marcum, Pro Se, And STATES His Complaint
AS FOLLOWS:

PARTIES

1) PLAINTIFF, BENJAMIN T. MARCUM (Mr. Marcum or PLAINTIFF) is an
inmate AT Mount Olive Correctional Complex (M.O.C.C.) Mount Olive West
Virginia.

2) DEFENDANT CORPORAL CHARLES MOLES (herein After Defendant)
WAS AT ALL TIMES relevant Correctional officer Employed AT M.O.C.C. and acting
under color of STATE LAW.

JURISDICTION

3) THIS ACTION is Brought Pursuant to 42 U.S.C. 1983, 1982 and The Eighth Amendment
to The UNITED STATES constitution. Jurisdiction is BASED Upon 28 U.S.C. 1331, 1343 (1-4)
and 2202.

FACTS:

- 4) On September 15 2020 At Approximately 11:00 Pm Mr. MARCUM WAS Locked Securely inside Cell #11 in Pod 4 in Quilliams 2 Unit At M. O. C. C. When Defendant Entered the Pod to Remove The Roller Telephone.
- 5) Defendant Went upstairs to Cell #10 to Remove The phone and Stopped At Mr. Marcum's Cell #11. Plaintiff Then Asked To Use The phone And The Defendant denied His Request For No Stated Reason.
- 6) Plaintiff Then Asked To speak To a F*#king (Explicit) Gold Badge right now and The Defendant Refused and Said "Here's your Gold Badge" and Began spraying Mr. MARCUM under the door. NOTE: Corporal Charles Moles Did not HAVE a video camera with Him when He sprayed The Plaintiff As The Policy Requires.
- 7) Mr. MARCUM WAS Begging The Defendant To Stop spraying him And The defendant kept spraying The Plaintiff over and over and After He Stopped spraying Plaintiff The Defendant just stood And watched Mr. MARCUM. This was All recorded By The Pod 4 Stationary cameras.
- 8) The Defendant Then Had The Two (2) inmates who were granted Access To the phone removed from Their cells and Taken off The Pod So They could get Fresh Air off The outside Recreational Yard on Quilliams 2 This was All done while Defendant left Mr. MARCUM in His cell Asking To Be Removed Because He couldnt Breathe And The Defendant Stated He needed A camera There First.
- 9) Upon Entering The unit with the camera The Defendant came To Mr. Marcum's cell where He Told Plaintiff To ~~off~~ Strip out And cuff up So He could Be Removed from The cell for Treatment.
- 10) The Defendant Then Had four (4) additional inmates removed from Their cells and Taken To The outside Recreational Yard for Fresh Air due To The Amount of vapors leaving Mr. Marcum's cell.

- 11) As Stated, The Actual Use of Force, WAS Not Recorded Because The Defendant failed to follow numerous Policies including The one That States He HAS To HAVE A video camera Present, before Using Calculated force on the Plaintiff, who is locked Securely Behind The door Posting NO Threat To Defendant,
- 12) As A Direct result of Defendant's Actions and The use of Powerful Chemical Agents The Plaintiff Suffered Chemical Burns on His Penis And Feet, (EXHIBIT J)
- 13) As A Direct result of Defendants Actions Mr. Marcum Suffered Severe Mental And Emotional Stress. On September 17, 2020 Mr. Marcum needed His Mental Health Counselor Becky To see Him over this incident and Mr. Marcum continues To Suffer from Mental Health Issues After Being Sprayed.
- 14) On September 16 Mr. Marcum filed A Grievance To preserve All CCTV Footage in Pod 4 on Quilliams 2 Unit (EXHIBIT D)
- 15) On September 23 2020 Mr. Marcum filed A Grievance To Preserve All CCTV Footage in Quilliams 2 outside Recreational yard for The day of September 15 2020 from 7:00 pm to 7:00 Am. (EXHIBIT E)
- 16) On September 23 2020 Mr. Marcum filed A Grievance To preserve All Hand Held Video Footage from The Incident on September 15 2020, (EXHIBIT F-1) (EXHIBIT F-2)
- 17) The Plaintiff HAS Exhausted All Administrative Remedies, (EXHIBIT B) (EXHIBIT C)

COUNT I

- 18) Defendant Corporal Charles MOLES violated Mr. Marcum's Eighth Amendment Right Not To HAVE cruel And unusual Punishment used Against Him, when The Defendant maliciously, sadistically, and unnecessarily used Excessive force Against Mr. Marcum without Any Efforts to Temper while Plaintiff WAS Secured in His cell Posting NO Threat To Defendant,

COUNT II

19) Defendant Corporal Charles Moles violated Mr. MARCUM'S Eighth Amendment Right Not To Have Cruel And Unusual Punishment Used Against Him When The Defendant Used Excessive Amounts Of Powerful Chemical Agents In Much Greater Quantities Than Needed Or Necessary When He Sprayed Nearly A Whole 18 ounce canister of Phobos Pepper spray on Plaintiff.

RELIEF

wherefore The Plaintiff Request The Court To Award Damages Jointly And Severally As follows:

- A) Compensatory Damages in The Amount of \$ 50,000 dollars.
- B) Injunctive relief That All STAFF Entering or working Quilliams Unit At Mount Olive Correctional Complex wear Body Cameras To prevent further Excessive force and Assault Claims.
- C) Punitive Damages in the Amount of \$ 50,000 dollars
- D) Attorneys fees and cost; and
- E) Any other relief Determined By This Court To Be Just And Appropriate.

Respectfully Submitted

Benjamin T. MARCUM Plaintiff

Benjamin T. Marcum .3559336

| |
|--|
| BENJAMIN T. MARCUM 3559336 Mountainside way Mount Olive, West Virginia 25185 |
|--|

VERIFICATION

Plaintiff verifies and swears under Penalty of Perjury That All statements are true and correct,

I BENJAMIN T. MARCUM Do swear That my Complaint is True and Accurate To the Best of My Knowledge

Benjamin T. Marcum 3559338

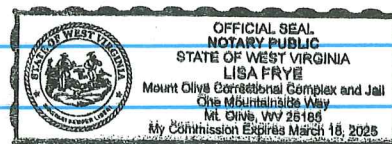
BENJAMIN T. MARCUM 3559338

DATE: JANUARY 18 2021

State of WV
County of Fayette

Sworn and subscribed before me this 18th day of January 2021.
My commission expires 18 March 2025.

Lisa Frye, Notary



SWORN AFFIDAVIT OF BENJAMIN MARCUM

I Benjamin Marcum Swear under Penalty of Perjury The following statement is True and Correct.

ON Sept. 15 2020 The following Incident occurred:

ON Sept. 15 2020 at approximately 11:00 pm I was locked security in Cell #11 in Pod 4 on The Quilliams 2 Unit when Corporal Charles Moles came in to remove The phone. AS He came upstairs To get The phone From Cell # 10 He Stopped at my door Cell # 11 And I ASKED To use The phone He Then Told me NO. I Told Him I WANTED A FCKING Gold BADGE And He Said Heres your gold BADGE and started spraying me under The Door.

I was Telling him to stop And He kept spraying me over and over and after He did stop I ASKED Him To get me out of The cell Because I cant Breathe. He said He HAD To get The camera First and Then He HAD The (2) two inmates who used The phone removed from Their cells and Taken to The Rec yard who wasnt even sprayed and left me in my cell covered in spray

Then Corporal moles HAD A camera Brought into The unit and they came to my cell Door, And ordered me to cuff up so I could be removed from my cell for treatment, and at no time did I become combative or refuse and order. Then I WAS Taken To The multi purpose room To see The nurse. I told Her I needed A Shower and she ASKED me some questions. I WAS Then Taken To the Shower in Pod 4 on Bottom Tier But only given A pair of Red pants. I was given no Soap or washcloth To help remove The chemical off my body I was Told to rinse it off Best That I could.

During This Time Their was An Additional (4) four inmates That HAD To be Removed from Their cells and Taken To the Rec yard Because of The Amount of vapors from OC. Spray leaving my cell They couldnt breathe. After I WAS removed from The Shower I WAS Taken To the Rec yard for fresh Air and After A while (Time unknown) I WAS placed BACK into my cell my Bed Linens WASnt Washed or Exchanged out:

Then on Sept. 16 2020 I sent A sick call slip To medical ASKING for help Because I HAD Blisters on my Penis And feet, I Also sent A sick call slip to my mental Health counselor Becky ASKING to see Her. and on The Same day I filed A grievance To secure The camera footage in Quilliams 2 Pod 4

EXHIBIT A-1

Then on Sept. 17 2020 At Evening P.M. Call Around 2:30pm A nurse Brought me A + O ointment for The Blisters on my Penis and Feet. And my mental Health Counselor Becky Came to speak with me over The incident. Also on Sept. 17 2020 Captain Brian Penick Came To my cell #11 in Quilloms 2 Pod 4 And moves me To Quilloms 2 Pod 6 Cell #1 Behind The glass

I Benjamin T. Marcum Do Swear That The Above Stated facts Are True And Accurate To The Best of my Knowledge.

Benjamin T. Marcum 3559338
Benjamin T. Marcum 3559338

DATE: Dec. 15, 2020

state of WV
County of Fayette
Sworn and subscribed
before me this 15th
day of December 2020.
my commission expires
18 March 2025.

Aracely, Notary

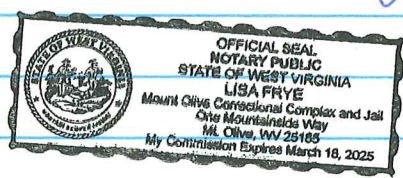


EXHIBIT A-2

ONE STAPLE ONLY

WVDCR Policy Directive 335.00
15 February 2020
Attachment #2
GENERAL DISTRIBUTION

WVDCR Inmate Grievance Form

Grievance No. 20 MOCC QA 922

Benjamin M. L. W.
Inmate Name

3559338
OID #

9-20-20
Date of Grievance

1121 1058

State Nature of Grievance / Issue to be addressed (Note: 1 issue per grievance be concise file with Director of Inmate Services.
NO WRITING ON BACK):

ON 9-15-20 I WAS IN CELL 411 ON Q-2 AND WAS SPIED ON BY CORPORAL MOLES. THIS WAS DONE UNLAWFULLY AND I RECEIVED BURNS ON MY PRIVATE PARTS THAT RESULTED IN MEDICAL TREATMENT. PLEASE EXPLAIN WHY.

Relief Sought (state what you want):

for spidy to be removed from use on inmates AT MOCC.

Benjamin M. L. W.
Inmate's Signature

(The inmate may attach one 8.5 x 11 sheet if necessary, at this level only)

Director of Inmate Services Response (attach additional sheet if needed)

Accepted Rejected Reason for rejection: _____ Date: 23 Sept 2020

Response on Merits if accepted:
Request denied.

Capt. [Signature]
Signature

Resolved: _____ (if so initial and give copy to Director of Inmate Services) Appealed to Superintendent BM (initial) Date: 9-24-20

If no response at initial level is included the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

Inmate's Signature _____ Date _____

EXHIBIT B

Action by Superintendent:
Accepted Rejected Reason for rejection: _____ Date: _____

Response on Merits if accepted: Remand to Unit for further action Affirm unit and/or deny grievance Grant the Grievance as specified
Comments: O.C. is approved by the Food & Drug administration and is necessary to stop negative behavior within this environment.

[Signature]
Superintendent's Signature _____ Date: SEP 28 2020 (Attach additional sheet if necessary)

Resolved: _____ (if so initial and give copy to Director of Inmate Services) Appealed to Commissioner BM (initial)

If no response at Superintendent's level is included, the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

Inmate's Signature _____ Date _____

Action by Commissioner:
Accepted Rejected Reason for rejection: _____
Response on Merits if accepted: Affirm



Affirmed
Grievance Denied
Central Office
Grievance Review

West Virginia Department of Corrections
Date: 10/8/20
Other: memo attached.

Received
MOCC
SEP 25 2020

WARDEN'S OFFICE
RECEIVED
SEP 25 2020

ONE STAPLE ONLY

WVDCR Policy Directive 335.00
15 February 2020
Attachment #2
GENERAL DISTRIBUTION

SEP 22 2020
WVDCR Inmate Grievance Form

Grievance No. 20 Mac 02 9A

Benjamin Marcus
Inmate Name

3557338
OID #

9-20-20
Date of Grievance

1181 1058

State Nature of Grievance / Issue to be addressed (Note: 1 issue per grievance be concise file with Director of Inmate Services.
NO WRITING ON BACK):

ON 9-15-20 I WAS SPRAYED BY CPL. RIDER WITH A POWERFUL CHEMICAL AGENT IN QUANTITIES MUCH GREATER THAN NECESSARY

Relief Sought (state what you want):

Please quit spraying inmates in retaliation due to lack of staff and over exertion of employees

Benjamin Marcus
Inmate's Signature

(The inmate may attach one 8.5 x 11 sheet if necessary, at this level only)

Director of Inmate Services Response (attach additional sheet if needed)

Accepted Rejected Reason for rejection: _____ Date: 23 Sept 2020

Response on Merits if accepted:

No one is retaliating. OC was used to stop you from your negative behavior

Cop [Signature]
Signature

Resolved: _____ (if so initial and give copy to Director of Inmate Services) Appealed to Superintendent BM (initial) Date: 9-24-20

If no response at initial level is included the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

Inmate's Signature _____ Date _____

EXHIBIT C

Action by Superintendent:
Accepted Rejected Reason for rejection: _____ Date: _____

Response on Merits if accepted: Remand to Unit for further action Affirm unit and/or deny grievance Grant the Grievance as specified
Comments Your remedial actions require the use of OC.

[Signature]
Superintendent's Signature _____ Date SEP 28 2020 (Attach additional sheet if necessary)

Resolved: _____ (if so initial and give copy to Director of Inmate Services) Appealed to Commissioner BM (initial)

If no response at Superintendent's level is included, the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

Inmate's Signature _____ Date _____

Action by Commissioner:
Accepted Rejected Reason Affirm
Response on Merits if accepted: _____



Affirmed
Grievance Denied
Central Office
Grievance Review

Date: 10/20/20
Other, memo attached

RECEIVED
WARDEN'S OFFICE
MCC
SEP 28 2020
SCANNED

ONE STAPLE ONLY

RECEIVED

WVDCR Policy Directive 335.00
15 February 2020
Attachment #2
GENERAL DISTRIBUTION

SEP 18 2020
WVDCR Inmate Grievance Form

Grievance No. 20-MOCC-Q2-893

Inmate Name Benjamin MARLON WILLIAMS

355-9338
OID #

9-16-20
Date of Grievance

1161 1058

State Nature of Grievance / Issue to be addressed (Note: 1 issue per grievance be concise file with Director of Inmate Services. NO WRITING ON BACK):

would you please preserve all video camera footage in the pod of Q2-Pod 4 for the date of 9-15-20

Relief Sought (state what you want):

video footage secure for Q-2 Pod 4 ON 9-15-20 from 7:00 PM T-11 midnight.

Benjamin
Inmate's Signature

(The inmate may attach one 8.5 x 11 sheet if necessary, at this level only)

Director of Inmate Services Response (attach additional sheet if needed)

Accepted Rejected Reason for rejection: _____ Date: 23 Sep 2020

Response on Merits if accepted:

The footage on any use of force is preserved

cap hilton
Signature

Resolved: _____ (if so initial and give copy to Director of Inmate Services) Appealed to Superintendent BM (initial) Date: 9-27-20

If no response at initial level is included the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

Inmate's Signature _____ Date _____

EXHIBIT D

Action by Superintendent:

Accepted Rejected Reason for rejection: _____ Date: _____

Response on Merits if accepted: Remand to Unit for further action Affirm unit and/or deny grievance Grant the Grievance as specified

Comments A subpoena is required to obtain this

J
Superintendent's Signature _____ Date SEP 28 2020 (Attach additional sheet if necessary)

Resolved: _____ (if so initial and give copy to Director of Inmate Services) Appealed to Commissioner BM (initial)

If no response at Superintendent's level is included, the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

Inmate's Signature _____ Date _____

Action by Commissioner:

Accepted Rejected Reason for Response on Merits if accepted: Affirm Sup



Affirmed
Grievance Denied
Central Office
Grievance Review

Date: 09 Oct 2020
Other, memo attached.

RECEIVED
SEP 28 2020
WARDEN'S OFFICE
MOCC

ONE STAPLE ONLY RECEIVED

WVDCR Policy Directive 335.00
15 February 2020
Attachment #2
GENERAL DISTRIBUTION

SEP 24 2020

WVDCR Inmate Grievance Form

Grievance No. 20 MAC Q2 930

Benjamin Williams
Inmate Name

3559338
OID#

9-23-20
Date of Grievance

1161 1058

State Nature of Grievance / Issue to be addressed (Note: 1 issue per grievance be concise file with Director of Inmate Services.
NO WRITING ON BACK):

I would like all CCTV video footage preserved on Quilliams 2 Rec yard for the date of 9-15-20 from 7:00pm till 7:AM please

Relief Sought (state what you want):

To have all video footage on 9-15-20 preserved from Quilliams 2 Rec yard from 7:00pm to 7:00 Am

Benjamin Williams
Inmate's Signature

(The inmate may attach one 8.5 x 11 sheet if necessary, at this level only)

Director of Inmate Services Response (attach additional sheet if needed)

Accepted Rejected Reason for rejection: _____ Date: 24 Sept 2020

Response on Merits if accepted:

All Use of Force Incidents evidence is preserved

Capt Richard [Signature]
Signature

Resolved: _____ (if so initial and give copy to Director of Inmate Services) Appealed to Superintendent Bm (initial) Date: 9-24-20

If no response at initial level is included the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

Inmate's Signature _____ Date _____

EXHIBIT E

Action by Superintendent:

Accepted Rejected Reason for rejection: _____ Date: _____

Response on Merits if accepted: Remand to Unit for further action Affirm unit and/or deny grievance Grant the Grievance as specified

Comments A subpoena is required to obtain this info.

[Signature]
Superintendent's Signature _____ Date SEP 28 2020 (attach additional sheet if necessary)

Resolved: _____ (if so initial and give copy to Director of Inmate Services) Appealed to Commissioner BM (initial)

If no response at Superintendent's level is included, the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

Inmate's Signature _____ Date _____

Action by Commissioner:

Accepted Rejected Reason for re
Response on Merits If accepted: Affirm Super



Affirmed
Grievance Denied
Central Office
Grievance Review

Date: 09/24/20
Other, memo attached

WARDEN'S OFFICE
NOV 20 2020
RECEIVED

ONE STAPLE ONLY

SEP 24 2020

WVDCR Policy Directive 335.00

15 February 2020

Attachment #2

GENERAL DISTRIBUTION

WVDCR Inmate Grievance Form

Grievance No.

WILLIAMS 2

20-MACC-Q2-929

Benjamin Marcum
Inmate Name

3559338
OID #

9-23-20
Date of Grievance

State Nature of Grievance / Issue to be addressed (Note: 1 issue per grievance be concise file with Director of Inmate Services.
NO WRITING ON BACK):

I would like all Hand held video footage preserved from Incident on 9-15-20 in Pod 4 on Williams Unit

Relief Sought (state what you want):

To preserve STATED video footage

Benjamin Marcum
Inmate's Signature

(The inmate may attach one 8.5 x 11 sheet if necessary, at this level only)

Director of Inmate Services Response (attach additional sheet if needed)

Accepted Rejected Reason for rejection: _____ Date: 25 Sept 2020

Response on Merits if accepted:

All Use of Force evidence is preserved

Capri Kuhn
Signature

Resolved: _____ (if so initial and give copy to Director of Inmate Services) Appealed to Superintendent _____ (initial) Date: _____

If no response at initial level is included the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

Inmate's Signature

Date

EXHIBIT F-1

Action by Superintendent:

Accepted Rejected Reason for rejection: _____ Date: _____

Response on Merits if accepted: Remand to Unit for further action Affirm unit and/or deny grievance Grant the Grievance as specified
Comments _____

Superintendent's Signature

Date

Resolved: _____ (if so initial and give copy to Director of Inmate Services) Appealed to Commissioner _____ (initial)

If no response at Superintendent's level is included, the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

Inmate's Signature

Date

Action by Commissioner:

Accepted Rejected Reason for rejection: _____ Date: _____

Response on Merits if accepted: Affirm Superintendent and deny grievance (Affix final stamp) Other, memo attached.

MOUNT OLIVE CORRECTIONAL COMPLEX & JAIL UNIT TEAM REQUEST FORM

DATE: 12-7-20

UNIT: Quilliams 2

I, BENJAMIN MARLUM, OID# 3559338, Cell# 307

Need to speak with/receive a reply from the (check only one):

- Unit Manager
- Case Manager
- Counselor
- Office Assistant

RECEIVED
DEC 08 2020
QUILLIAMS 2

Regarding:

Mrs. Frye Would you please send me a copy of a grievance I filed on 9-23-20 its grievance No 20-MOCC-Q2-929 I never got a copy of it once it came back from the office of the warden it was appealed to the superintendent on 25 Sept. 2020 And I need a copy please.

Thank you.

Benjamin MARLUM 3559338
Signature/OID#

Reply:

DATE: 12-14-20

EXHIBIT f-2

~~I only have what was answered at this level. you may want to write records if you need a copy of the warden's and commissioners~~

Staff Signature/Title

~~answer! we do not get copies of those.~~ I forwarded your request & voucher to Records.

I Shane marcum # 3484997 Do swear the following
Is true and correct upon penalty of perjury

On 9-15-20 shortly after 11pm I witnessed Ben. T. marcum
ask cpl. ~~matias~~^{moles} to use the mobile phone DO to two other
Inmates Receiving this privilege mr. marcum was denied
for no stated reason when mr. marcum asked for a gold badge
or shift commander cpl. ~~matias~~^{moles} stated heres you gold badge
Then sprayed mr. marcum under his cell door with o.c. spray
To the point I myself had complications. cpl. ~~matias~~^{moles} then
took the 2 inmates who got access to the phone outside
to fresh air due to the extreme vapors leaving mr. marcum
contaminated in his cell to do so. This incident was not video
taped until approx 10-15 mins later when the shift commander
arrived and ordered mr. marcum to be removed for treatment

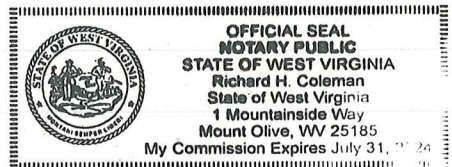
Shane marcum # 3484997

11-02-20

Notary: Richard H. Coleman

EXHIBIT G

Date: 2 November 2020



I, Kelly Powell 3618372 Do swear the following is True and correct under penalty of perjury.

On 9.15.20 in Q² Pod 4 cell 2 at about 11pm I heard Benjamin Marcum ask corporal moles for the mobile phone that was being used by inmates and Marcum was denied, so he said "I want to talk to a fucking Gold Badge right now", corporal moles said something along the lines of "Here is your gold badge" or "your gold badge is here" and started spraying Marcum with OC spray it was so bad inmates had to be taken outside over the amount of vapors leaving Marcum's cell. The incident wasn't videotaped until the apparent shift commander showed up and ordered Marcum to be taken out of his cell for treatment.

Kelly Powell 3618372
12.15.2020

[EXHIBIT H]

State of WV
County of Fayette

Sworn and subscribed before me this 15th day of December 2020. My commission expires 18 March 2025.



[Handwritten Signature], Notary

RECEIVED
SEP 16 2020

Policy Directive 424.01
01 January 2004
Attachment #1

BY: _____

INMATE MEDICAL SERVICES REQUEST
(Inmate to fill out top of Part A)

PART A:

NAME Benjamin Marcum DATE 9-16-20
NUMBER 3559339 HOUSING UNIT Q-2-411

REASON FOR REQUEST

ON 9-15-20 I was sprayed & woke up today and my privates are burnt and so are my feet can you please give me something to help I have a large blister on the side of my penis near the head please help.

RESPONSE (To be completed by medical personnel)

Sent request to provider on 9/17/2020 mcur

Medical Personnel Signature _____

Date _____

*****DETACH HERE*****

PART B:

NAME _____ DATE _____
NUMBER _____ HOUSING UNIT _____

I understand that there will be a charge for medical services. I request the following medical services and understand that me institutional account or voluntary savings account will be charged for these services.

- 1. Nurse Sick Call
- 2. Nurse Sick Call with a Referral to a Doctor @ \$3.00
- 3. Nurse Sick Call (\$3.00) with an Inmate Request Referral to a Doctor (\$2.00) @ \$3.00
- 4. Non-Emergency Visit for Treatment by a Nurse @ \$5.00
- 5. Self-Inflicted or Self-Induced Injury or Illness Requiring a Nurse @ \$3.00
- 6. Self-Inflicted or Self-Induced Injury or Illness Requiring a Doctor @ \$3.00
- 7. Missed, Non-Excused Scheduled Medical Appointment @ \$5.00
- 8. A new complaint presented at an appointment that is not related to the original appointment @ \$3.00
- 9. Scheduled, Non-Referral Doctor or Optometrist Call (Medical staff sets up scheduled appointment for doctor or optometrist because an inmate requested the service.) @ \$3.00
- 10. Non-Emergency Scheduled Dental Visit @ \$5.00
- 11. Prescription Fees Per Prescription (excluding chronic care prescriptions for chronic care patients) @ \$5.00
- 12. Over the Counter Medications - Priced as established according to standard marketing prices. Separate policy and procedure shall establish doses and procedures for issue and purchase @ \$2.00
- 13. No Charge

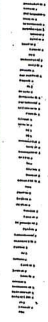
EXHIBIT I

Note: At no time will any Medical Services be denied to any inmate who cannot pay for these services.

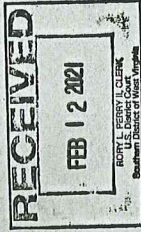
Inmate's Signature _____

Staff Witness _____

BENJAMIN MARCUM 3669338
1 Mountain Side Way
Mt. Olive, WY 25785



Correspondence from an
Inmate at Mount Olive
Correctional Complex and Jail



CLERK UNITED STATES DISTRICT COURT

PO Box 2546

Charleston West Virginia 25329

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