

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MOHAMED A. EL-TABECH,) 4:04CV3231
)
Plaintiff,)
) **ANSWER**
v.)
)
HAROLD W. CLARKE, ET AL.,)
)
Defendants.)

COME NOW the Defendants, Harold W. Clarke, Mary Carmichael, Dr. Randy Kohl aka Randy Cole, Francis Britten, Dr. Douglas Sell and Michael Kenney, and in answer to the Plaintiff's Complaint, hereby admit, deny and allege as follows:

1. Paragraph I, "Preliminary Statement," makes no allegations against any Defendant, therefore Defendants neither admit nor deny the same.
2. Defendants deny the allegations contained in paragraph II, "Jurisdictional Statement."
3. Defendants admit the allegations in paragraph III (A) of the Complaint to the extent that they admit that Plaintiff was an inmate committed to the Nebraska Department of Correctional Services (hereinafter "DCS") and was housed in the Control Unit (hereinafter "CU") of the Nebraska State Penitentiary (hereinafter "NSP") from April 25, 2001 to July 18, 2002, at which time Plaintiff was transferred to the Special Management Unit (hereinafter "SMU") of the Tecumseh State Correctional Institution (hereinafter "TSCI"); that both the NSP and the TSCI are maximum security prisons; that both the CU and the SMU are segregation units; and that the Plaintiff's address is 2725 N. Hwy.

50, P.O. Box 900, Tecumseh, NE 68450. Defendants deny the remainder of the allegations found in paragraph III (A) of the Complaint.

4. Defendants admit the allegations contained in paragraph III (B) (1) of the Complaint only to the extent that Harold Clarke was the Director of the DCS at all times relevant to the allegations in the Complaint. Defendants deny the remainder of the allegations found in paragraph III (B) (1) of the Complaint.
5. Defendants admit the allegations contained in paragraph III (B) (2) of the Complaint only to the extent that Mike Kenney was the Warden of the NSP at all times relevant to the allegations in the Complaint. Defendants deny the remainder of the allegations found in paragraph III (B) (2) of the Complaint.
6. Defendants admit the allegations contained in paragraph III (B) (3) of the Complaint only to the extent that Francis Britten was the Warden of the TSCI at all times relevant to the allegations in the Complaint. Defendants deny the remainder of the allegations found in paragraph III (B) (3) of the Complaint.
7. Defendants admit the allegations contained in paragraph III (B) (4) of the Complaint only to the extent that Randy Cole was the Medical Director of the DCS at all times relevant to the allegations in the Complaint. Defendants deny the remainder of the allegations found in paragraph III (B) (4) of the Complaint.

8. With respect to the allegations found in paragraph III (B) (5) of the Complaint, Defendants note that Elizabeth Conley was dismissed from this case pursuant to the Order found at Filing 72, therefore Defendants neither admit nor deny the same.
9. With respect to the allegations found in paragraph III (B) (6) of the Complaint, Defendants note that Janssen Williams was dismissed from this case pursuant to the Order found at Filing 72, therefore Defendants neither admit nor deny the same.
10. With respect to the allegations found in paragraph III (B) (7) of the Complaint, Defendants note that Dave Thomas was dismissed from this case pursuant to the Order found at Filing 72, therefore Defendants neither admit nor deny the same.
11. Defendants admit the allegations contained in paragraph III (B) (8) of the Complaint only to the extent that Douglas Sell was employed by the TSCI at all times relevant to the allegations in the Complaint. Defendants deny the remainder of the allegations found in paragraph III (B) (8) of the Complaint.
12. To the extent that the allegations found in paragraph III (B) (9) of the Complaint may be construed as allegations against Defendant Paul Church, pursuant to the Order found at Filing 11, Defendants note that Paul Church was dismissed from this case pursuant to the Order found at Filing 72, therefore Defendants neither admit nor deny the same.

13. Defendants admit the allegations contained in paragraph III (B) (10) of the Complaint only to the extent that Mary Carmichael was employed by the DCS at all times relevant to the allegations in the Complaint. Defendants deny the remainder of the allegations found in paragraph III (B) (10) of the Complaint.
14. The allegations found in paragraph IV of the Complaint make no allegations against any Defendant, therefore Defendants neither admit nor deny the same.
15. Admit that on April 25, 2001, Plaintiff attempted to escape from the NSP. Deny the remainder of the allegations found in paragraph V(A)(1) of the Complaint.
16. Admit the allegations found in paragraph V(A)(1)(a) of the Complaint only to the extent that they are alleged to have occurred on or about April 25 and 26, 2001.
17. Deny the allegations found in paragraph V(A)(2) of the Complaint.
18. Deny the allegations found in paragraph V(A)(3) of the Complaint.
19. Deny the allegations found in paragraph V(A)(4) of the Complaint.
20. Deny the allegations found in paragraph V(A)(5) of the Complaint.
21. Deny the allegations found in paragraph V(A)(6) of the Complaint.
22. Deny the allegations found in paragraph V(A)(7) of the Complaint.
23. Deny the allegations found in paragraph V(A)(8) of the Complaint.
24. Deny the allegations found in paragraph V(A)(9) of the Complaint.
25. Deny the allegations found in paragraph V(A)(10) of the Complaint.

26. Deny the allegations found in paragraph V(A)(11) of the Complaint.
27. Deny the allegations found in paragraph V(A)(12) of the Complaint.
28. Deny the allegations found in paragraph V(A)(13) of the Complaint.
29. Deny the allegations found in paragraph V(A)(14) of the Complaint.
30. Deny the allegations found in paragraph V(A)(15) of the Complaint.
31. Deny the allegations found in paragraph V(A)(16) of the Complaint.
32. Deny the allegations found in paragraph V(A)(17) of the Complaint.
33. Deny the allegations found in paragraph V(A)(18) of the Complaint.
34. Deny the allegations found in paragraph V(A)(19) of the Complaint.
35. Deny the allegations found in paragraph V(A)(1)(b)(1) of the Complaint.
36. Deny the allegations found in paragraph V(A)(1)(b)(2) of the Complaint.
37. Deny the allegations found in paragraph V(A)(1)(b)(3) of the Complaint.
38. Deny the allegations found in paragraph V(A)(1)(b)(4) of the Complaint.
39. Deny the allegations found in paragraph V(A)(1)(b)(5) of the Complaint.
40. Deny the allegations found in paragraph V(A)(1)(b)(6) of the Complaint.
41. Deny the allegations found in paragraph V(A)(2) of the Complaint.
42. Deny the allegations found in paragraph V(A)(2)(a) of the Complaint.

43. Deny the allegations found in paragraph V(A)(2)(b)(1) of the Complaint.
44. Deny the allegations found in paragraph V(A)(2)(b)(2) of the Complaint.
45. Deny the allegations found in paragraph V(A)(2)(b)(3) of the Complaint.
46. Deny the allegations found in paragraph V(A)(2)(b)(4) of the Complaint.
47. Deny the allegations found in paragraph V(A)(2)(b)(5) of the Complaint.
48. Deny the allegations found in paragraph V(A)(2)(b)(6) of the Complaint.
49. Deny the allegations found in paragraph V(A)(2)(b)(7) of the Complaint.
50. Deny the allegations found in paragraph V(A)(2)(b)(8) of the Complaint.
51. Deny the allegations found in paragraph V(A)(2)(C)(1) of the Complaint.
52. Deny the allegations found in paragraph V(A)(2)(C)(1)(a) of the Complaint.
53. Deny the allegations found in paragraph V(A)(2)(C)(1)(b) of the Complaint.

54. Deny the allegations found in paragraph V(A)(2)(C)(2) of the Complaint.
55. Deny the allegations found in paragraph V(A)(2)(b)(3) of the Complaint.
56. Deny the allegations found in paragraph V(A)(2)(C)(1) of the Complaint.
57. Deny the allegations found in paragraph V(A)(2)(C)(2) of the Complaint.
58. Deny the allegations found in paragraph V(A)(2)(C)(3) of the Complaint.
59. Deny the allegations found in paragraph V(A)(2)(C)(4) of the Complaint.
60. Deny the allegations found in paragraph V(A)(2)(C)(5) of the Complaint.
61. Deny the allegations found in paragraph V(A)(2)(D)(1) of the Complaint.
62. Deny the allegations found in paragraph V(A)(2)(D)(1)(a) of the Complaint.
63. Deny the allegations found in paragraph V(A)(2)(D)(1)(b) of the Complaint.
64. Deny the allegations found in paragraph V(A)(2)(D)(1)(c) of the Complaint.

65. Deny the allegations found in paragraph V(A)(2)(D)(2)(a) of the Complaint.
66. Deny the allegations found in paragraph V(A)(2)(D)(2)(b)(1) of the Complaint.
67. Deny the allegations found in paragraph V(A)(2)(D)(2)(b)(2)(a) of the Complaint.
68. Deny the allegations found in paragraph V(A)(2)(D)(2)(b)(2)(b) of the Complaint.
69. Deny the allegations found in paragraph V(A)(2)(D)(2)(b)(2)(c) of the Complaint.
70. Deny the allegations found in paragraph V(A)(2)(D)(2)(b)(2)(d) of the Complaint.
71. Deny the allegations found in paragraph V(A)(2)(D)(3)(1) of the Complaint.
72. Deny the allegations found in paragraph V(A)(2)(D)(3)(2) of the Complaint.
73. Deny the allegations found in paragraph V(A)(2)(D)(3)(3) of the Complaint.
74. Deny the allegations found in paragraph V(A)(2)(D)(4) of the Complaint.
75. Deny the allegations found in paragraph V(A)(2)(D)(5) of the Complaint.

76. Deny the allegations found in paragraph V(A)(2)(D)(5)(1) of the Complaint.
77. Deny the allegations found in paragraph V(A)(2)(D)(5)(2) of the Complaint.
78. Deny the allegations found in paragraph V(A)(2)(D)(6) of the Complaint.
79. Deny the allegations found in paragraph V(B)(1) of the Complaint.
80. Deny the allegations found in paragraph V(B)(2) of the Complaint.
81. Deny the allegations found in paragraph V(B)(2)(I)(1) of the Complaint.
82. Deny the allegations found in paragraph V(B)(2)(I)(2) of the Complaint.
83. Deny the allegations found in paragraph V(B)(2)(II)(1) of the Complaint.
84. Deny the allegations found in paragraph V(B)(2)(II)(2) of the Complaint.
85. Deny the allegations found in paragraph V(B)(2)(II)(3) of the Complaint.
86. Deny the allegations found in paragraph V(B)(3) of the Complaint.
87. Deny the allegations found in paragraph V(B)(4)(I) of the Complaint.
88. Deny the allegations found in paragraph V(B)(4)(II) of the Complaint.
89. Paragraph VI, and all subparagraphs thereto, make no allegations against any Defendant, therefore Defendants neither admit nor deny the same.

DEFENSES

1. Allege that the Complaint fails to state a cause of action against the Defendants upon which relief can be granted.
2. Allege that the Defendants at all times acted in good faith and are immune from suit and an award of damages against them in their individual capacities.
3. Allege that any request for damages against the Defendants, in their official capacities, is barred by the States' sovereign immunity and by the Eleventh Amendment to the United States Constitution.
4. Alleges that the Plaintiff has not exhausted his available state remedies prior to filing as is required by 42 U.S.C. ' 1997e(a).
5. Allege that this Court lacks jurisdiction over any pendent state law tort claim due to Nebraska's limited waiver of sovereign immunity.

JURY DEMAND

The Defendants, by and through counsel, pursuant to Fed. R. Civ. P. 38(b), hereby demand a trial by jury for all triable issues in this action.

WHEREFORE, the Defendants respectfully request that this matter be dismissed.

HAROLD W. CLARKE, MARY CARMICHAEL, DR. RANDY KOHL AKA RANDY COLE, FRANCIS BRITTEN, DR. DOUGLAS SELL AND MICHAEL KENNEY, in their official and individual capacities, Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2005, I electronically filed the foregoing Answer with the Clerk of the Court using the CM/ECF system and that a true and accurate copy of the foregoing was served on the Plaintiff, *pro se*, herein by depositing said copy into the United States Mail, first class postage prepaid, addressed to Mohamed A. El-Tabech at P.O. Box 900, Tecumseh, NE 68450.

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