

STATE OF NORTH CAROLINA

21 CV 013401

File No.

Wake County

In The General Court Of Justice
District Superior Court Division

Name And Address Of Plaintiff 1
Ashlee Inscoc
Avery Mitchell Correctional Institution
600 Amity Park Road
Spruce Pine, NC 28777
Name And Address Of Plaintiff 2
WAKE CO., C.S.C.
BY

GENERAL CIVIL ACTION COVER SHEET
INITIAL FILING SUBSEQUENT FILING

Rule 5(b) of the General Rules of Practice for the Superior and District Courts

VERSUS

Name And Address Of Attorney Or Party, If Not Represented
Elizabeth Simpson
Emancipate NC
PO Box 309
Durham, NC 27702
Telephone No. 919-682-1149
Cellular Telephone No.
NC Attorney Bar No. 41596
Attorney Email Address elizabeth@emancipatenc.org
Initial Appearance in Case Change of Address
Name Of Firm Emancipate NC
Fax No.
Counsel For
All Plaintiffs All Defendants Only: (list party(ies) represented)
Petitioner, Ashlee Inscoc

Name And Address Of Defendant 1
Todd Ishee, Commissioner of Prisons
512 North Salisbury Street
Raleigh, NC 27699
Summons Submitted Yes No
Name And Address Of Defendant 2
Summons Submitted Yes No

Jury Demanded In Pleading Complex Litigation Stipulate to Arbitration

TYPE OF PLEADING

- (check all that apply)
Amend (AMND)
Amended Answer/Reply (AMND-Response)
Amended Complaint (AMND)
Assess Costs (COST)
Answer/Reply (ANSW-Response) (see Note)
Change Venue (CHVN)
Complaint (COMP)
Confession Of Judgment (CNFJ)
Consent Order (CONS)
Consolidate (CNSL)
Contempt (CNTP)
Continue (CNTN)
Compel (CMPL)
Counterclaim (CTCL) Assess Court Costs
Crossclaim (list on back) (CRSS) Assess Court Costs
Dismiss (DISM) Assess Court Costs
Exempt/Waive Mediation (EXMD)
Extend Statute Of Limitations, Rule 9 (ESOL)
Extend Time For Complaint (EXCO)
Failure To Join Necessary Party (FJNP)
Failure To State A Claim (FASC)
Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
Improper Venue/Division (IMVN)
Including Attorney's Fees (ATTY)
Intervene (INTR)
Interplead (OTHR)
Lack Of Jurisdiction (Person) (LJPN)
Lack Of Jurisdiction (Subject Matter) (LJSM)
Modification Of Child Support In IV-D Actions (MSUP)
Notice Of Dismissal With Or Without Prejudice (VOLD)
Petition To Sue As Indigent (OTHR)
Rule 12 Motion In Lieu Of Answer (MDLA)
Sanctions (SANC)
Set Aside (OTHR)
Show Cause (SHOW)
Transfer (TRFR)
Third Party Complaint (list Third Party Defendants on back) (TPCL)
Vacate/Modify Judgment (VCMD)
Withdraw As Counsel (WDCN)
Other (specify and list each separately)
Writ of Mandamus

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

(Over)

CLAIMS FOR RELIEF

- | | | |
|---|---|---|
| <input type="checkbox"/> Administrative Appeal (ADMA)
<input type="checkbox"/> Appointment Of Receiver (APRC)
<input type="checkbox"/> Attachment/Garnishment (ATTC)
<input type="checkbox"/> Claim And Delivery (CLMD)
<input type="checkbox"/> Collection On Account (ACCT)
<input type="checkbox"/> Condemnation (CNDM)
<input type="checkbox"/> Contract (CNTR)
<input type="checkbox"/> Discovery Scheduling Order (DSCH)
<input type="checkbox"/> Injunction (INJU) | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP)
<input type="checkbox"/> Medical Malpractice (MDML)
<input type="checkbox"/> Minor Settlement (MSTL)
<input type="checkbox"/> Money Owed (MNYO)
<input type="checkbox"/> Negligence - Motor Vehicle (MVNG)
<input type="checkbox"/> Negligence - Other (NEGO)
<input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN)
<input type="checkbox"/> Possession Of Personal Property (POPP) | <input type="checkbox"/> Product Liability (PROD)
<input type="checkbox"/> Real Property (RLPR)
<input type="checkbox"/> Specific Performance (SPPR)
<input checked="" type="checkbox"/> Other (<i>specify and list each separately</i>)
Writ of Mandamus |
|---|---|---|

Date

09/29/2021

Signature Of Attorney/Party

FEES IN G.S. 7A-308 APPLY

Assert Right Of Access (ARAS)
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)
 Supplemental Procedures (SUPR)

PRO HAC VICE FEES APPLY

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input type="checkbox"/> Additional Plaintiff(s)	<input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

STATE OF NORTH CAROLINA **IN THE GENERAL COURT OF JUSTICE**
COUNTY OF WAKE **SUPERIOR COURT DIVISION**

2021 SEP 30 A 10: NO: _____

ASHLEE INSCOE, Petitioner, WAKE CO., C.S.C.

v.

BY _____

TODD ISHEE,

COMMISSIONER OF PRISONS, Respondent.

PETITION FOR WRIT OF MANDAMUS

The petitioner, Ms. Ashlee Inscoe, hereby petitions the Wake County Superior Court for a Writ of Mandamus and in support of this Petition, respectfully shows the Court:

The Parties

1. **Ashlee Inscoe** is a woman. She is currently incarcerated in a men's prison at Avery Mitchell Correctional Institution because she was erroneously assigned male at birth, over forty (40) years ago.
2. Respondent **Todd Ishee** is the Commissioner of Prisons for the State of North Carolina. He possesses all requisite authority to transfer Ms. Inscoe to a women's prison facility.

Jurisdiction, Venue, and Standing

3. Jurisdiction over this cause is conferred upon this Court under and by virtue of inter alia N.C.G.S. 7A-245(a)(2).

4. Venue of this action is proper with this Court under and by virtue of N.C.G.S. 1-77(2) as the offices of the North Carolina Prisons are located within Wake County.
5. Ms. Inscoe has standing to maintain this action.
6. Ms. Inscoe has suffered and will continue to suffer irreparable harm without the relief requested herein.

Facts

7. Ms. Inscoe is an intersex woman who is presently incarcerated at Avery Mitchell Correctional Institution in Spruce Pine, North Carolina. Avery Mitchell Correctional Institution is a men's prison facility. "Intersex" refers to a wide range of variations in physical sex characteristics, such as chromosomes, genitals, and/or gonads, that may cause an individual's body not to conform to stereotypical notions of male or female.
8. She is currently subject to conditions that put her at an ongoing serious risk of harm.
9. She is forced to sleep in a room with thirty-three (33) men. As per facility policy, she is not allowed to sleep with pants on, which leaves her even more vulnerable at night.
10. The risks of sexual assault and violence are not vague or hypothetical in her case; both she and the North Carolina Department of Public Safety ("DPS") know that these dangers are real. Ms. Inscoe has made DPS aware that she was raped by three men in a men's prison.

11. Currently, she is subjected to near-constant verbal and physical harassment, reporting that “men grab my breast[s] and buttocks almost every day” and further that “about 60% of this prison is sexually violent inmates...I always hope that one doesn’t decide to rape me again.”
12. She lives daily with the “fear and threats of staff allowing an inmate(s) to come in my cell to assault me or even staff doing it themselves which has happened to me in the past.”
13. In April 2020, in accordance with appropriate policy, the facility made a formal request to the Division Transgender Accommodation Review Committee (“DTARC”) to transfer Ms. Inscoe to a women’s facility.
14. In May 2020, DTARC responded to this request by asking for Ms. Inscoe to be seen by an endocrinologist.
15. In September 2020, Dr. Eric L. Klett examined Ms. Inscoe, and recommended her transfer to a women’s facility
16. A second doctor—Dr. FNU Bernart—likewise advised transferring Ms. Inscoe to a women’s facility after reviewing her medical records and Dr. Klett’s report.
17. The Facility Transgender Accommodation Request Committee (“FTARC”), consistent with DPS policy regarding “non-routine” accommodations, referred the request back to DTARC in October 2020.
18. Finally in November 2020, DTARC and DPS denied the request to transfer Ms. Inscoe—against medical experts’ advice—because of her “gender assigned at birth” and vague “safety concerns.”

19. At a men's prison, Ms. Inscoc is subjected to intrusive searches by male officers despite her requests to be searched by female officers. These searches are often performed in front of additional male staff members and male incarcerated people and are characterized by vulgar comments about Ms. Inscoc's body.
20. At this time, Ms. Inscoc's physical and emotional health are greatly deteriorating.
21. Counsel became aware of Ms. Inscoc's situation in July 2021.
22. On August 10, 2021, Counsel sent a letter to Respondent Ishee and his general counsel seeking an immediate transfer to a women's facility for Ms. Inscoc
23. After back-and-forth correspondence with the general counsel's office, it is clear that Respondent Ishee does not intend to transfer Ms. Inscoc to a women's facility.

Relief Sought

24. Without the requested Writ of Mandamus, there is no adequate remedy available to Ms. Inscoc.
25. Pursuant to *Morningstar Marinas v. Warren County*, 368 N.C. 360, 365, 777 S.E.2d 733, 736 (2015), there are 5 factors that must be established in order for a party to be entitled to a Writ of Mandamus. They are:
 - a. the party seeking relief has a clear legal right to the act requested,
 - b. the respondent has a legal duty to perform the act requested,
 - c. performance of the act is ministerial in nature and does not involve the exercise of discretion,
 - d. respondent did not perform the act requested and time for performance of the act has expired, and

e. no alternate legally adequate remedy is available.

26. Ms. Inscoe is a woman, and thus, she is entitled to be incarcerated at a women's prison.

27. Mr. Ishee is the Commissioner of Prisons with the legal duty and authority to ensure that women are housed with women, and not in men's facilities. "A prison official is liable when he knows of, or in the exercise of reasonable care should anticipate, danger to the prisoner, and with such knowledge or anticipation fails to take the proper precautions to safeguard his prisoners." See Taylor v. N. Carolina Dep't of Correction, 88 N.C. App. 446, 363 S.E.2d 868 (1988). See also State ex rel. Williams v. Adams, 288 N.C. 501, 219 S.E.2d 198 (1975). Here, there is direct evidence that Ms. Inscoe is subject to continued harm every day that she remains confined to a men's prison facility. It is Mr. Ishee's duty to remedy this by transferring Ms. Inscoe.

28. Ms. Inscoe is a woman. Therefore, there is no discretion for Mr. Ishee to apply as to her housing assignment.

29. Ms. Inscoe pursued the correct administrative remedies for seeking transfer, including filing and exhausting the Administrative Remedy Procedure and going through the Facility and Division Transgender Accommodation Review Committee (TARC) procedures. She was denied for each of these administrative remedies.

30. Having exhausted administrative remedies, there is no alternate legally adequate remedy available to her at this time.

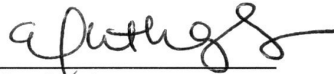
31. Accordingly, Ms. Inscoe is entitled to a Writ of Mandamus directing Mr. Ishee to transfer her to a women's prison facility.

WHEREFORE, Ms. Inscoe prays the Court as follows:

1. That the Court issue a Writ of Mandamus compelling Mr. Ishee, in his capacity as the Commissioner of Prisons, to transfer Ms. Inscoe to a women's prison facility.
2. That all costs of this action be taxed against the respondents.
3. That the Court order such other and further relief as it deems just and proper.

This 30 day of September, 2021

Respectfully submitted,



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Counsel for Ashlee Inscoe