

REDUCING JAIL LIABILITY BY UTILIZING THE PRISON LITIGATION REFORM ACT

Stacey A. Blankenship, Attorney at Law
Denton & Keuler



REDUCING JAIL LIABILITY BY UTILIZING THE PRISON LITIGATION REFORM ACT

In 1996, Congress enacted the Prison Litigation Reform Act (hereinafter “PLRA”), to “curtail the ability of prisoners to bring frivolous and malicious lawsuits.”¹ The sponsors of the bill submitted a “top ten” list, entitled “*Top 10 Frivolous Inmate Lawsuits Nationally*”. Those included:

- (10) Inmate sued, claiming \$1 million in damages because his ice cream had melted;
- (9) Inmate sued, alleging that being forced to listen to his unit manager’s country and western music constituted cruel and unusual punishment;
- (8) Inmate sued, claiming that his piece of cake was “hacked up”;
- (7) Inmate sued because he was served chunky instead of smooth peanut butter;
- (6) Two inmates sued because the prison would not pay for their sex change operations;
- (5) Inmate sued, alleging that he made only \$21.00 during a three month period but had been told he would make \$29.40;
- (4) Inmate sued because he was forced to send packages via UPS rather than U.S. mail;
- (3) Inmate sued, demanding L.A. Gear or Reebok shoes instead of Converse;
- (2) Inmate sued, alleging that the prison physicians had implanted an electronic device in his head which broadcast his thoughts over the prison public address

system; and

- (1) Inmate sued prison officials for taking away his Gameboy electronic game.²

Although these claims are humorous, they were expensive to the taxpayers. In each of these cases, the facts alleged in the complaint were clearly not worthy of a Court’s time, but the taxpayers nevertheless had to pay for the judicial resources used in hearing the matter, as well as the attorneys fees to defend the jails or prisons. Since the passage of the PLRA, Courts are now required to review the allegations of the Complaint before issuing summonses to the defendants. If the Court determines that the Complaint fails to state a claim upon which relief can be granted, the Court shall dismiss the Complaint, without issuing a summons. This new procedure has drastically reduced the amount of public resources spent in defending these frivolous suits.

In addition, the PLRA has set forth several defenses of which all jail officials should be aware and utilize to their advantage. The most useful tool created by the PLRA is the “exhaustion of administrative remedies” requirement. This article will address how County officials can use the PLRA in this regard to their advantage and thereby reduce jail liability.

The PLRA provides, in relevant part, that “*[n]o action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42*

*U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”³ In Kentucky, all full service jails and youth alternative centers are required to have a written policy, setting forth a grievance procedure.⁴ There is no similar regulation applicable to life safety jails. However, in order to substantially reduce liability, every jail, regardless of classification, should enact a grievance procedure. An example of a **grievance procedure**, an **inmate grievance form**, and an **inmate grievance appeal form** is shown at the end of this article.*

Grievance procedures can limit a jail’s and/or a jailer’s liability in two distinct ways. Obviously, if an inmate is allowed to file a grievance about a condition of which the jail authorities are not aware and do not approve, the condition can be corrected and as such, liability reduced. Second, if the inmate fails to follow the grievance procedure, as adopted, any complaint he subsequently files in federal court will be dismissed pursuant to the PLRA’s “exhaustion of administrative remedies” provision. Of course, if the jail has not adopted a grievance procedure, the inmate does not have to jump through any hoops before he files suit and the jail does not get the opportunity to correct the problem before a judge gets involved.

The first step of any grievance process should require the inmate to speak to the alleged offending party, i.e., deputy jailer, medical health professional, etc. If the issue is not resolved at that stage, then the inmate may file a written grievance form, which should be available to any inmate upon request. In the sample grievance procedure that I have drafted, the written grievance is to be submitted to the Jailer. It is important that the procedure set forth deadlines for filing a grievance and an appeal. In addition, the procedure should require the Jailer (or other person responsible for responding to the grievance) to respond to the grievance

within a given period. Failure to respond within that period should be deemed a denial of the grievance and begin the clock for which an appeal can be filed. In the attached sample grievance procedure, the appeal is to be submitted to the County Judge Executive or his designee. The Judge Executive could designate the County Administrator, the County Attorney, or the Judge Pro Tem, for example. Failure of the County Judge Executive (or his designee) to respond to an appeal within a given period should likewise deem the response as “denied.” However, in order to avoid liability, both the Jailer and the Judge Executive or other appointed persons, should conduct a limited investigation into the complaint. Failure to do so, could result in a valid claim of deliberate indifference, subjecting the official and/or the County to liability.

An important note in this discussion is the fact that the grievance procedure must be communicated to the inmates. Storing the only written grievance procedure in the Jailer’s desk or County’s vault does not communicate much to the inmates. I am currently defending a County, a Jailer, and several deputy jailers in a case in which the County had adopted a comprehensive grievance procedure, but has no evidence that the procedure was ever communicated to the complaining inmate. On behalf of the Defendants, I filed a Motion to Dismiss for failure to exhaust administrative remedies. The District Court granted the Motion but the Sixth Circuit Court of Appeals reversed, ruling that a grievance procedure that is not communicated to the inmate is not an “available” administrative remedy, as defined by the PLRA. The most effective way to prevent this situation is to require all inmates, upon being booked into the jail, to sign a document setting forth the procedure. This document should be retained by the Jail for at least two years.

In addition, it is very important for jails and/or counties to retain copies of all grievances and appeals filed by inmates for at least two years. Copies of all responses to

the grievances and appeals should also be retained for this period of time. An inmate has one year from the date of incident in which to file a §1983 action in federal court. However, because Courts are now required to review the allegations in the complaint before issuing the summonses, it can now take up to two years for a summons and complaint to be served. Of course, without copies of all grievances filed in the last two years, it is hard to rebut an inmate's argument that he in fact did exhaust all available administrative remedies.

As such, whenever a jail and/or jailer is served with a summons and complaint, the jail's files should be immediately perused for grievances filed by the plaintiff/inmate. If grievances were filed, copies should be made and forwarded to the assigned attorney. If not, the custodian of the records should sign a statement to that effect. Furthermore, the custodian of the records of the County Judge Executive (or his designee) should do the same. This procedure should occur *at the beginning* of the case, as a Motion to Dismiss for failure to exhaust administrative remedies may be filed immediately.

I have defended over 50 jail liability suits since the passage of the PLRA, of which 75 per cent were dismissed due to the inmate's failure to exhaust administrative remedies. Most inmates are not aware of this procedural requirement and are not willing to "waste their time" with filing grievances and appeals. Of the 25 per cent that were not dismissed on PLRA grounds, the defending County had either not adopted a grievance procedure or had not communicated such to the inmates.

The PLRA's exhaustion of administrative remedy requirement may be effectively utilized to reduce a jail's liability. In enacting the PLRA, Congress sought to reduce frivolous lawsuits in federal court. However, whether County jails use the tool given to them by Congress to their advantage, is up to them.

JAIL GRIEVANCE PROCEDURE

If an inmate wishes to file a complaint regarding a condition of his confinement, he must utilize the following procedure:

(a) Attempt to alleviate the problem through verbal communication with the person he believes is responsible for the condition. If that person does not alleviate his concern, then he may request an Inmate Grievance Form;

(b) Complete and submit a written grievance form to the Jailer, within five (5) calendar days of the incident about which he is complaining;

(c) The Jailer shall have ten (10) business days from the date the grievance was submitted to conduct an investigation and respond to the grievance. The response shall be in written form on the bottom of the grievance form submitted. A copy of the response shall be given to the inmate and a copy shall be retained by the Jailer;

(d) If the inmate is not satisfied with the Jailer's response or if he does not receive a response from the Jailer within ten (10) business days of the date the grievance was submitted, the inmate may appeal the Jailer's decision to the County Judge Executive (or his designee), within five (5) calendar days. An Inmate Grievance Appeal form shall be provided to the inmate upon request.

(e) The County Judge Executive (or his designee) shall have ten (10) business days from the date the appeal was submitted to conduct an investigation and respond to the appeal. The response shall be in written form on the bottom of the Inmate Grievance Appeal Form submitted. A copy of the response shall be given to the inmate and a copy shall be retained by the County Judge Executive (or his designee).

Grievance Form

_____ COUNTY JAIL
INMATE GRIEVANCE FORM # _____

Deputy Providing Form: _____ Date/Time: _____

Inmate Name: _____

Cell #: _____ Date/Time Submitted: _____

DETAILS OF COMPLAINT: _____

Date of incident: _____ Did you complain to the person you feel is responsible for the condition? _____ Who? _____ Date/Time: _____

What was his/her response? _____

Receiving Deputy: _____ Date/Time Received: _____

RESPONSE: _____

Responding Authority: _____ Date: _____

Appeals Form

_____ COUNTY JAIL
INMATE GRIEVANCE APPEAL FORM

Deputy Providing Form: _____ Date/Time: _____

Inmate Name: _____

Cell#: _____ Date/Time: _____

Inmate Grievance Form Number from which you appeal: _____

Reason for appeal: _____

Receiving Deputy: _____ Date/Time Received: _____

RESPONSE: _____

Responding Authority: _____ Date: _____

3. 110 Stat. 1321, 1321-71.
4. 501 KAR 10:140(1)(e) and 501 KAR 12:140(1)(e).

Author **Stacey A. Blankenship** is a partner at the law firm of **Denton & Keuler** located in Paducah, Kentucky. You can reach Stacey via email at sblankenship@dklaw.com

Prior to practicing with **Denton & Keuler**, Stacey served as Assistant Commonwealth Attorney for McCracken County. In so doing, she developed a reputation of integrity among local public officials and prosecutors and gained significant insight into many 1983 Civil Rights actions. Since joining the firm in 1997, Stacey has counseled and trained various police departments and jails in Western Kentucky and has defended numerous counties and jailers in liability lawsuits.

*This article is designed to provide general information prepared by the professionals at **Denton & Keuler** in regard to the subject matter covered. It is provided with the understanding that the author is not engaged in rendering legal, accounting, or other professional service. Although prepared by professionals, these materials should not be utilized as a substitute for professional service in specific situations. If legal advice or other expert assistance is required, the service of a professional should be sought*

1. Pub. L. No. 104-134, 110 Stat. 1321 (codified as amended in scattered sections of 18 U.S.C., 28 U.S.C., and 42 U.S.C. (1996)).
2. 141 Cong. Rec. S14, 629 (daily ed. Sept. 29, 1995).