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Prison Litigation Reform Act: Exhaustion of Remedies – Part One

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❖ Introduction

Prisoners file many lawsuits concerning prison and jail conditions against correctional agencies, officials, and employees. While some assert meritorious claims, there are also many that seek to assert claims that are frivolous, not supported by evidence, or seeking to impose liability on entities or persons who bear no legal responsibility for the alleged deprivations complained of.

Additionally, even some lawsuits containing legitimate grievances have at times been filed with the courts when the problem might have been earlier, and more easily, remedied, had it been properly brought to the attention of prison or jail management.

It was with the hope of reducing the filing of frivolous litigation, of allowing correctional officials an enhanced opportunity to remedy problems before facing the burdens of litigation, and lightening the load on the courts by full utilization of the various grievance and other administrative processes already available in prisons and jails, that Congress enacted the [Prison Litigation Reform Act](#) (PLRA).

This federal statute changed many of the rules concerning litigation by prisoners. These include court screening of prisoner lawsuits to summarily reject the obviously frivolous or legally insufficient, a requirement that even indigent prisoners pay filing fees in installments as they have assets to do so, a provision known as the “three strikes” rule denying those who repeatedly file lawsuits that are frivolous, malicious, or fail to state a claim the right to proceed as paupers, and a bar on the seeking of damages for mental or emotional injury without a showing of physical injury.

Others are a limitation on the award of attorneys’ fees, allowing a court to order the loss of good-time credits as a sanction for lawsuits filed for malicious or harassing purposes, and altering the manner in which injunctions can be issued and maintained.

The subject of this article is the requirement, in [42 U.S.C. Sec. 1997e](#) of the PLRA, that prisoners fully exhaust available administrative remedies prior to filing a lawsuit concerning their complaints. The statute states:

“No action shall be brought with respect to prison conditions under [[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.”

Those few words have been the subject of no less than four major U.S. Supreme Court decisions interpreting their meaning, as well as of hundreds of decisions by the lower federal appeals and trial courts. A handbook advising prisoners on how to sue over prison conditions states that “More prisoners lose their cases because of failure to exhaust administrative remedies—that is, failure to pursue all available administrative remedies to the end—than from any other part of the PLRA.” A Jailhouse Lawyer’s Manual, Chapter 14: “[The Prison Litigation Reform Act](#),” page 28, Columbia Human Rights Law Review (8th Edition 2009).

The purpose of this two-part article is to briefly review the major rulings of the courts as to the meaning and interpretation of the exhaustion of remedies requirements of the statute. Towards the end of Part Two, there is a series of recommendations concerning how correctional agencies can take steps to obtain the maximum benefit possible from the exhaustion of remedies provision of the law. A listing of some relevant resources appears at the end of Part One, and a listing of relevant references at the end of Part Two.

❖ **Exhaustion Required Regardless of Remedy Sought**

Some courts initially interpreted the exhaustion of administrative remedies provision of the PLRA as not applying in cases where prisoners were seeking only money damages and such a remedy was not obtainable through the administrative grievance process. In

[Booth v. Churner](#), #99-1964, 532 U.S. 731 (2001), the U.S. Supreme Court unanimously rejected that approach.

The plaintiff was a Pennsylvania state prison inmate claiming that corrections officers violated his Eighth Amendment right to be free from cruel and unusual punishment by assaulting him, using excessive force against him, and denying him medical attention to treat ensuing injuries.

He sought injunctive relief and money damages. At the time, the state provided an administrative grievance and appeals system, which addressed his complaints but had no provision for recovery of money damages. Before suing, he filed an administrative grievance, but failed to appeal for administrative review after the prison denied relief.

The U.S. Supreme Court upheld the dismissal of his lawsuit for failing to fully exhaust his available administrative remedies. It reasoned that a prisoner seeking only money damages must complete any prison administrative process capable of addressing the inmate's complaint and providing some form of relief, even if the process does not provide for money damages.

Prisoners would otherwise have a strong inducement to skip the administrative process by simply limiting the relief they sought to money damages not available through a grievance process.

❖ Exhaustion Required Even in Cases Involving Single Incidents

Next, in [Porter v. Nussle](#), #00-853, 534 U.S. 516 (2002), the U.S. Supreme Court resolved a conflict among the U.S. appeals courts concerning whether or not the “exhaustion of remedies” requirement applies in the context of a prisoner’s lawsuit over a single incident, such as an alleged assault by a correctional officer, as opposed to a more general “condition,” such as overcrowding.

A unanimous Court ruled that the exhaustion requirement applies to all inmate suits about prison life.

At issue was the meaning of the phrase “prison conditions” in the statute. As enacted by Congress, the statute mandates that a prisoner must exhaust available administrative remedies, such as an internal prison grievance procedure, before pursuing a lawsuit under 42 U.S.C. Sec. 1983, or any other federal law, “with respect to prison conditions.” In the case reviewed, a state prisoner in Connecticut brought a lawsuit in federal court against the state Department of Correction asserting that corrections officers had subjected him to a sustained pattern of harassment and intimidation and had singled him

out for a severe beating in violation of the Eighth Amendment prohibition on cruel and unusual punishment.

The U.S. Court of Appeals for the Second Circuit overturned the trial's court's dismissal of the lawsuit based on the plaintiff inmate's failure to exhaust available administrative remedies before bringing suit. [Nussle v. Willette](#), #99-0387, 224 F.3d 95 (2nd Cir. 2000). The appeals court reasoned that the statutory requirement covered only conditions which affected prisoners generally, rather than "single incidents" that affect only particular prisoners, such as the alleged use of excessive force.

Rejecting this, the U.S. Supreme Court held that the PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or "some other wrong." Accordingly, exhaustion of remedies is "now mandatory" for prisoner plaintiffs, and the trial court does not have "discretion" to decide which cases it should apply to.

The intent of Congress in passing the statute, the Court reasoned, was to reduce the quantity and improve the quality of prisoner suits, and afford correctional officials an opportunity to address complaints internally before allowing the initiation of a federal lawsuit.

In some instances, corrective action taken in response to an internal grievance may improve prison administration and "satisfy the inmate," eliminating the need for litigation. Additionally, in the process of review of prisoner grievances, frivolous cases may be filtered out. And, for cases which ultimately result in lawsuits, the existence of an administrative record can clarify the issues in the case and "facilitate adjudication."

The Court rejected the plaintiff's argument, based on the prior cases of [Hudson v. McMillian](#), #90-6531, 503 U.S. 1 (1992) and [Farmer v. Brennan](#), #92-7247, 511 U.S. 825 (1994) that there was a distinction that should be applied in the exhaustion requirement between excessive force claims from "conditions of confinement" claims.

While those earlier cases did draw that distinction, the Court pointed out that they did so "in the context of proof requirements," focusing on what injury a prisoner plaintiff must allege and show, and what mental state on the part of the defendants the plaintiff must plead and prove. What proof is required for a claim once the case is in court, is different from the question of whether resort to a prison grievance process "must precede resort to a court."

The Court stated that it was possible that Congress inserted the phrase "prison conditions" in the exhaustion requirement in the statute simply to make it clear that the requirement does not apply to "pre-incarceration claims," such as a prisoner's civil rights lawsuit against an arresting officer.

The Court also reasoned that the distinction that some courts made between excessive force claims and “exhaustion-mandatory” frivolous claims was “untenable,” since excessive force claims can also be frivolous and the exhaustion requirements serve other purposes beyond merely weeding out the frivolous allegations.

The Court also noted that, in the prison environment, a specific incident may be “symptomatic of a systemic problem,” rather than being an aberration. While the plaintiff prisoner argued that his case could be placed in the “isolated episode” category, he could just as easily “urge” that his complaint describes a “pattern or practice of harassment climaxing in the alleged beating.”

The Court found it “unlikely” that Congress, in including the exhaustion requirement in the PLRA, meant to “leave the need to exhaust” to the plaintiff’s “option” in terms of how the case was argued.

The Court also found that its clarification that the exhaustion requirement would apply to all prisoner cases would result in less complex litigation, avoiding “bifurcated proceedings” in which a prisoner sues both the corrections officer alleged to have used excessive force, arguing that this was a “specific incident,” and the supervisor who allegedly failed to adequately monitor those in his charge, which might be seen as an indication of a more systemic “condition.”

❖ Prisoners Must Comply With Procedural Rules for Grievances

In [*Woodford v. Ngo*](#), #05-416, 548 U.S. 81 (2006), the U.S. Supreme Court ruled that prisoners are required to properly exhaust available administrative remedies for their grievances before pursuing federal lawsuits over prison conditions, including fully complying with procedural rules, such as deadlines for grievance filing.

In this case, a California prisoner filed a grievance with state prison officials about his conditions of confinement, specifically concerning restrictions placed on his participation in “special programs,” including religious activities, while he was in administrative segregation for allegedly engaging in “inappropriate activity” in the prison chapel. His grievance was rejected by state correctional officials because it was not filed within 15 working days of the action being challenged, as required under state law, but rather six months later.

The prisoner then filed a civil rights lawsuit in federal court. The U.S. Supreme Court rejected the argument that a prisoner can satisfy the PLRA’s exhaustion requirement by filing an “untimely or otherwise procedurally defective” administrative grievance or appeal. It held, with two Justices dissenting, that compliance with the PLRA statute

requires “proper exhaustion” of the administrative remedies made available by prison authorities.

It agreed with the prison officials in the case that a prisoner is required, before pursuing his federal lawsuit, to complete the administrative review process in compliance with applicable procedure rules, including deadlines. It rejected the argument that a prisoner can simply file suit once administrative grievance procedures and appeals are no longer available to himself or herself.

This, the Court’s majority stated, provides prisoners an effective incentive to fully use prison grievance procedures, which can also allow prisons an opportunity to correct their own errors without litigation, which was one of the goals of Congress in passing the PLRA. This also helps ensure that the lawsuits which are ultimately filed in federal court are of higher quality, and creates an administrative record which is helpful to the court.

The other interpretation, urged by the plaintiff prisoner, would, the Court reasoned, make the PLRA’s requirement of exhaustion of remedies ineffective.

The Court believed that any other interpretation would allow prisoners to deliberately bypass the administrative grievance process by ignoring or violating procedural rules without any penalty for doing so.

❖ Resources

The following are some useful resources related to the subject of this article.

- A Jailhouse Lawyer’s Manual, Chapter 14: “[The Prison Litigation Reform Act](#),” Columbia Human Rights Law Review (8th Edition 2009).
- City of New York, Department of Corrections, [Directive 3375R-A, Inmate Grievance Resolution Program](#) (March 13, 2008).
- [Prison Litigation Reform Act: Exhaustion of Remedies](#). Summaries of cases reported in AELE publications.
- [Prison Litigation Reform Act of 1996](#). Summaries of cases reported in AELE publications.

❖ Prior Relevant Monthly Law Journal Articles

- [Retaliation Against Prisoners for Protected First Amendment Expression](#), 2010 (3) AELE Mo. L. J. 301.

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