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Prisoner Lawsuits Concerning Specific Conditions of Confinement

Part One (December)
- **Introduction**
- **Bugs and Vermin**
- **Cleaning Supplies**
- **Dampness**
- **Constant Illumination**

Part Two (Last Month)
- **Sanitary Conditions – General**
- **Sanitary Conditions: Showers**
- **Sanitary Conditions - Toilets and Toilet Paper**
- **Sleeping Accommodations and Celling**

Part Three (This Month)
- **Temperature: Hot or Cold**
- **Ventilation**
- **Water: Cleaning, Drinking, and Bathing**
- **Resources and References**

This is part 3 of a three-part article. To read part 1, click here, and to read part 2, click here.

❖ Temperature: Hot or Cold

Extremes of temperature in cells, whether hot or cold, have been a frequent subject of prisoner and detainee lawsuits. In *Yates v. Collier*, #16-20505, 868 F.3d 354

(5th Cir. 2017), for instance, prisoners who had disabilities making them particularly susceptible to heat and who claimed that correctional officials failed to reasonably accommodate their disabilities that impacted their ability to withstand extreme heat sued, asserted claims under the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act.

A federal appeals court, upholding class certification, found no error in the trial court's ruling that a facility's heat mitigation measures were not effective to bring the risk of serious harm below the constitutional baseline for the plaintiff prisoners. Class certification was appropriate because the same acts were the source of injury for all inmates as they were all subjected to the same lack of air-conditioning, had the same available heat-mitigation measures, and were all harmed by exposure to excessive heat and they identified specific injunctive relief of maintaining a heat index of 88 degrees or lower.

In *Graves v. Arpaio*, #08-17601, 623 F.3d 1043 (9th Cir. 2010), a federal appeals court ruled that a trial court did not "clearly err" in finding that air temperatures above 85 degrees Fahrenheit "greatly increased" the risk of prisoners who took psychotropic medications suffering from heat-related illnesses.

Knowledge of unreasonable heat or cold is an important factor for courts to consider. In *Haywood v. Hathaway*, #12-1678, 842 F.3d 1026 (7th Cir. 2016), a trial court erred in granting a warden summary judgment in a prisoner's lawsuit alleging that his conditions of confinement in disciplinary segregation violated the Eighth Amendment.

There was evidence that the warden had actual knowledge of unusually harsh weather conditions and that the windows in the prisoner's cell would not close, having himself toured the segregation unit. The warden's "plainly inappropriate" response to the inmate's grievance and to the extreme cold faced by him allowed an inference that he was deliberately indifferent to the plaintiff's suffering.

In *Ball v. LeBlanc*, #14-30067, 792 F.3d 584 (5th Cir. 2015), death row inmates at a new prison that has no air conditioning claimed that the heat they were exposed to during the summer violated their Eighth Amendment rights because of their pre-existing medical conditions and disabilities, including hypertension, obesity, diabetes, depression, and high cholesterol. They also claimed that this constituted

disability discrimination under the Americans with Disabilities Act (ADA), 42 U.S.C. 12132, and the Rehabilitation Act (RA), 29 U.S.C. 794.

A federal appeals court upheld a trial court finding of deliberate indifference constituting an Eighth Amendment violation, as the heat put the plaintiffs at substantial risk of serious harm, but found that an injunction issued requiring the installation of air conditioning throughout death row was overbroad under prior precedent and the Prison Litigation Reform Act, 18 U.S.C. 3626, so that further proceedings were required. The appeals court upheld the rejection of the disability discrimination claims, however, as the prisoners failed to present evidence to prove that they were disabled.

Also see *Walker v. Schult*, #12-1806, 717 F.3d 119 (2nd Cir. 2013), in which a prisoner who served almost 28 months in a six-man cell claimed that conditions there constituted cruel and unusual punishment in violation of the Eighth Amendment. His claims were plausible that he was deprived of the minimal civilized measure of life's necessities and subjected him to unreasonable health and safety risks because of stifling heat in summer and freezing cold in winter, among other things. Claims against some defendants were rejected, but allowed to proceed against others, with qualified immunity issues to be resolved after further facts were determined.

Deliberate efforts to impose unreasonable temperatures, if proven, can lead to damages, but in *Bibbs v. Early*, #09-10557, 418 Fed. Appx. 362, 2011 U.S. App. Lexis 5767 (Unpub. 5th Cir.), a federal appeals court upheld a jury determination that the plaintiff did not prove his claim that correctional officers retaliated against him for filing grievances by activating a "purge fan" that caused the temperature in his cell to drop below freezing for approximately four hours for three mornings in a row.

To be viable, a claim must truly amount to extremes of heat or cold. In *Strope v. McKune*, #09-3283, 382 Fed. Appx. 705, 2010 U.S. App. Lexis 11956 (Unpub. 10th Cir.), a Kansas prisoner claimed that prison heat was not turned on during a cold period in late October and early November. A federal appeals court, while finding that the average temperatures during that time period were lower than the climate data submitted by prison officials suggested, ruled that the temperatures were not severe enough to make the alleged lack of heat an Eighth Amendment

violation. There was evidence that an extra blanket was issued to prisoners and no indication that prisoners were unable to wear enough clothes to stay warm.

Similarly, in a prisoner's lawsuit contending that he was subjected to unreasonable cold and hot temperatures while confined, his claims regarding the cold were too "vague" to show a denial of the "minimal civilized measure of life's necessities." As for the heat, while the prisoner claimed that the temperature in the facility was sometimes "uncomfortably" hot, he did not claim that this caused him any heat-related injuries. *Johnson v. Tex. Board of Criminal Justice*, #07-20396, 281 Fed. Appx. 319, 2008 U.S. App. Lexis 12056 (Unpub. 5th Cir.).

On the other hand, in *White v. Monohan*, #08-2567, 326 Fed. Appx. 385, 2009 U.S. App. Lexis 8205 (Unpub. 7th Cir.), a civilly committed person sufficiently alleged that conditions in the facility where he was confined were inhumane to proceed with his federal civil rights case. Specifically, among other things, he alleged cell temperatures reaching as high as 110 degrees, causing him to vomit blood.

❖ Ventilation

Poor ventilation, especially when combined with heat, can lead to serious injuries or even death. In *Brock v. Warren Co., Tenn.*, #Civ.-4-87-057, 713 F.Supp. 238 (E.D. Tenn. 1989), the family of a prisoner who died from heat prostration because of inadequate ventilation in a jail was awarded $100,000. The sheriff also held liable for $10,000 in punitive damages.

There are objective standards for adequate ventilation. In *Green v. Secretary Depart. of Corrections*, #05-16807, 212 Fed. Appx. 869, 2006 U.S. App. Lexis 32062 (Unpub. 11th Cir.), the failure of Florida correctional officials to provide air conditioning in a facility did not create conditions sufficiently severe to objectively violate the plaintiff prisoner's Eighth Amendment rights. The court found that ventilation and air circulation at the prison exceeded national standards, and that extra fans were provided during very hot weather. Further, prisoners had access to water and medical attention when needed.

Contaminated ventilation, air containing hazardous substances, can also be a problem. In *Board v. Farnham*, #03-2628, 394 F.3d 469 (7th Cir. 2005), pre-trial detainees who asserted that they were forced to breathe air filled with fiberglass

while in a county jail adequately stated a claim for deliberate indifference to their health or safety against the county sheriff.

Prisoners alleging inadequate ventilation must, of course, comply with the requirements of the Prison Litigation Reform Act for lawsuits over conditions of confinement. But an interesting case, *Figel v. Bouchard*, #03-1567, 89 Fed. Appx. 970, 2004 U.S. App. Lexis 2978 (Unpub. 6th Cir. 2004) raises a point about the "exhaustion" of administrative remedies requirement.

In that case, a federal appeals court ruled that a prisoner's federal civil rights lawsuit against correctional officials for allegedly keeping him locked in a cell without adequate heating and ventilation was improperly dismissed for failure to exhaust available administrative remedies. Under the prison's grievance policy, the court noted, these issues were non-grievable since they involved many prisoners. The prison grievance coordinator had advised the plaintiff that his complaints would be rejected as a "group issue."

In response to a letter of complaint the plaintiff sent to the warden about these conditions, a deputy warden sent him a form letter in which he did not indicate that the matter should be grieved. Further, an unrelated grievance that the plaintiff filed concerning ventilation in his cell was rejected as non-grievable.

"Although the record reflects that plaintiff filed grievances that were apparently accepted in error, plaintiff nonetheless cannot be required to exhaust administrative remedies regarding non-grievable issues. Accordingly, plaintiff's complaint was not subject to dismissal for failure to exhaust administrative remedies."

On the other hand, in *Sarro v. Essex County Correctional Facility*, #Civ.A. 98-12204, 84 F. Supp. 2d 175 (D. Mass. 2000), a prisoner's claim that requiring him to keep his cell windows closed for three days and nights, preventing adequate ventilation, was cruel and unusual punishment did not allege a physical injury as required by the Prison Litigation Reform Act provisions barring recovery for mental injuries unaccompanied by physical injuries.

❖ Water: Cleaning, Drinking, and Bathing

A variety of claims have arisen based on the availability or quality of water prisoners have access to for cleaning, drinking, and bathing. In *Hayes v. Scott*, #16-

1262, 854 F.3d 915 (7th Cir. 2017), a sexually violent person detainee claimed that a facility engaged in deliberate indifference to his hydration during a five-day "boil order" imposed by the city which was applicable to the facility. The order directed residents to boil tap water before drinking it. The detainee had a sink in his room and access to a microwave so that he could, in fact, boil his drinking water. He also was given an eight-ounce carton of milk at each meal, but still claimed to have gone without drinkable water for five days, and to have become dizzy and dehydrated as a result.

Upholding summary judgment for the defendants, a federal appeals court pointed out that detainees were notified of the order and how to cope with it (by boiling water in their microwaves). The facility also ordered extra boiled water. The plaintiff did not report feeling dizzy and dehydrated during the boil order, only afterwards. There "can't be deliberate indifference if the indifferent person did not know what harm he was being indifferent to."

A pretrial detainee, who was an Army veteran, was enrolled in a special veterans' program. He worked in the jail laundry and lived in a special veterans' wing, apart from the general population. He sued, claiming among other things that he had to drink filthy water. A federal appeals court reversed the dismissal of his inadequate food and contaminated water claims, but otherwise affirmed. *Smith v. Dart*, #14-1169, 803 F.3d 304 (7th Cir. 2015).

No water at all being supplied led to a huge damage settlement. See *Chong v. United States*, demand notice sent to DEA, claim settled July 30, 2013, (discussed in a Wikipedia article) in which a $4.1 million settlement was reached in a claim by a 25-year-old college student who was apparently abandoned in a windowless Drug Enforcement Administration (DEA) cell for almost five days with no food or water. During those days, the plaintiff claimed, he drank his own urine, attempted to carve a farewell message to his mother in his arm with a shard of broken glass, and had hallucinations that made him believe that DEA agents were sending gases through vents to try to poison him. When finally discovered, he was suffering from severe dehydration, kidney failure, 15 pounds of weight loss, a lung punctured by swallowed glass, and post-traumatic stress disorder. Following the incident, the DEA adopted new national detention standards mandating daily inspections of cells and in cell cameras.

In *White v. Monohan*, #08-2567, 326 Fed. Appx. 385, 2009 U.S. App. Lexis 8205 (Unpub. 7th Cir). The court ruled that a civilly committed person sufficiently alleged that conditions in the facility where he was confined were inhumane to proceed with his federal civil rights case. Specifically, he alleged that staff members told him not to drink the facility's water where he was confined, as it was poisonous, and, unlike water provided to the general population, did not meet Environmental Protection Agency standards.

On the other hand, in *Brown v. Williams*, #Civ. 03-426, 399 F. Supp. 2d 558 (D. Del. 2005), an inmate failed to prove that he was exposed to unreasonably high levels of contaminated water in his cell. While the water was allegedly discolored, and the prisoner claimed that he fainted after he drank water there, a sample of the water independently tested showed that it "met or exceeded" required health standards.

Some restrictions on ready access to water may be imposed on the basis of prisoner misconduct in appropriate circumstances, but they still must have access to adequate water. This is illustrated by *Beckford v. Portuondo*, #98-CV-350,151 F. Supp. 2d 204 (N.D.N.Y. 2001), ruling that prison officials did not impose cruel and unusual punishment on a prisoner, in violation of his Eighth Amendment rights, by restricting his rights to in-cell water for six days as a punishment after he flooded his cell, when he was allowed access to water elsewhere at least twice per officer shift.

❖ Resources

- Commission on Safety and Abuse in America's Prisons.
- Prison & Jail Conditions: General. AELE Civil Case Summaries.
- Prison & Jail Conditions: Asbestos. AELE Civil Case Summaries.
- Prison & Jail Construction and Closing Issues. AELE Civil Case Summaries.
- Resources on Prison and Jail Conditions.

❖ **Prior Relevant Monthly Law Journal Articles**

- Prison Litigation Reform Act: Exhaustion of Remedies - Part One, 2011 (4) AELE Mo. L. J. 301.
- Prison Litigation Reform Act: Exhaustion of Remedies - Part Two, 2011 (5) AELE Mo. L. J. 301.
- Recovery of Mental/Emotional Distress Damages Under the Prison Litigation Reform Act. 2018 (4) AELE Mo. L. J. 301.
- Prisoner Lawsuits Concerning Specific Conditions of Confinement - Part 1 of 3. 2018 (12) AELE Mo. L. J. 301.
- Prisoner Lawsuits Concerning Specific Conditions of Confinement - Part 2 of 3. 2019 (1) AELE Mo. L. J. 301.

❖ **References:** (*Chronological*)

1. Trends in Prisoner Litigation, as the PLRA Enters Adulthood, by Margo Schlanger, UC Irvine L. Rev. 5, no. 1 (2015): 153-79.
2. Do Harsher Prison Conditions Reduce Recidivism? A Discontinuity-based Approach, by M. Keith Chen and Jesse M. Shapiro, (April 16, 2007).
3. The Prison Conditions Cases and the Bureaucratization of American Corrections: Influences, Impacts and Implications by Malcolm M. Feeley and Van Swearingen, 24 Pace Law Review 433 (2004).
4. Challenging the Conditions of Prisons and Jails, a report on Section 1983 Litigation by Roger A. Hanson and Henry W. K. Daley, Bureau of Justice Statistics (December 1994).
5. Prison Conditions: A Unconstitutional Roadblock to Rehabilitation, by Richard G. Singer, 20 Catholic University Law Review Issue 3, Article 3, 365 (Spring 1971).

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- The law sometimes differs between federal circuits, between states, and sometimes between appellate districts in the same state. AELE Law Journal articles should not be considered as "legal advice." Lawyers often disagree as to the meaning of a case or its application to a set of facts.

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