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Alternative Dispute Resolution

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Stemming the Tide of Inmate Litigation: Exhaustion of Inmate Grievance Procedures

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Argument: Before a prisoner files an excessive force suit for money damages in federal court, the prisoner must first exhaust all administrative grievance procedures "as are available" within the prison system, regardless of whether the administrative grievance procedure affords the prisoner the monetary relief the prisoner seeks.

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I. Introduction

An administrative agency is a governmental body that is charged with the responsibility of administering and implementing legislation in a particular area of law where such administration is practicable.[1] Common types of administrative agencies are workers' compensation commissions, tax commissions, and public service commissions.[2] But administrative agencies may also bear the name "board," "department," or "division."[3]

Typically, administrative agencies carry out the terms of the law that originally created the agency, as well as to make regulations for the conduct of business before the agency.[4] These agencies usually have the authority to hold hearings, to make rulings or determinations, to dispose of matters before it, or to award non-judicial remedies. Such hearings usually take place in an administrative tribunal, rather than a judicial tribunal.

With respect to this distinction, administrative agencies have a unique relationship with the judiciary.[5] As a general rule, when individuals are subject to the authority of an administrative agency, they are required to grieve their claims within the appropriate agency, before they are permitted to file suit in court. ""Exhausting" or pursuing thoroughly a claim within an administrative process is a concept known as "the exhaustion of remedies" doctrine.[6] For instance, in Hyde v. South Carolina Department of Mental Health,[7] the South Carolina Supreme Court held that an employee seeking damages under the state Whistle-blower statute must first exhaust the administrative process, before filing suit in court. This grievance procedure was available under the State Employee Grievance Procedure Act. In so holding, the Hyde court stated that the employee seeking access to the courts must first "pursue the administrative remedy or be precluded from relief in the courts."[8]

The exhaustion of remedies doctrine has several important functions. The doctrine allows factual issues to be flushed out and determined by agencies that specialize in a particular area: "[T]hreshold questions within the peculiar expertise of an administrative agency are appropriately routed to the agency."[9] Second, the deference that the judiciary shows to the doctrine fosters a more uniform approach to the range of issues within an agency's jurisdiction.[10] Third, the exhaustion of remedies doctrine protects administrative agencies by facilitating more efficient action: "An agency can streamline its operations by limiting the appeal and review of an administrative decision."[11] Fourth, the doctrine allows the agency to correct its own errors and to keep down costs.[12] Lastly, the doctrine of exhaustion promotes judicial efficiency and protects the autonomy of administrative agencies.[13]

The doctrine of exhaustion, however, is not absolute. Sometimes, federal courts are reluctant to require exhaustion of administrative remedies. In these cases, courts will balance the interest of the individual against "countervailing institutional interests favoring exhaustion."[14]

This paradox is exemplified in the following two, but similar instances, both of which concern violations of an individual's constitutionally protected civil rights. In the first case, exhaustion of administrative remedies is usually not required when private citizens bring suits against state officers under section 1983 of Title 42 of the United States Code, a statute that affords individuals the right to bring suit if they believe their civil rights have been violated.[15] However, in the second instance, when prisoners make similar allegations against prison officials, Congress requires that such prisoners exhaust all administrative grievance remedies "as are available," before such prisoners bring suit against prison officials in federal courts.[16] This requirement is set forth under 42 U.S.C.A. § 1997e (see Part IV "Exhaustion of Remedies").

II. A Model Grievance Procedure: The Commonwealth of Pennsylvania

Many governmental and administrative agencies have alternative-dispute-resolution mechanisms in place to resolve disputes and grievances. The nation's prisons are no exception. In 1996, Congress passed the Prison Litigation Reform Act, 42 U.S.C.A. § 1997e, which requires prisoners to exhaust all administrative grievance procedures before filing suit in court.

Congress put this mechanism in place to help reduce litigation; to reduce the incidence of frivolous lawsuits; to help "reduce the intervention of federal courts into the management of the nation's prison systems"; and to help better frame the legal issue at hand before the matter is submitted to the judiciary.[17] A grievance procedure can be as complex or as simple as an agency deems appropriate, but it is recommended that grievance procedures be crafted to facilitate a "smooth" resolution of the dispute or grievance.[18]

Congress intended for states to adopt voluntarily inmate grievance procedures that comply with section 1997e.[19] But many states have not yet adopted substantially complying inmate grievance procedures. Many states feel that obtaining federal approval is either too burdensome or an unrealistic means of resolving grievances within prison walls.[20]

One state that has adopted a compliant, seemingly effective inmate grievance procedure is Pennsylvania. The Commonwealth of Pennsylvania Department of Corrections Consolidated Inmate Grievance System consists of a three-part administrative process.[21]

A. Step One

Under the Commonwealth of Pennsylvania Department of Corrections Consolidated Inmate Grievance System, a prisoner must submit his grievance in writing within fifteen days after the events upon which his or her claim is based. The prisoner must submit this writing to the Facility/Regional Grievance Coordinator.[22] Extensions of this time period may be granted for good cause.[23] Once submitted, the grievance is investigated and persons having knowledge of the subject matter may be interviewed. If the grievant requests a personal interview, the policy provides that one "shall" be granted.[24] Within ten working days of the receipt of the grievance by the Grievance Officer, the policy provides that "the grievant shall be provided a written response to the grievance, summarizing the conclusions and any action taken or recommended to resolve the issues raised by the grievance.

B. Step Two

Within five days of the receipt of this initial determination, the grievant may appeal the determination to the appropriate intermediate review personnel.[25] The intermediate review personnel have ten working days after the receipt of the appeal to notify the grievant of their decision.[26] "This decision may consist of approval, disapproval, modification, reversal, or remand or reassignment for further fact finding, and must include a brief statement of the reasons for the decision."[27]

C. Step Three

With respect to the third and final step, "any inmate who is dissatisfied with the disposition of an Appeal from an Initial Review decision, may, within seven (7) days of receiving the decision, appeal [to the Central Office Review Committee ["CORC"] … for final review."[28] Absent good cause, final review is not permitted if a grievant has not complied with the procedures governing Initial Review and Appeal from Initial Review.[29] On final review, the CORC (1) has the power to require additional investigation before it makes its determination[30]; (2) may consider matters related to the initial grievance[31]; and (3) may, in its final decision, approve, disapprove, modify, reverse, or remand for further fact finding.[32]

The CORC must issue its decision within twenty-one days after receipt of an appeal, and it must include a brief statement of the reasons for the decision it reaches.[33]

III. Deprivation of Civil Rights

The United States Constitution sets forth numerous civil rights and liberties, the deprivation from which individuals are legally protected. Since the ratification of the Constitution, the United States Congress has passed many laws, which seek not only to enrich the scope and breadth of civil rights and liberties, but also to knit a fundamental fabric of protection for individuals against such deprivation. For instance, in 1871, Congress passed the Civil Rights Act of 1871, 42 U.S.C.A. § 1983, with the express purpose of enforcing provisions of the Fourteenth Amendment of the Constitution.[34]

42. U.S.C.A. § 1983 provides,

Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizens of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress … .[35]

Legal scholars maintain that this section resulted from the need to override the corrupting influence that the Klu Klux Klan and its sympathizers had in governmental and law-enforcement agencies in the southern states.[36] In the mid- to late-1800s, the Klu Klux Klan had formed a campaign of violence and deception in the South to deny civil rights to citizens, particularly African-American citizens. Local governments were unable or unwilling to exercise the necessary corrective action. Lynchings, whippings, and conspiracies went unpunished with immunity given to the participants.[37]

In enacting section 1983, Congress sought to use the power of civil enforcement as a means of providing protection though the federal courts. Yet the language of section 1983 has been subjected to much interpretation. In 1941, the Classic court construed “under color of” to mean the following: “Misuse of power – possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of the state law – is an action taken ‘under color of’ state law.”[38]

The meaning of the Act, however, broadened when the United States Supreme Court decided the cases of Screws v. United States,[39] Williams v. United States,[40] and

Monroe v. Pape.[41]

Now, section 1983 establishes a firm right to hold liable any person who acts under the color of authority and deprives another person of a civil right or liberty. Section 1983 does not, however, create a mechanism to hold liable private individuals who might deprive another private individual of constitutionally protected civil rights. The main purpose of § 1983 is to deter state actors from using their badges of authority to deprive individuals of federally guaranteed rights and to provide relief to victims if such deterrence fails.[42] By design, the statute interposed the federal government between the state and the claimant and established the federal government as the primary protector and guarantor of the civil rights enforcement powers of state courts.[43]

Although not itself a source of substantive rights, this section merely establishes a federal cause of action for damages against state and local officials who have caused individuals to suffer constitutional deprivation of rights.[44] In simple terms, it is a method for vindicating the deprivation of federal rights elsewhere conferred on United States citizens.[45] Interestingly, the United States Supreme Court made § 1983 claims subject to state statute of limitations governing personal injuries.[46]

The scope and breadth of section 1983 is pervasive and far-reaching. Thus, it is no surprise that section 1983 extends to prisoners who believe they have been deprived of constitutionally protected rights. Under this section, a prisoner may seek redress when a person acting under "the color of" state law deprives the prisoner of rights guaranteed by the Constitution or other federal laws. In such cases, the violating "person" is usually a prison official.[47] It is, however, important to distinguish between prisoners seeking redress for a deprivation of civil rights and prisoners who challenge the "fact or length of [their] custody," the latter of which must be challenged through a writ of habeas corpus.[48]

IV. Exhaustion of Administrative Remedies

Prisoner suits under § 1983 have become a significant means to attack repugnant and abusive prison conditions, and, as a result, there has been an emergence of section 1983 suits. This rise in activity is due, in part, to the fact that many states have not provided an effective forum for prisoners to air their

complaints regarding prison conditions. It is also due to the simple, one paragraph decision in the 1964 case of Cooper v. Pate.[49]

In Cooper, a Muslim prisoner filed a complaint in which he complained that prison officials would not allow him to purchase religious materials and publications. He also alleged that the prison officials prohibited him from enjoying the privileges of his religion. The district court dismissed the case, and the Seventh Circuit Court of Appeals affirmed the dismissal.

The United States Supreme Court, however, reversed, stating in pertinent part, "[T]aking as true the allegations of the complaint, as they must be on a motion to dismiss, the complaint stated a cause of action and it was error to dismiss it."[50] In extending the standards of motions to dismiss to inmate cases, Cooper was, in effect, the proverbial pebble tossed into the pond, and in its wake emerged a significant rise in civil rights actions. In 1978, state prisoners filed 2030 civil rights actions in federal court; in 1979 there were 11,195; and in 1985 there were 19,448.[51] In effect, Cooper permitted prisoners to file complaints on a wide range of grounds that often do not involve constitutionally cognizable claims.

Since Cooper grievances relating to conditions of confinement, food, privacy, heat, mail, hair length, work details, segregation from the prison population, religious practices, and rehabilitation have all become issues of federal litigation under section 1983.[52] Moreover, as the court in Preiser v. Rodriquez notes, "For state prisoners, eating, sleeping, dressing, washing, working and playing are all done under the watchful eye of the State."[53] The Preiser court suggests that with such a high level of State involvement, it is reasonable to expect a high number of claims. The Preiser court analogizes the veritable likelihood of inmate cases arising to the likelihood of cases arising between private citizens and their landlord, employer, tailor, neighbor, or banker.[54]

To counterbalance the skyrocketing rate of inmate cases, Congress amended the "Civil Rights of Institutionalized Persons Act," 42 U.S.C.A. § 1997e.[55] Congress passed this legislation intending to "make an important contribution toward reducing court backlog in many districts.[56] Section 1997e, as modified, is now known as the Prison Litigation Reform Act ("PLRA"). Section 1997e(a) provides,

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.[57]

By passing section 1997e(a), Congress attempted to reduce the degree of litigation by adopting a qualified exhaustion requirement for state prisoners, who file suit based on § 1983 or any other federal law, and by compelling prisoners to exhaust a state prison grievance process first, provided the grievance process complies with certain federal guidelines.

Section 1997e provides a significant exception to the non-exhaustion rules that ordinarily apply to section 1983 cases. This is because section 1997e was adopted with the hope that prison officials would resolve inmate grievances through institutional procedures that are fair and attractive to inmates and that provide a more expeditious means to resolving legitimate grievances.[58] Furthermore, the exhaustion of administrative remedies requirement helps (1) to avoid premature interruption of the administrative process; (2) to let the agency develop the necessary factual background upon which the decisions should be based; (3) to permit the agency to exercise its discretion or apply its expertise; (4) to improve the efficiency of the administrative process; (5) to conserve scarce judicial resources, since the complaining party may be successful in vindicating the rights in the administrative process and the courts may never have to intervene; (6) to give the agency a chance to discover and correct its own errors; and (7) to avoid the possibility that "frequent and deliberate flouting of the administrative processes could weaken the effectiveness of an agency by encouraging its people to ignore its procedures.[59]

Under section 1997e, courts are permitted to dismiss any action brought with respect to "prison conditions" under section 1983 if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.[60] The court may also dismiss such claims that have not first gone through the administrative grievance process or without first requiring the exhaustion of administrative remedies.[61]

Exhaustion of administrative remedies is a prerequisite for a prisoner to filing an action in federal court. Even though a prisoner may make "some attempts" to go through the prison's grievance system, courts will dismiss a prisoner's suit if the prisoner files suit before the administrative process is complete.[62] That is, exhaustion of administrative remedies is an absolute precondition to filing an action in federal court.[63] Or is it?

V. "Prison Conditions" and Excessive Force

When a prisoner brings an action under section 1983 with respect to prison conditions, he or she is essentially maintaining that there has been a violation of his or her constitutionally guaranteed civil rights. When a prisoner brings a complaint about a "prison condition," he or she is essentially asserting a deprivation of a civil right. Such complaints have included claims alleging a lack of educational opportunity,[64] claims alleging a denial of medical treatment,[65] claims of being allegedly subjected to "ribald comments" during strip searches,[66] claims of being spat upon,[67] claims of being subjected to racial epithets,[68] claims of being subject to "cruel and usual punishment" for being exposed to second-hand smoke,[69] and claims of excessive force.[70]

When prisoners complain of prison conditions, they are required to exhaust all administrative remedies, before they may file suit in federal court. A point of controversy, however, has emerged as to whether claims of "excessive force" fall within the meaning of "prison conditions," and are thus subject to the exhaustion requirement of section 1997e.

Two cases illustrate excessive force. In Freeman v. Francis,[71] the plaintiff prisoner alleged that a prison officer told him to "shut up" and then assaulted him when he asked a nurse, who was making her rounds, for some gauze for his nose. Apparently, the prisoner had been recovering from "nasal surgery."[72] In Booth v. Churner,[73] prison officials, on several occasions, allegedly punched the plaintiff in his face, threw cleaning materials in his face, shoved him into a shelf, and tightened and twisted the plaintiff's handcuffs in such a manner so as to injure the plaintiff.

In Freeman, Booth, and other cases, the plaintiffs argued that the language of section 1997e (i.e., "no action shall be brought with respect to prison conditions") does not apply to assaults or excessive force claims on prisoners by prison officers.[74] The plaintiffs made this argument for a simple reason: if claims of excessive force were found not to fall within the meaning of "prison conditions," the plaintiffs' claims would not be subject to the exhaustion requirement of § 1983 and would be thus permitted to take their claims directly to court. The Freeman court addressed this argument.

The Freeman court recognized that the phrase "action … with respect to prison conditions" is not defined in § 1997e, but expressed that it is defined in another section of Title 42. Therefore, the Freeman court turned to a well-settled principle: It is generally recognized that when Congress uses the same language in two different places in the same statute "the words are usually read to mean the same thing in both places."[75] Noting that "prison conditions" is also used in section 1997e and 18 U.S.C.A. § 3626(g)(2), and noting further that § 3626(g)(2) and § 1997e were concomitantly amended as part of the same

legislation, the Freeman court turned to the plain meaning of section 3626(g)(2) and its legislative history for guidance. Section 3626(g)(2) provides,

The term “civil action with respect to prison conditions” means any civil proceeding arising under federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison.[76]

In Freeman, the defendants argued that the second part of the disjunctive, qualifying phrase (i.e., “the effects of actions by government officials on the lives of persons confined in prison”) includes acts such as excessive force by a prison guard.[77] The court agreed with the defendants, implicitly noting that this phrase defined, qualified, and clarified the primary phrase “prison conditions.” In short, the Freeman court, as well as other courts, held that “prison conditions,” as used in § 1997e, includes claims of excessive force and are therefore subject to the exhaustion requirement of § 1997e.[78]

Furthermore, the Freeman ruling comports with an apparent judicial trend toward a broader exhaustion requirement. In 1991 – before the passage of the PLRA and section 1997e – the Supreme Court of the United States analyzed a similar piece of legislation in the case of McCarthy v. Bronson.[79] In McCarthy, the Court held that the statutory language of the Magistrate’s Act, 28 U.S.C.A. § 636(b)(1)(B), which read “prisoner petitions challenging conditions of confinement,” includes both “ongoing practices and specific acts of misconduct … .”[80]

Eight years later, in Freeman v. Francis, the court turned to the reasoning of McCarthy when it stated, “A Supreme Court case decided before passage of the [PLRA] holds that the statutory language "prisoner petitions challenging conditions of confinement," includes both ongoing practices and specific acts of misconduct like those alleged here by plaintiff.” The Freeman court therefore held that the term "prison conditions" as used in section 1997e includes claims of excessive force and that the exhaustion requirement of 1997e(a) applies.

As a matter of practicability, to include excessive force claims in the definition of “prison conditions” supports the central purpose and legislative intent of the PLRA. The Act was passed to reduce frivolous lawsuits and to reduce the intervention of federal courts into the management of the nation’s prison systems. A broad requirement to exhaust all administrative remedies, which includes claims of excessive

force, effectuates this purpose and maximizes the benefits of requiring prisoners to use prison grievance procedures before filing suit in federal court.[81]

VI. Prisoner's Obligation

When a state provides a grievance procedure for its prisoners, an inmate who launches a complaint must file a grievance and exhaust all administrative remedies under that procedure before pursuing his claim.[82] Implicit in this requirement is a latent obligation on the prisoner to provide those officials who will "pass upon the grievance" all the relevant information that the prisoner has, including the identity of any officials he thinks might have wronged him.[83]

However, the court in Brown v. Sikes ruled that "a prisoner cannot pass on that which he does not have."[84] The Brown court noted that the exhaustion requirement will not foreclose a prisoner's suit in federal court, which names as defendants prison officials whom the prisoner did not name in his previously filed grievance. The Brown court reasoned that a grievance procedure, which requires a prisoner to provide information he does not have and cannot reasonably obtain, is not a remedy that is "available" to the prisoner.

In Brown, the prisoner was supposed to receive certain "snacks and an athletic supporter," both of which a prison physician allegedly prescribed for the prisoner's hernia.[85] The prisoner, however, never received these items and was uncertain as to who was responsible for failing to provide him with these items.[86] When he filed his grievance, the prisoner failed to name as defendants the warden and the commissioner, because as high-ranking officials, they were in a position to identify the individuals who were supposed to deliver these items to the plaintiff.

At trial, following the grievance procedure, the federal district court dismissed the plaintiff's case against these two defendants, because the plaintiff had not named these defendants in his initial grievance. On appeal, however, the circuit court noted, "[N]aming the warden and commissioner in a grievance simply because they are the top officials in charge of the prison would not have advanced any of the policies underlying the exhaustion requirement. … There is no point in making a prisoner name them in his grievance, unless they were somehow personally involved … ."[87] The circuit court in Brown reversed the district court's dismissal of the prisoner's lawsuit, noting, "The best you can do is the best you can do."[88]

VII. Non-availability of Sought-After Damages: Is Exhaustion Still Required?

It is clear that the requirement to exhaust administrative grievance procedures resulted from an attempt to reduce frivolous claims and appeals by prisoners, a trend that boomed in the 1970s and 1980s. But the process of exhausting such administrative machinery begs one fundamental question: Is there not inherent in the exhaustion requirement the assumption that such administrative machinery, in fact, affords prisoners the ultimate relief they seek?

As to this inquiry, there is currently a split in the circuit courts as to whether claims for monetary damages, which are not available through the grievance procedures, are subject to the exhaustion requirement of section 1997e(a). In other words, must prisoners exhaust an administrative grievance procedure that does not afford sought-after remedies?

In cases where prisoners file claims for monetary damages, some federal courts of appeals have held that § 1997e(a) does not require exhaustion when the administrative process does not award money damages.[89] On the other hand, some federal courts of appeals have concluded that § 1997e(a) requires exhaustion no matter what remedy the prisoner seeks, and no matter what remedies the prison's internal grievance procedure affords.[90] The most recent federal appeals court to take this latter position is Booth v. Churner. The United States Supreme Court granted certiorari in Booth on October 30, 2000. The issue is currently unresolved.

A. Exhaustion Not Required

Some federal courts have ruled that prisoners need not exhaust administrative remedies when they sue for monetary damages, because monetary damages are not "available" under prison grievance procedures.[91] These cases reason that Congress could not have intended to force a prisoner to exhaust administrative remedies with respect to claims for monetary damages when the prison system does not provide relief for monetary damages. In other words, monetary damages are not an "available remedy" within the meaning of section 1997e.[92] "Because no "available" remedy exists, the reasoning goes, requiring the prisoner to file a grievance is an exercise in futility.[93]

In Hollimon v. DeTella, a prisoner complained that he was subjected to a strip search for the purpose of "humiliating him," and not for penological purposes.[94] Specifically, the prisoner complained that he was subjected to "ribald comments" during a strip search, and that, to further humiliate him, he was strip

searched with female guards present.[95] Although a grievance procedure was in place at the Illinois Department of Corrections, Hollimon did not file a grievance because there was no remedy for the relief sought after in his complaint."[96] Hollimon filed suit, seeking monetary relief and an injunction ordering that the "defendants or their agents refrain from committing such practices … ."[97]

The Hollimon court acknowledged that a grievance procedure was available to the plaintiff, but that the procedure did not allow the recovery of monetary damages. The Hollimon court decline to require the plaintiff to exhaust the prison's administrative remedies. In so holding, the court turned to other decisions, which have held that, where a prisoner is pursuing only monetary damages, and the prison grievance system does not provide for monetary relief, the exhaustion requirement of § 1997e(a) does not apply.[98]

Similarly, in Wells v. Payne, the court ruled that, although the Indiana Department of Corrections had implemented a prisoner grievance procedure, the prisoner was not required to exhaust administrative procedures. Mr. Wells had brought suit in federal court, claiming that his Eighth Amendment right to be free from cruel and unusual punishment was violated when a prison captain "beat him while interrogating him about allegedly fraternizing with a female officer."[99] Wells brought suit for money damages. The Wells court reasoned that to require prisoners to present their claims to prison officials where no relief is available would be a useless act, "wasting the time of both prisoners and prison officials."

B. Exhaustion Required

On the other hand, some federal courts disagree and require prisoners to exhaust all administrative prison remedies, regardless of whether the prison system offers the type of remedy the prisoner seeks. The majority's view is that the plain language of section 1997e does not provide for such a qualification.

The statute expressly states that prisoners must exhaust "such administrative remedies as are available."[100] "The most natural reading of this language," the court in Moore v. Co2 Smith noted, "leads to the conclusion that Congress was not asking courts to evaluate the sufficiency of the administrative remedies, but merely intended to require prisoners to utilize the existing administrative remedies, whether or not the grievance procedure will produce the precise remedy that the prisoner seeks … ."[101]

Additionally, if absolute exhaustion were not required, prisoners could easily avoid the exhaustion requirement by simply including a request for monetary damages in their complaints, the result of which

would not serve the PLRA's primary intent to "stem the tide of meritless prisoner cases."[102] Moreover, despite the fact that some, if not many, prisoners assert claims for remedies that are unavailable from the prison grievance systems, several benefits result from forcing prisoners to exhaust administrative procedures: (1) prisons have a substantial interest in encouraging internal resolution of grievances and in preventing the undermining of its authority by unnecessary resort by prisoners to the federal courts;[103] and (2) the federal judiciary itself has an interest in ensuring that the prison has a "first crack" at resolving any dispute, which may equate to "one less case … brought to federal court … ."[104]

Perhaps the Freeman court said it best: "Although it might make sense to excuse exhaustion of the prisoner's complaint where the prison system has a flat rule declining jurisdiction over such cases, it does not make sense to excuse the failure to exhaust when the prison system will hear the case and attempt to correct legitimate complaints,

even though it will not pay damages."[105] Freeman supports the proposition that, by requiring exhaustion of administrative remedies, the prisoner's claim, at the very least, will be flushed out, developed, and correctly stated by the time it is submitted in court.

VIII. Conclusion

United States Supreme Court clearly requires inmates to take their complaints about "prison conditions" through the prison system's grievance process before filing suit in federal court. Claims of excessive force generally fall within the definition of prison conditions. In some instances, prisoners bring claims for monetary damages for being subjected to excessive force, a deprivation of civil rights.

There remains sharp disagreement in the federal courts over the question of whether inmates faced with an administrative process that does not provide monetary relief are nevertheless required to exhaust the administrative process in a predictably futile manner. This specific issue is currently pending before the United States Supreme Court, claims of excessive force notwithstanding.

Based on the legislative history of the Prison Litigation Reform Act, judicial interpretations of the Act, and the overall benefit of procedural efficiency and effectiveness, prisoners should be required to exhaust all administrative remedies, regardless of the relief they seek. They should be required to do so provided their claims fall within the definition and interpretation of "prison conditions" under the Act.

According to the legislative history of the PLRA, the purpose of the Act is to limit the number of federal cases in federal court. It provides that "no action shall be brought with respect to prison conditions," by an inmate in either state or federal prison until "such administrative remedies as are available are exhausted." This Act replaced an earlier law that had required exhaustion of "such plain, speedy, and effective" remedies as are available. It can be reasonably inferred that the deletion of the adjectives "plain," "speedy," and "effective" is dispositive of Congress's general intent to broaden the reach of the Act, to require exhaustion in more instances, and to deflect prisoner suits from federal court.

Furthermore, as the court in Moore held, Congress, in passing the Act, did not intend for courts to evaluate the sufficiency of administrative remedies. The Act makes no mention of remedies, but rather focuses exclusively on the type of claim filed by a prisoner – to wit, "prison conditions."

Lastly, when used in this manner, the administrative grievance process can uncover, illuminate, and define a prisoner's case before it is submitted to the judiciary, much like the process and purpose of discovery in the context of litigation. Although the grievance procedure may not be able to afford the prisoner the remedy he or she seeks, the procedure can flush out issues germane to the prisoner's case, operating as an effective prefix to judicial action. When the prisoner ultimately files his claim in federal court, the plaintiff's case will be better-defined and presented in a judicially intelligible manner. Federal courts can then focus exclusively on the issue at hand, rather than have to sift through the potentially confusing quagmire of a prisoner's undeveloped or ill-presented case, thus arguably permitting federal courts to hear more section 1983 cases than otherwise possible.

Bibliography

Case Law

Alexander v. Hawk, 159 F.3d 1321 (11th Cir. 1998)

Allen v. McCurry, 449 U.S. 90 (1980).

A.N.R. v. Caldwell, 111 F. Supp. 2d 1294 (M.D. Alabama 2000).

Blissett v. Casey, 969 F. Supp. 118, aff'd, 147 F.3d 218, certiorari denied, 119 S. Ct. 2392 (1997).

Booth v. Churner, 206 F.3d 289 (3rd Cir. 2000), certiorari granted, 2000 WL 798208 (Oct. 30, 2000).

Brown v. Sikes, 212 F.3d 1205 (11th Cir. 2000).

Cooper v. Pate, 378 U.S. 546 (1964).

Duchesne v. Sugarman, 566 F.2d 817 (N.Y. 1977).

Freeman v. Francis, 196 F.3d 641 (6th Cir. 1999).

Freeman v. Harris, 196 F.3d 641 (1999).

Garret v. Hawk, 127 F.3d 1263 (10th Cir. 1997).

Helling v. McKinney, 509 U.S. 25 (1993)

Hollimon v. DeTella, 6 F. Supp. 2d 968 (N.D. Illinois 1998).

Irwin v. Quinlan, 791 F. Supp. 301(S.D. Ga. 1992).

Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922 (1982).

Lunsford v. Jumao-As, 155 F.3d 1178 (9th Cir. 1998).

McCarthy v. Bronson, 500 U.S. 136 (1991).

McCarthy v. Madigan, 503 U.S. 140 (1992).

McKart v. United States, 395 U.S. 185 (1969).

McKnight v. Rees, 519 U.S. 1002, aff'd, 521 U.S. 399 (1997).

Miller v. Tanner, 196 F.3d 1190 (11th Cir. 1999).

Moore v. Co2 Smith, 18 F. Supp.2d 1360 (N.D. Georgia 1998).

Monroe v. Pape, 365 U.S. 167 (1961).

Nyhuis v. Reno, 204 F.3d 65 (3rd Cir. 2000).

Powell v. Cook County Jail, 814 F. Supp. 757 (N.D. Ill. 1993).

Preiser v. Rodriguez, 411 U.S. 475 (1973)

Roe v. Office of Adult Probation, 938 F. Supp. 1080 (1996).

Rumbles v. Hill, 182 F.3d 1064 (9th Cir. 1999).

Screws v. United States, 325 U.S. 91 (1945).

Thompson v. Springs Mills, Inc., 576 F. Supp. 651 (D.S.C. 1982).

The Slaughterhouse Cases, 83 U.S. 36 (16 Wall. 1873).
United States v. Classic, 313 U.S. 299 (1941).
Weinberger v. Bentex Pharmaceuticals, Inc., 412 U.S. 645 (1993).
Wells v. Payne, 114 F. Supp. 2d 795 (N.D. Illinois 2000)
Whitley v. Hunt, 158 F.3d 882 (5th Cir. 1998).
Williams v. United States, 341 U.S. 97 (1951).
Wyatt v. Leonard, 193 F.3d 876 (6th Cir. 1999).

Public Documents

Act of Apr. 20, 1871, ch. 22, I, 17 Stat. 13 (codified as amended at 42 U.S.C.A. § 1983 (1982 and 1996).
42 U.S.C.A. 1997e(a) (1996), Civil Rights of Institutionalized Persons Act, Pub. L. No. 96-247 § 7, 94 Stat. 349, 352-53 (referred to commonly as the "Prison Litigation Reform Act of 1996).
42 U.S.C.A. § 1983 (1979) (R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284, as amended Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853).
R.S. § 1979 is from Act April 20, 1871, c.22, § 1, 17 Stat. 13.
S. Rep. No. 415, 96th Cong., 2d Sess. 34
S. Rep. No. 415, 96th Cong., 2d Sess. 15-16.
S.Rep.No. 416, 96th Cong., 2d Sess. 34, reprinted in 1980 U.S. Code Cong. & Ad. News 787, 816

Reference Materials

Black's Law Dictionary, (5th Ed. 1979).

Texts

Elkouri & Elkouri, How Arbitration Works (Washington D.C.: BNA Books, 1997)

Periodicals and Journals

Lay, Donald P. "Exhaustion of Grievance Procedures for State Prisoners Under Section 1997e of the Civil Rights Act," 71 Iowa L. Rev. 935 (1986).
Reese, Kevin W. "Administrative Remedies Must Be Exhausted Absent Circumstances Supporting An Exception to Exhaustion Doctrine" 47 S.C. L. Rev. 17 (1995).

Turner, William Bennet. "When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts," 92 Harv. L. Rev. 610 (1979).

[1] See Black's Law Dictionary, 42 (5th Ed. 1979).

[2] See Black's Law Dictionary, 42 (5th Ed. 1979).

[3] See Black's Law Dictionary, 42 (5th Ed. 1979).

[4] See Black's Law Dictionary, 42 (5th Ed. 1979).

[5] See Kevin W. Reese, "Administrative Remedies Must Be Exhausted Absent Circumstances Supporting An Exception to Exhaustion Doctrine," 47 S.C. L. Rev. 17 (1995).

[6] See Thompson v. Springs Mills, Inc., 576 F. Supp. 651 (D.S.C. 1982).

[7] Hyde v. South Carolina Department of Mental Health, 442 S.E.2d 582 (1994).

[8] Hyde, 442 S.E.2d at 583.

[9] See Weinberger v. Bentex Pharmaceuticals, Inc., 412 U.S. 645, 654 (1993).

[10] See id.

[11] See Kevin W. Reese, "Administrative Remedies Must Be Exhausted Absent Circumstances Supporting An Exception to Exhaustion Doctrine," 47 S.C. L. Rev. 17, 19 (1995).

[12] See id.

[13] See McKart v. United States, 395 U.S. 185, 195 (1969) (holding that complaining parties must resolve their complaint through the administrative process without judicial interference, the result of which will reduce the number of cases heard by federal courts).

[14] See McCarthy, 503 U.S. 140 (1992).

[15] 42 U.S.C.A. § 1983 provides, "Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizens of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress … ."

[16] A Constitutional Tort Claim is one that alleges a "deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C.A. § 1983 (1988).

[17] See e.g., Blissett v. Casey, 969 F. Supp. 118, aff'd, 147 F.3d 218, certiorari denied, 119 S. Ct. 2392 (1997); S. Rep. No. 415, 96th Cong., 2d Sess. 34 (noting that requiring the exhaustion of in-prison grievances should resolve some cases, thereby reducing the total number of cases submitted to the judiciary and helping to "frame the issues in the remaining cases so as to make them ready for expeditious court consideration"); see also, Booth v. Churner, 206 F.3d 289, 294 (3rd Cir. 2000).

[18] Elkouri & Elkouri, How Arbitration Works (Washington D.C.: BNA Books, 1997), 214. Although the referenced material pertains to grievance procedures within the context of labor arbitration, this author believes that the fundamental premise of all grievance procedures is the same: to resolve disputes in an informal manner, thereby reducing the number of cases submitted to litigation.

[19] S. Rep. No. 415, 96th Cong., 2d Sess. 15-16.

[20] See Donald P. Lay, "Exhaustion of Grievance Procedures for State Prisoners Under Section 1997e of the Civil Rights Act," 71 Iowa L. Rev. 935 (1986).

[21] See Booth v. Churner, 206 F.3d 289, 293 n.2 (3rd Cir. 2000).

[22] See Booth v. Churner, 206 F.3d 289, 293 n.2 (3rd Cir. 2000) (referring to the Commonwealth of Pennsylvania Department of Corrections, Consolidated Inmate Grievance Review System, Policy No. DC-ADM 804 §§ VI.A.1, VI.B2 (Oct. 20, 1994).

[23] See id. (referring to §§ VI.B.2).

[24] See id. (referring to §§ VI.B.3).

[25] See id. (referring to §§ VI.C.1., 2).

[26] See id. (referring to §§ VI.C.4.)

[27] Id.

[28] Id. § VI.D.1.

[29] See id. (referring to §§ VI.D.2).

[30] See id. (referring to §§ VI.D.5).

[31] See id. (referring to §§ VI.D.6).

[32] See id. (referring to §§ VI.D.7).

[33] See id. (referring to §§ VI.D.7).

[34] See Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922 (1982).

[35] Act. of Apr. 20, 1871, ch. 22, I, 17 Stat. 1, amended at 42 U.S.C.A. § 1983 (1979) (R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284, as amended Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853) (emphasis added).

[36] See Allen v. McCurry, 449 U.S. 90 (1980).

[37] Robert G. Doumar, "Prisoners' Civil Rights Suits: A Pompous Delusion," 11-Fall Geo. Mason U. L. Rev. 1, 2 (1988).

[38] Classic v. United States, 313 U.S. 299 (1941).

[39] Screws v. United States, 325 U.S. 91 (1945) (holding that, in a case where a sheriff, his deputy, and a policeman were indicted under the Civil Rights Act of 1871 for beating to death an African-American male during and after his arrest, "under the color of law" means "under the pretense" of law, thereby excluding acts of officers in the ambit of their personal pursuits).

[40] Williams v. United States, 341 U.S. 97 (1951) (re-affirming the Classic and Screws interpretations of the Civil Rights Act of 1871 and holding that a detective was acting under color of law by virtue of his card, which designated him as a special police officer, his oath, and his official investigation).

[41] Monroe v. Pape, 365 U.S. 167 (1967) (reversing a lower court's dismissal, holding that an unauthorized illegal act by a city police officer was nonetheless under "color of law," and that therefore 42 U.S.C.A. § 1983 applied).

[42] See McKnight v. Rees, 519 U.S. 1002, aff'd, 521 U.S. 399 (1997).

[43] See Monroe v. Pape, 365 U.S. 167, 173-174 (1961).

[44] See Duchesne v. Sugarman, 566 F.2d 817 (N.Y. 1977).

[45] See Roe v. Office of Adult Probation, 938 F. Supp. 1080 (1996).

[46] See e.g., Wilson v. Garcia, 471 U.S. 261 (1985).

[47] See e.g., Powell v. Cook County Jail, 814 F. Supp. 757 (1993) (holding that Cook Count Jail is not a "person" for the purposes of federal civil rights statute).

[48] The primary function of a writ of habeas corpus is to seek release from unlawful imprisonment. Such a procedure does not determine the prisoner's guilt, but rather addresses the issue of whether or not the prisoner is restrained of his liberty as a result of due process. Blacks Law Dictionary, 638 (5th Ed. 1979) (citing People ex rel. Luciano v. Murphy, 292 N.Y.S. 844, (N.Y. AD. 1937), aff'g, 160 Misc. 573, 290 N.Y.S. 1011 (1936); Ex parte Presnell, 58 Okl. Cr. 50, 49 P.2d 232 (1935)).

[49] Cooper v. Pate, 378 U.S. 546 (1964).

[50] Id.

[51] See Donald P. Lay, "Exhaustion of Grievance Procedures for State Prisoners Under Section 1997e of the Civil Rights Act," 71 Iowa L. Rev. 935 (1986) (citing "Annual Report of the Director of the Administrative Office of the United States Courts," 1985, Table C2, at A-7; P. Bator, P. Mishkin, D. Shapiro, and H. Wechsler, "The Federal Courts and the Federal System," 233-234 (Supp. 1984)).

[52] See Donald P. Lay, "Exhaustion of Grievance Procedures for State Prisoners Under Section 1997e of the Civil Rights Act," 71 Iowa L. Rev. 935 (1986).

[53] Preiser v. Rodriquez, 411 U.S. 475 (1973).

[54] See id.

[55] Civil Rights of Institutionalized Persons Act, Pub. L. No. 96-247 § 7, 94 Stat. 349, 352-53.

[56] S.Rep.No. 416, 96th Cong., 2d Sess. 34, reprinted in 1980 U.S. Code Cong. & Ad. News 787, 816 (noting that over 10,000 prisoners brought suit, many of which were pro se and "poorly drafted in terms of presenting the problem in a legal context).

[57] 42 U.S.C.A. 1997e(a) (emphasis added). This Act replaced an earlier language that had required exhaustion of "such plain, speedy, and effective" remedies as are available.

[58] S. Rep. No. 415, 96th Cong., 2d Sess. 34 (noting that requiring the exhaustion of in-prison grievances should resolve some cases, thereby reducing the total number and helping to “frame the issues in the remaining cases so as to make them ready for expeditious court consideration”).

[59] Alexander v. Hawk, 159 F.3d 1321, 1327 (11th Cir. 1988) (citing Kobleur v. Group Hospitialization & Medical Services, Inc., 954 F.2d 705 (11th Cir. 1992).

[60] See 42 U.S.C.A. § 1997e(c)(1): “The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.”

[61] See 42 U.S.C.A. § 1997e(c)(2).

[62] See Freeman v. Harris, 196 F.3d 641, 645 (1999).

[63] See Freeman v. Harris, 196 F.3d 641, 645 (1999).

[64] See e.g., A.N.R. v. Caldwell, 111 F. Supp. 2d 1294 (M.D. Alabama 2000).

[65] See e.g., Brown v. Sikes, 212 F.3d 1205 (11th Cir. 2000).

[66] See e.g., Hollimon v. DeTella, 6 F. Supp. 2d 968 (N.D. Illinois 1998).

[67] See e.g., Rumbles v. Hill, 182 F.3d 1064 (9th Cir. 1999).

[68] See e.g., Rumbles v. Hill, 182 F.3d 1064 (9th Cir. 1999).

[69] See Helling v. McKinney, 509 U.S. 25, 35-36 (1993) (holding, that where prisoner was assigned to a cell with an inmate who smoked five packs of cigarettes per day, prisoner established a cause of action under the Eighth Amendment because prison officials exposed the prisoner “with deliberate indifference” to levels of environmental tobacco smoke (ETS) that posed an unreasonable risk of serious damage to prisoner’s future health, thus establishing a constitutional right to be free from a level of environmental tobacco smoke so high that it poses an unreasonable risk of serious damage to the future health of a prisoner).

[70] See e.g., Booth v. Churner, 206 F.3d 289, 293 n.2 (3rd Cir. 2000); Freeman v. Francis, 196 F.3d 641 (6th Cir. 1999); Rumbles v. Hill, 182 F.3d 1064 (9th Cir. 1999); Wells v. Payne, 114 F. Supp. 2d 795 (N.D. Illinois 2000); Hollimon v. DeTella, 6 F. Supp. 2d 968 (N.D. Illinois 1998); and Moore v. Co2 Smith, 18 F. Supp.2d 1360 (N.D. Georgia 1998).

[71] 196 F.3d 641 (6th Cir. 1999).

[72] Freeman v. Francis, 196 F.3d 641, 642-43 (6th Cir. 1999)

[73] 206 F.3d 289 (3rd Cir. 2000).

[74] Freeman v. Francis, 196 F.3d 641, 643 (6th Cir. 1999).

[75] Freeman v. Francis, 196 F.3d 641, 643 (6th Cir. 1999) (citing Commissioner v. Lundy, 516 U.S. 235, 250 (1996).

[76] 18 U.S.C.A. § 3626(g)(2) (emphasis added).

[77] Freeman v. Francis, 196 F.3d 641, 643 (6th Cir. 1999).

[78] See e.g., Freeman v. Francis, 196 F.3d 641 (6th Cir. 1999); See Booth v. Churner, 206 F.3d 289, 293 n.2 (3rd Cir. 2000).

[79] 500 U.S. 136 (1991).

[80] See McCarthy, 500 U.S. at 139-143 (1991) (holding that language in the so-called "Magistrate's Act," which concerned the referral of cases to the magistrate judge, included isolated acts of misconduct by prison officials, including assault, as well as ongoing misconduct).

[81] See Freeman v. Francis, 196 F.3d 641, 643 (6th Cir. 1999)

[82] See Miller v. Tanner, 196 F.3d 1190, 1193 (11th Cir. 1999).

[83] See Brown v. Sikes, 212 F.3d 1205, 1208 (11th Cir. 2000).

[84] See Brown, 212 F.3d at 1207 (11th Cir. 2000).

[85] This author reminds himself never to visit this particular physician.

[86] Id. at 1208.

[87] Id. at 1209 (emphasis added).

[88] Id.

[89] See e.g., Rumbles v. Hill, 182 F.3d 1064 (9th Cir. 1999); Whitley v. Hunt, 158 F.3d 882, 886-887 (5th Cir. 1998); Lunsford v. Jumao-As, 155 F.3d 1178 (9th Cir. 1998); and Garret v. Hawk, 127 F.3d 1263, 1266 (10th Cir. 1997).

[90] See e.g., Nyhuis v. Reno, 204 F.3d 65 (3rd Cir. 2000); Wyatt v. Leonard, 193 F.3d 876 (6th Cir. 1999); Alexander v. Hawk, 159 F.3d 1321 (11th Cir. 1998); and Booth v. Churner, 206 F.3d 289, 293 n.2 (3rd Cir. 2000), certiorari granted, 2000 WL 798208 (Oct. 30, 2000).

[91] See e.g., Garrett v. Hawk, 127 F.3d 1263, 1266 (10th Cir. 1997); Lunsford v. Jumao-As, 139 F.3d 1233 (9th Cir. 1998); Hollimon v. DeTella, 6 F. Supp. 968 (N.D. Ill. 1998).

[92] Garrett v. Hawk, 127 F.3d 1263, 1267 (10th Cir. 1997)

[93] Jackson v. DeTella, 998 F. Supp. 901, 904 (N.D. Ill. 1998).

[94] Hollimon v. DeTella, 6 F. Supp. 968, 969 (N.D. Ill. 1998).

[95] Id.

[96] Id.

[97] Id. at 970.

[98] Id.

[99] Wells v. Payne, 114 F. Supp.2d 795, 796 (N.D. Div. 2000).

[100] 42 U.S.C.A. § 1997e.

[101] Moore v. Co2 Smith, 18 F. Supp.2d 1360, 1364 (N.D. Georgia 1998).

[102] Moore v. Co2 Smith, 18 F. Supp.2d 1360, 1364 (N.D. Georgia 1998) (quoting Senator Kyl, 141 Cong. Rec. § 7498-01, § 7525 (1994)).

[103] See McCarthy v. Madigan, 503 U.S. 140, 155 (1992).

[104] Irwin v. Quinlan, 791 F. Supp. 301, 303 (S.D. Ga. 1992).

[105] See Freeman v. Francis, 196 F.3d 641, 643 (6th Cir. 1999).