

How to file an Effective Grievance

by: Mirado Crow

There will come a time during a prisoner's incarceration that he or she wishes to resolve an institutional problem or constitutional violation. In many jurisdictions, there are different ways to handle these types of issues. The grievance system was built so that prisoners can safely petition their keepers for a redress of an issue. This is a guaranty by the United States Constitution, under the Petition Clause. Originally, this was only a Federal Right, but after the passage of the fourteenth amendment, it became a State Right. Now, a government must pass through strict judicial scrutiny before abrogating the fundamental rights held by United States citizens.

The First Amendment is very important within the prison walls. Most importantly, the right to grieve unconstitutional prison conditions. This right has been conveyed by some prisoners to mean that they have the right to utilize the petition clause in order to pass petitions to get things resolved. This is a big mistake, as one who has been through the system would know. Circulating petitions has been banned by virtually all prisons within the United States; instead, prisoners have been provided the prison grievance procedure. This procedure is different in many states, but generally provide for the same results – to remedy a wrong. There's no reason why inmates and staff can't find some happy medium to co-exist where they work, and prisoners are forced to live.

In that respect, the first step in filing an effective grievance, is by requesting to see the Grievance Aide. If a prison does not have a Grievance Aide, then a prisoner will generally be required to request the appropriate forms from staff. There will be a space provided on the form, requesting for information of the problem; this will normally be entitled "Brief Statement of the Problem", where the prisoner will be required to write the problem in specific detail. This will

normally start off with, "...On January 25, 2017, at 9:25 a.m...." to give the grievance any jurisdictional muster. Most states require that a grievance be filed within a certain number of days after the incident, so it is very important that prisoners be specific about the date and time. It is also propitious if there's a staff conflict, that their badge number be included. I highly recommend, when filing grievances, that all language a grievant uses, be respectful. Grievances that are riddled with vulgar language will generally be dismissed, and will possibly cause a disciplinary report to be issued; remember, by being respectful in any given situation, the probability of a prisoner being taken seriously, will significantly rise.

A prisoner will also be asked what they want done with the situation, under "Action Requested". This is where a prisoner will have the chance to request what action they want to see happen. In no circumstances should any prisoner request any specific action (*i.e.*, disciplinary action...etc.) to be taken against a staff member. Grievances are usually guaranteed to be dismissed due to this being requested. It is normally best if the grievant requests that they want the matter investigated, that all staff act in a professional manner, and that the issue be resolved. If the grievant is physically hurt, or there could be damages sought in court, then do not forget to request the damages in the grievance. Courts are divided as to whether a litigant is required to request damages in the administrative remedy (*i.e.*, Grievance) prior to bringing the action to Court; so I highly recommend that all grievants list the damages in the action requested. Even if the Department of Corrections may not be able to award damages, it is highly recommended to request them to fully exhaust the claim anyway. The grievance is then signed and dated by the grievant, and given to the Grievance Aide to file.

The second stage of the grievance procedure is called the "Informal Resolution" stage. This is the first response a grievant will receive from prison staff regarding the matter. When I

have filed grievances in the past, the responses I would receive from staff, would attempt to avoid the problem. This is not an uncommon issue, and is to be expected; that's what the procedure is for – to show how the issue is wrong, and can be fixed. The informal resolution will most likely be a supervisor or department head within the institution, it is not normal for staff to call a grievant to their office regarding the grievance, unless they are investigating the situation, and need more information. It is unethical for staff to have grievants sign off on their grievance during the informal resolution stage. This stage is not over until the grievance is returned to the grievance coordinator, and the grievance aide. The Grievance Coordinator or Grievance Aide will sign the response, and notify the grievant of the results of the informal resolution. This is where a prisoner will decide if they are happy with the results, or want to forward it to the Grievance Committee.

The Grievance Committee will generally differ from state to state, but in some states, the committee is made up of a balance between staff and prisoners. This is the grievant's chance to be heard before an actual committee – face to face, and discuss the problem. It will be wise to bring all evidence that a grievant has collected to back up their grievance; such as policy, statute, case law...etc. The committee will normally be accepting of this documentary evidence, because it will aide them in making their recommendations to the Warden. It is also wise to fully explain the problem in enough detail when first filing the grievance, so that the issue will be cut and dry; meaning that further explanation will not be required. The Grievance Aide will be present during this hearing, and it is recommended and encouraged to seek their help in this situation. They are there to ensure the grievant receives a fair hearing, and that the committee abides by the policy. The hearing will be stopped, once enough information has been obtained, and the grievant will be excused for deliberations. The Grievance Aide will normally be present during deliberations.

Once the Committee makes their decision, the grievant will be called back into the room, and read the decision by the Committee Chair. If the grievant is not satisfied with the decision, they are encouraged to appeal to the Warden.

The Warden's Appeal is generally written by the grievant to explain further as to why their constitutional rights have been violated, and how it can be remedied. This is the grievant's chance to put forth everything within the institutional level; including all case law, statute, regulation, policy and constitutional provision that's relevant to the issue. There will be no chance to be heard before the Warden, so everything the grievant wants done, must be put in writing. The Warden of the institution will provide their review and decision. Some States have this as the final step in their grievance process, however, there are some States which allows for one final administrative review of the issue, this is called the Commissioner's Review.

The final step in the grievance procedure, is the Commissioner's Review. This is where the grievant will have their last chance to explain everything regarding the constitutional violations they are facing. It is also best to put additional case law, law, policy, and constitutional provision within this appeal; and explain how they relate to the issue. I have always highly recommended this to every inmate who has submitted their grievance to me, and they have won every time; though not on the DOC level, but through the court. The Commissioner has generally more time to respond to the issue, and may extend this time for further investigation. If the grievant is not satisfied with the decision of the Commissioner, then it's time for judicial action.

The Warden and Commissioner generally have the authority to remand the issue for further investigation, so the grievant should not be surprised if this action does occur; especially if the issue is significant. Complaining about responses are not favored on any level, and are

normally not responded to well; so the grievant will fare better by maintaining composure, and treating the authoritarians on each level with respect.

The reason I have always highly recommended prisoners to include law, case law, policy, regulation, and constitutional provisions within the grievance and appeals, is to preserve each argument for judicial review. If the matter should go forward to judicial review, it will be known that each defendant knew of clearly established law – and chose to ignore it.

Effective grievances are won every day, but how to write one it is not widely known by the inmate populace. Grievance Aides and Legal Aides alike should be encouraged to counsel fellow prisoners in each step of the grievance process. Likewise, staff members should be encouraged to properly follow the established grievance policies, to ensure that the prison and inmate(s) involved are given their constitutional protections throughout the process. There's absolutely no reason as to why prison staff and inmates can't find a happy medium to co-exist, where they have to work, and we have to temporarily live.