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Your Responsibility When Using the Information Provided Below:

When putting this together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information, and we cannot give specific advice to all prisoners. Laws and policies change often and can be looked at in different ways. We do not always have the resources to make changes to this material as soon as laws or policies change. If you use this pamphlet, it is your responsibility to make sure that the law or policy has not changed. Most of the materials you need should be available in your institution’s law library.

**ARIZONA’S INMATE GRIEVANCE SYSTEM
 Medical and Non-Medical Grievances
 (Updated November 2016)**

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An Arizona prisoner may file a grievance related to any part of institutional life or condition of confinement that directly and personally affects him/her. This includes the actions or inactions of Arizona Department of Corrections (ADC) staff and ADC’s contractors, including health care providers, as well as regarding problems that result from written instructions, policies, and procedures. The rules that set out how to file grievances are Department Order # 802, “Inmate Grievance Procedure,” and Department Order # 803, “Inmate Disciplinary Procedure,” most recently updated October 16, 2016. When we refer to these rules in this letter, we shorten them to “DO 802” and “DO 803.” Filing a grievance takes time and work, but it can resolve a problem. More importantly, prisoners who wish to file a federal civil rights lawsuit or a state tort claim against ADC for a violation of their rights must first go all the way through (“exhaust”) the grievance process.

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Exhaustion of Administrative Remedies

Courts often refuse to address legal complaints raised by prisoners unless the prisoner first completes the prison's administrative grievance procedure. In other words, a prisoner must "exhaust administrative remedies" before asking a court to step in.

Exhaustion for Federal Claims

Under the Prison Litigation Reform Act, before a prisoner can file a federal civil rights ("section 1983") lawsuit about a prison issue, he or she must "exhaust administrative remedies" by filing a grievance up to the fourth formal level of review with the ADC Director (or through the third formal level of review for medical grievances). 42 U.S.C. § 1997e(a); *Porter v. Nussle*, 534 U.S. 516, 520 (2002); *McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002). More prisoners lose their federal cases because of failure to exhaust administrative remedies, or to exhaust correctly, than from any other part of the PLRA. If you have not exhausted, your case will be dismissed without prejudice, which means that in theory you can re-file your case after you pursue your grievance. *O'Guinn v. Lovelock Correctional Center*, 502 F.3d 1056, 1059 (9th Cir. 2007). But in reality, your grievance will be late by that time, so it is very important to get it right the first time.

You have to file a grievance even if you are seeking only money damages, despite the fact that money damages are not normally awarded through the grievance process. *Booth v. Churner*, 532 U.S. 731, 733 (2001). Even if you are filing a section 1983 claim in state court, you must still exhaust the grievance process. *Baker v. Rolnick*, 210 Ariz. 321, 325 (Ariz. Ct. App. 2005). Your grievance need not set forth legal theories or each element of a legal claim, but it must include enough information to put prison staff on fair notice of what happened and to give them an opportunity to respond. *Griffin v. Arpaio*, 557 F.3d 1117, 1120-1121 (9th Cir. 2009).

Prison officials cannot keep you out of court by simply ignoring your grievances, but you must show that you have tried to exhaust. If your grievance is denied, you must appeal to the next level, until you have reached a response from the Director's level for non-medical issues or from the Contract Facility Health Administrator for medical issues. However, courts have said that if you win your grievance (it is "granted") before the final level of review, then you have exhausted, because it makes no sense to appeal if you have won. *Brown v. Valoff*, 422 F.3d 926, 935 (9th Cir. 2005) (holding that "a prisoner need not press on to exhaust further levels of review once he has either received all available remedies at an intermediate level of review."); *Barrett v. Maricopa County Sheriff's Office*, 2010 WL 46786, *4-5 (D. Ariz. Jan. 4, 2010) (prisoner who got his medication, which was all he sought through the pre-grievance informal process, had exhausted). However, some courts have held that if a prisoner doesn't win all possible relief in the grievance, you haven't exhausted all possible remedies, so if the response partially granted, is vague, or only answers some of the problems you raised, then you should still appeal to the next level to be sure you have exhausted.

Exhaustion for State Claims

Before filing a state tort claim, you must have put the prison on notice of the claim within 180 days of the incident. Arizona case law is unclear about whether the grievance process fulfills this requirement and some courts have suggested that you do not need to complete the grievance process to file a state tort lawsuit. In *Kosman v. State*, an Arizona court of appeals held that a prisoner's tort action

was not a “claim that *must* be submitted to the ADOC’s grievance system.” *Kosman v. State*, 199 Ariz. 184, 186 (Ariz. Ct. App. 2000). Due to this lack of clarity, completing the grievance process before proceeding with a state tort claim is the best way to ensure that your claim is not dismissed. It is also important to note that state tort claims must allege serious physical injury. *Tripati v. State*, 199 Ariz. 222, 225 (Ariz. Ct. App. 2000) (holding that Arizona Revised Statutes Annotated section 31–201.01(L) limits prisoners’ tort claims against the State to those involving serious physical injury).

Arizona prisoners and parolees cannot file a state court petition for a writ of habeas corpus to challenge a prison or parole conditions issue. *Bishop v. Arizona Dept. of Corrections*, 2010 WL 685613, at *2 (Ariz. Ct. App., Feb. 25, 2010, 2 CA-HC 2009-0002), *citing Foggy v. State ex rel. Eyman*, 107 Ariz. 532, 533-34 (1971) (holding that the “rule in Arizona has always been that the writ of habeas corpus may not be utilized for the purpose of correcting alleged mistreatment of a prison inmate by prison authorities subsequent to valid judgment and commitment.”).

Practice Tips for Filing Grievances

There are strict time limits for each step of the process. You need to file your grievance as soon as – and no later than 10 work days after – the action or inaction affected you for the first time. Grievances about sexual abuse do not have a time limit. Keep good notes of the dates you file documents, and when you should get them back. Make sure to write down if the time limit specifies “work days” (Saturday, Sunday and official holidays don’t count) or “calendar days” or “days” (Saturday and Sunday do count). ADC also has time limits for when they are supposed to respond to you. The maximum length of time for completion of the non-medical grievance process from the initiation of the Formal Grievance process to final disposition is 120 days.

As soon as you file a grievance, count out all the deadlines in the entire process on a calendar and write them down, so you know when you should be getting responses and/or filing the next level of appeal. **At every stage of the process, if you don’t get a response by the date ADC staff should respond to you, or you have not been notified in writing that ADC staff need more time to respond, you still must go forward to the next level of the process.** DO 802.01, 1.10; *Williams v. Arpaio*, 2007 WL 2903025, *3 (D. Ariz., Sept. 28, 2007). If you don’t get a response, make sure to write at the very top of the next level grievance form that you fill out, “I did not get a timely response at the prior level of grievance.” That way they can’t throw out your appeal for not having all documents and responses with it. Prison officials cannot keep you out of court by simply ignoring your grievances, but you must show that you have tried to exhaust.

However, at all stages of the process, if you receive written notification from ADC staff that they need more time to respond to your grievance, then you need to wait until the new deadline to go to the next step. (DO 802.01, 1.10, 1.4).

Save copies of all paperwork. In addition to making copies for you to hold on to, you may also want to send copies of everything to a family member in the community, in case your copies are lost. You need to have copies of everything, because every time you go to the next level in the process, you must attach copies of all papers you have filed so far, and responses (if any).

Each grievance you file can only be about one topic. If you have multiple complaints, file a separate grievance for each issue, and follow it through to the end of the process. For example, if you want to complain about not seeing a specialist for a medical problem, and not getting enough food, and also about not getting access to the law library, these have to be written on separate grievance forms.

Do not abuse the grievance system! (DO 802.07, 802.09) No matter how upset, angry, or frustrated you feel, do not be emotional, sarcastic, make insults or accusations in what you write, because that will be grounds to throw out your grievance. Your grievance will be rejected if it:

- Threatens serious bodily harm to staff, other prisoners, or the general public
- Is one of multiple or duplicate grievances on the same issue at the same time
- Raises multiple unrelated issues on a single form
- Raises an issue previously addressed through the grievance process
- Is filed past the timeframe in the absence of extenuating circumstances

In October 2016, ADC created a new term called a “vexatious grievant” which can result in disciplinary action and restrictions on access to the grievance process (DO 802.07, 803.10). If you are determined to be a “vexatious grievant,” you will have to submit an 802-13 Grievance Request to the Warden every time you want to file a grievance, and the Warden will have five days to approve or deny your request. Filing vexatious grievances will be considered Class A violations and can result in unrestricted time loss, parole class III from 90 to 180 days, restitution, loss of privilege for 30 days, extra duty for 0 to 40 hours, and/or reclassification. The definition of a “vexatious grievant” includes:

- Repeatedly filing grievances solely or primarily for the purpose of harassment
- Filing grievances without substantial justification (groundless or not in good faith)
- A pattern of filing grievances making unreasonable, repetitive, and excessive requests for information

Write clearly and legibly. When filling out your grievance form, write clearly and legibly, or type it if you have access to a typewriter. Be brief and get to the point.

HOW TO FILE A GRIEVANCE

EMERGENCY GRIEVANCES

You may file an emergency grievance when a condition exists that would cause you substantial risk of medical harm, personal injury, or other serious harm if the grievance had to go through the normal time frames. (DO 802.01, 1.8). In true emergencies, prisoners can also notify staff verbally or by letters.

Any informal complaint or formal grievance that is marked as “Emergency” should be reviewed immediately by staff to determine if it is an emergency and requires immediate response. If a complaint or grievance describes a sexual assault, staff must immediately initiate certain safety procedures under the federal Prison Rape Elimination Act (PREA).

MEDICAL GRIEVANCES

Below is a summary of the most important rules and steps in filing a grievance about medical or mental health care, and a few practical tips to ensure your grievance is exhausted. The time frames are similar to those for non-medical grievances, but there are only two steps to filing a medical grievance because unlike regular grievances, these grievances do not have to be appealed to the warden or the director. (DI 287, 802.02, 802.05)

STEP ONE: Try to solve your complaint informally. (DO 802.02):

Submit **Form 802-11 Inmate Informal Complaint Resolution** to the CO III of your unit. You must do this within **10 work days** of the original incident. The CO-III will forward the grievance to the prison's Director of Nursing. In your letter, (1) describe the problem, (2) describe what the impact is on you because of the problem, and (3) request or suggest how the problem could be fixed. Make sure to be clear and to the point. Attach copies of any documentation that supports your complaint. Keep a copy of the Form 802-11 for yourself.

- **NOTE:** A Health Needs Request (HNR) *cannot* be used as an informal grievance; you must use Inmate Letter form 802-11.

The Director of Nursing must respond to you in writing within **15 work days**. If you don't get a response by that day or you have not been notified in writing that medical staff needs more time to respond, go to the next step. If they respond and you are not satisfied, you must file a formal grievance within **5 work days** of receiving the response.

STEP ONE IMPORTANT DATES:

File Form 802-11 Inmate Informal Complaint Resolution within **10 work days** of the incident or impact of the actions or inactions of medical staff on you. Save a copy for yourself.

The CO-III must forward your letter to the Director of Nursing who will respond to you within **15 work days** of receiving your letter. If there is no response by that deadline and/or you have not been told that staff needs more time to respond, go to Step Two.

If you get a response to your informal complaint and aren't satisfied, or it denies your request, you have **5 work days** from the day you received it to go to Step Two.

STEP TWO: File a formal medical grievance. (802.05).

No later than **5 work days** after receiving a response to your informal letter, fill out a **Form 802-1 Inmate Grievance**. Additionally, you should do this if you haven't received a response from the Director of Nursing within 15 work days of the date you submitted the informal letter. In the grievance, (1) describe what the medical problem is, (2) how you tried to resolve it informally, and (3) what you want them to do. You must attach a copy of your original inmate letter (Step One), and a copy of the Director of Nursing's response. If you did not receive a response, write, "I did not get a response to my

inmate letter within 15 work days.” Give everything to the CO-IV Grievance Coordinator on your yard, and save a copy of all papers for yourself. The CO-IV will log and assign a number to your Inmate Grievance. Make sure to write down the grievance number in your own records.

The CO-IV must immediately forward your grievance to the Facility Health Administrator from ADC’s health care contractor, Corizon. Within **15 work days** of receiving your grievance, the Corizon Facility Health Administrator must return a written response to the CO-IV, which will be logged and returned to you in a sealed envelope. The response should summarize your complaint, describe Corizon’s investigation of your complaint, the findings of the investigation, and a decision with supporting rationale for that decision. The Facility Health Administrator’s decision is final for medical grievances. You have now exhausted all remedies within ADC.

STEP TWO IMPORTANT DATES:

File Form 802-1 Inmate Grievance within **5 work days** of receiving a response to your Inmate Letter from the Director of Nursing.

The CO-IV immediately forwards your grievance to the Corizon Facility Health Administrator, who must send a response to the CO-IV within **15 work days**. The CO-IV will log the response and forward the decision to you in a sealed envelope.

NON-MEDICAL GRIEVANCES

Below is a summary of the most important rules and steps in filing a non-medical grievance, and a few practical tips to ensure your grievance is exhausted. There are three steps to filing a non-medical grievance.

STEP ONE: Try to solve your complaint informally. (DO 802.02):

First, try to talk with the ADC staff most responsible for the problem. If they won’t talk to you, you’re not satisfied with the answer you get, or your problem isn’t fixed, go to the second informal method:

Second, submit **Form 802-11 Inmate Internal Complaint Resolution** to the CO-III of your unit. You must do this within **10 work days** of the original incident. The first line should say, “I am trying to informally resolve the following problem” and then describe the problem in one sentence. After writing that line, (1) describe the problem, (2) describe what the impact is on you because of the problem, and (3) request or suggest how the problem could be fixed. Be clear and to the point. Attach copies of all documentation that supports your complaint. Keep a copy of the 802-11 for yourself.

The CO-III must provide you a written response within **15 work days**. If you don’t get a response by then and/or ADC staff has not told you that they need more time to respond, go to the next step. If you are not satisfied with the response, you must file a formal grievance within **5 work days**.

STEP ONE IMPORTANT DATES:

File Form 802-11 Inmate Letter within **10 work days** of the incident or impact of the policy on you. Save a copy for yourself.

The CO-III must respond to you within **15 work days** of getting your letter. If there is no response by then and/or ADC staff has not told you that they need more time to respond, go to Step Two.

If your grievance is denied, you have **5 work days** to go to Step Two.

STEP TWO: File a Formal Grievance. (DO 802.03)

No later than **5 work days** after receiving a response to your Inmate Letter, fill out a **Form 802-1 Inmate Grievance**. In your grievance, (1) describe what the problem is, (2) how you tried to resolve it informally, and (3) what you want them to do. Attach a copy of your original inmate letter (Step One), and a copy of the response. If you did not receive a response and/or ADC staff did not tell you that they need more time to respond, write, "I did not get a response to my inmate letter within 15 work days." Give everything to the CO-IV Grievance Coordinator on your yard, and save a copy of the 802-1 and all other documents for yourself. The CO-IV will log and give a number to your grievance. Make sure to write down the number in your own records.

*NOTE: If you have been labelled a "vexatious grievant," you must file a **Form 802-13 Grievance Request** instead of a Form 802-1. Form 802-13 is submitted to the Warden, who decides if this grievance is vexatious. You will receive notification of the Warden's decision in **5 calendar days**. If your request is granted, the grievance will then be responded to through the regular process. If your request to file a grievance is denied, you can submit a Grievance Appeal with a copy of the Grievance Request to the CO-IV **within 5 calendar days**. You will receive a response to your appeal within **15 calendar days**. The Grievance Appeal response is final and constitutes exhaustion.*

The CO-IV may request additional investigation be conducted or assign other staff to aid in resolving the grievance. You will be notified in writing of any extensions. The CO-IV must give you a written response within **15 work days** of receiving the grievance. If you are not satisfied by the response or it does not grant your request, you must file a formal appeal to the Director within **5 work days** of receiving the grievance response.

STEP TWO IMPORTANT DATES:

If ADC has determined that you are a "vexatious grievant," first submit Form 802-13 Grievance Request to the Warden. If your request is denied, you have **5 calendar days** to submit a Grievance Appeal to the CO-IV.

If you are not a "vexatious grievant," file Form 802-1 Inmate Grievance within **5 work**

days of getting a response to your Inmate Letter.

The CO-IV must respond within **15 work days** of receiving your Inmate Grievance. If there is no response by then and staff has not told you they need more time to respond, go to Step Three.

If your grievance is denied, you have **5 work days** from getting the response to go to Step Three.

STEP THREE:

File an Inmate Grievance Appeal with the ADC Director. (DO 802.04).

No later than **5 work days** after receiving an appeal response from the Deputy Warden, you can appeal to the ADC Director. Fill out a **Form 802-3 Inmate Grievance Appeal**. In the appeal, (1) describe what the problem is, (2) how you tried to resolve it so far, and (3) what you want them to do. You must also attach a copy of your original inmate letter and any response (Step One), and a copy of your inmate grievance and any response (Step Two). If you did not receive a response from the Deputy Warden at step two and/or ADC staff has not told you that they need more time to respond, write, "I did not get a response to my inmate grievance appeal within 15 work days." Save a copy of the 802-3 (and copies of the attached forms) for yourself, and give everything to the CO-IV Grievance Coordinator on your yard.

The CO-IV has **5 work days** to send your appeal to ADC's Central Appeals Office. The Central Appeals Office must prepare a response and submit it to the Director within **30 calendar days** of receiving your grievance appeal, unless his office notifies you that they need more time to investigate the matter. The Director's response is final, and once you receive it, you have exhausted all available administrative remedies. You may now pursue a lawsuit.

STEP THREE IMPORTANT DATES:

File Form 802-3 Inmate Grievance Appeal within **5 work days** of receiving a response from the Deputy Warden.

The Central Appeals Office must submit a response to the Director within **30 calendar days** of receiving your Inmate Grievance, or notify you if more time is needed to respond.

Once you receive a response from the Director level, you have now exhausted your grievance and may pursue a lawsuit.

OTHER TYPES OF GRIEVANCES

In addition to the medical and non-medical grievance procedures outlined above, there are independent appeals processes for the following:

- Sexual Offense Grievances, Department Order #802.08
- Inmate Discipline, Department Order #803
- Inmate Mail, Department Order #914
- Protective Custody, Department Order #805
- Security Threat Groups, Department Order #806
- Inmate Classifications, Department Order #801

REMINDER: Make sure that you are following the right grievance process or else your grievance will be rejected.

Blank copies of the Inmate Informal Letter Form (Form 802-11) and Grievance Form (Form 802-1) are attached to this handout.

Our office has compiled information for prisoners on how to file a civil rights case in federal court, and another handout on filing a tort case in Arizona state court. If you want either handout, or both of them, write us back and we will send you one free copy.