

If you are currently incarcerated and believe your civil rights have been violated, you may be considering filing a lawsuit in federal court. Before you do, you should know about a federal law called the Prison Litigation Reform Act (PLRA), which affects your ability to sue the prison or prison officials for constitutional violations. In short, the law makes it harder for you to bring claims. Know what the PLRA requires will make a significant difference in making sure your claims get heard by a judge.

A few major provisions are discussed below.

USING THE PRISON'S GRIEVANCE PROCEDURE: EXHAUSTION OF ADMINISTRATIVE REMEDIES

- Follow the prison's grievance procedure **exactly**.
- Keep copies of all grievances and any decisions on them.
- Grieve **every claim** you have.
- Appeal if denied and follow any appeal procedure exactly.
- Informal grievances will not count, follow the prison's procedure exactly.

File a grievance. Before an incarcerated person can sue a prison or prison officials, they must first use every available process under the prison's grievance procedure. This requirement, known as exhausting your administrative remedies, is mandatory. Failure to follow the grievance procedures will result in the dismissal of any case you bring in court.

In practice, this means you must first file a grievance—almost always on a form the prison provides. If your grievance is unsuccessful, you must then appeal if the procedure allows you to. Again, failure to follow this procedure will result in the dismissal of any lawsuit you bring.

Be aware of deadlines. Many grievance procedures have strict deadlines for filing and appeals. Be sure

you completely adhere to these. Missing a deadline could be the same as not filing the grievance at all.

Persist. If you do miss a deadline, or if a prison official accuses you of missing one when you did not, keep proceeding and move quickly. If there were extraordinary circumstances that caused delay, be sure to note those. It may be possible for a court to take them into account when deciding if you can be excused from any deadlines.

Grieve every claim. In addition to strictly following the grievance procedure, you must grieve **each and every** claim you might sue over. In other words, even if you exhaust your administrative remedies as to one injury or claim, if you fail to do so for another, then any lawsuit you bring over the unexhausted claim will be dismissed.

In practice, this means you should be sure to completely and comprehensively describe any injury or claim you have in your grievance. Be as detailed as you can, and provide any and all information that the grievance procedure requires.

Follow the procedure. It is important to follow the formal grievance process **exactly**. Informally speaking with prison officials, or even writing to them, will probably not satisfy the grievance process.

- Note that the PLRA's requirement to exhaust your administrative remedies applies even if you cannot receive the remedy you are seeking by grieving your injury. For example, most grievance procedures do not allow for the recovery of monetary damages. Despite this, in order for you to later be able to recover monetary damages in court, you must still exhaust your administrative remedies and grieve any claims you have.

KNOW YOUR RIGHTS: Filing a Lawsuit and the Prison Litigation Reform Act

FEES

The PLRA requires incarcerated persons to pay all court fees. If you cannot afford the filing fee, you can apply to proceed “*in forma pauperis*” and pay fees out over time.

Court fees are mandatory: Courts impose several different fees on all people appearing before them. First and foremost are filing fees. Under the PLRA, all people who are incarcerated must pay court fees regardless of their ability to pay. And you must pay even if your case is later dismissed or if you voluntarily withdraw it.

Proceeding in forma pauperis: Depending on your ability to pay, you can still apply to proceed *in forma pauperis*. This means applying to file without paying court fees up front. But even if your application is granted, you will still have to pay an initial amount based on an average of the balance in your account (or possibly deposits to those accounts) for the six months preceding your application and then a % of monthly deposits until the total amount is paid.

Also note that if you recover any money in a successful lawsuit, the Court may require you use part of that recovery to pay any fees you owe out of that recovery.

SCREENING AND “THREE STRIKES”

- The Court will screen your case and determine if it can proceed.
- After “three strikes” you will not be able to proceed without paying fees up front.
- Appeals count as new cases.

The Court will screen your case: The PLRA requires federal courts to conduct preliminary reviews of civil cases brought by incarcerated persons against government officials and all cases brought *in forma pauperis*. This process is called

“screening.” Through this process, the Court will make a first determination of whether your lawsuit states a claim which the Court could rule on. If the Court determines there is not a valid claim, it will dismiss. Otherwise, the Court will allow your case to proceed. It is important to note that even if the Court allows your case to proceed, it does not mean you will ultimately win or even that the case may not be dismissed by the Court later. It simply means that, on the face of your Complaint, the Court believes you have alleged enough to proceed.

Three Strikes: Under the three-strike rule, if you file three separate cases which a Court dismisses, you can no longer file new cases *in forma pauperis*. In other words, if you strike out three times, you can only file new cases if you pay the entire filing fee up front. There are highly limited exceptions, but in general the rule is strict. It does, however, only apply to civil claims you bring.

Appeals count as new cases: You should note that appeals count as “new cases” towards the three-strike rule. So if a Court dismisses your case as frivolous, and you then appeal that decision, the dismissal of any appeal could be deemed a 2nd or 3rd strike.

PHYSICAL INJURY REQUIREMENT

- Any claim for emotional distress damages must include a physical injury.

Under the PLRA, lawsuits seeking monetary damages must include allegations of physical injuries. What this means is that you cannot sue for money damages based on emotional distress alone. Any claim for emotional distress damages must be accompanied by a showing of physical harm.