



## **LGIT'S COMMANDER'S LOG JUNE 2012**

### **The PLRA's Administrative Exhaustion Requirements and Inmate Transfers**

**QUESTION:** Does the PLRA necessarily require an inmate to file a grievance at or with the facility at which he/she was housed at the time of the incident?

**ANSWER:** Not necessarily. If, for example, the inmate is transferred to another facility that leaves him/her with no administrative remedy, dismissal of a subsequent lawsuit on grounds of failure to exhaust administrative remedies may be improper.

**CASE:** *Michael Smith v. William Filbert, et al.*, U.S. District Court (Md.) (Unpub.)  
Decided April 24, 2012

Plaintiff Michael Smith sued various individuals, including Former Baltimore City Detention Center Correctional Officer Duwane Crew, alleging violations of his civil rights while detained at various facilities in the Maryland Department of Corrections (DOC). Essentially, Smith alleged in his lawsuit that on March 15, 2007, Corrections Officer Crew transported him and two other inmates from the Circuit Court in Baltimore City to the Baltimore City Detention Center. Smith alleged that the two other inmates were known gang members. Smith claimed that he saw Officer Crew speak privately with one of the two inmates-Brian Medline-and then "slip" him something before they got on the transportation van. During the return trip to the Detention Center, Medlin unlocked his restraints with two different keys, produced a home-made knife, and hit and stabbed Smith repeatedly.

Through his attorney, Officer Crew moved to dismiss the case, contending that Smith had failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). In support of his motion, Officer Crew submitted an affidavit in which the Director of Standards Compliance and Litigation for the Division of Pretrial Services testified in writing that Smith had not filed a grievance pursuant to DOC's written grievance policy. That policy requires prisoner grievances to be filed within 15 days of the event giving rise to it. Smith countered by stating that he did comply with the exhaustion requirements of the PLRA. He said that after he was beaten, he was taken straight to the infirmary and, within a few days, he was transferred to the Maryland Reception and Diagnostic classification Center. It was there that he became well enough to file a grievance-and he did so on March 26, 2007-11 days after the incident.

Faced with this conflict in the evidence, the United States District Court for the District of Maryland, per Judge Peter J. Messitte, denied Officer Crew's preliminary challenge to the lawsuit. He did so on grounds that Smith had shown that he did, in fact, file a grievance within the 15 day period. However, Smith filed the grievance while at a facility other than the one at which he was housed at the time of the incident. The court concluded that this fact was "of no moment, as [Smith] should not be penalized for a transfer that was outside his control." Since Officer Crew offered no other reason as to why the grievance filed by Smith was defective, the court allowed the lawsuit to proceed.

**NOTE:** This case, even though it is unpublished, emphasizes that detention centers and other correctional facilities must have procedures in place for retaining all written inmate grievances for a reasonable period of time (three years at a minimum). It may also be a better practice to inform inmates in publications such as inmate handbooks that, in the event they are transferred to another correctional facility, they may still invoke the grievance procedure at the facility they are leaving, as long as they do so from their new location in writing and within all pertinent time constraints.

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