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Not Just for Counties
Jail Litigation

Presented by:

Elmer Dickens
Senior Assistant County Counsel
Washington County, Oregon

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PRISON LITIGATION REFORM ACT

The Prison Litigation Reform Act (PLRA) (42 USC § 1997e) was passed by Congress in 1996 in an attempt to limit the large number of frivolous cases brought by prisoners in federal courts. According to a leading researcher on the PLRA, in 1966, there were less than 250 inmate lawsuits filed in federal court by inmates.[i] By 1995, that number had risen to over 40,000 lawsuits a year – which represented more than ten percent of all cases filed in federal court that year. Because many of these cases were filed by the prisoner without the assistance of an attorney – they took a lot longer for the court to resolve, and most of them were eventually dismissed as frivolous. Congress saw that as a huge waste of judicial resources and passed PLRA to fix the problem. *See Miller v. French*, 530 US 327 (2000). The Act is very unusual, in that it puts a number of limitations and requirements on prisoners that do not apply to any other litigant. The PLRA applies to both convicted inmates and pre-trial detainees. *Kingsley v. Hendrickson*, 135 S Ct 2466 (2015).

The Act makes it harder for an inmate to get to court

1. Inmate must exhaust any administrative remedies (grievance) that are available BEFORE filing lawsuit – or court will dismiss
    a. If the prisoner fails to exhaust all available administrative remedies the failure to exhaust remedies is an affirmative defense – the facility MUST raise the issue when they file an answer to the prisoner's complaint. *Jones v. Bock*, 549 US 199 (2010); *Albina v. Baca*, 747 F3d 1162 (9th Cir 2014). It is advisable for all facilities to make a clear and explicit statement to inmates to put them on notice of how and when grievances are considered fully exhausted (in policy or inmate manual). This will assist the court in determining whether the inmate actually exhausted administrative remedies.
    b. A prisoner may not be required to exhaust remedies if the facility interferes in the grievance process, such as through threats or intimidation – facility **staff should never interfere with the grievance process** so that failure to exhaust can be used as a defense.

c. Exhaustion of remedies means the inmate must comply with all the procedural requirements and time frames in the grievance process – maintaining documentation of grievances, responses and appeals is critical to defending the facility. *Woodford v. Ngo*, 548 US 81 (2006).

d. It should be noted that the Prison Rape Elimination Act Standards adopted in 2012 (28 CFR Part 115) provides that an agency can impose no time limits on grievances related to sexual assault in a jail or prison. 28 CFR part 115.52. It is unclear how courts will respond to a federal regulation which appears to severely restrict the applicant of a federal statute (PLRA) in terms of exhaustion of administrative remedies.

2. Inmate must pay filing fee even if they are proceeding *in forma pauperis* (they are indigent), although they can pay it on the installment plan. This is a significant change to normal *in forma pauperis* status, where litigants are completely excused from paying file fees if they are indigent.

a. Inmate must provide six months of inmate account history to prove they are indigent

b. If indigent – they pay 20% of the filing fee or 20% of their monthly average deposits over the past six months, and pay balance the same way

c. Facility must forward money out of account to court any balance in inmate's account over $10 until fee is paid

d. Court may dismiss the case if it learns they are not actually indigent, and even if the inmate files bankruptcy they are still responsible for these fees

3. Court must perform early judicial screening of all inmate cases. *Jones v. Bock, supra*. The court may simply dismiss the case if the court finds that the complaint is

a. Frivolous or malicious

b. Fails to state a claim for which relief can be granted

c. Seeks money damages from someone who is immune - such as a judge who has judicial immunity

4. If the inmate has three prior dismissals for frivolous cases, inmate will be denied *in forma pauperis* status and cannot file any more cases without paying the full filing fee unless the court finds that the inmate is in imminent danger of serious injury (three strikes). See *Williams v. Obama*, 600 Fed Appx 777 (DC Cir 2015).

The Act limits inmate remedies if the inmate does get to court

1. Damages are limited
    a. Damages are not available for mental or psychological injuries without a physical injury. There is no precise definition of what constitutes a physical injury, and courts have taken widely varied approaches. Courts have taken a wide variety of positions on this issue. In *Searles v. Van Bebber*, 251 F3d 859 (10th Cir 2001) the court held that inmate could not recover for denial of kosher diet because he had no physical injury. In *King v. Zamiara*, 788 F3d 207 (6th Cir 2015) the court found that a violation of an inmate's 1st Amendment rights justified an award of damages, and that the PLRA only precluded damages for mental injuries without physical injury – they found that violation of a constitutional right was NOT a mental injury, and thus compensable. In *Gibson v. Paquin*, 590 Fed Appx 635 (7th Cir 2015) the court found that an inmate who was forced to take cold showers did not allege a physical injury and could not recover. Likewise, an allegation from a prisoner that he was not given sufficiently warm clothing or bedding was not compensable even though prisoner was cold and wet, because a prisoner's claims for emotional injury must be accompanied by allegations of physical injuries that are greater than *de minimus*. While several earlier rulings denied recovery for a sexual assault if the inmate did not allege a physical injury, the trend seems to be to recognize unwanted sexual touching as a "physical injury" in and of itself. See e.g., *Kahle v. Leonard*, 563 F.3d 736, 739 (8th

Cir. 2009); *Cleveland v. Curry*, No. 07cv02809-NJV, 2014 U.S. Dist. LEXIS 22402, 2014 WL 690846, at *6-7 (N.D. Cal. Feb. 21, 2014); *Carrington v. Easley*, 2011 U.S. Dist. LEXIS 56805, 2011 WL 2132850, at *3 (E.D.N.C. May 25, 2011); *Marrie v. Nickels*, 70 F. Supp. 2d 1252, 1264 (D. Kan. 1999) (citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997))

b. If there is a restitution order from another case (civil or criminal) the restitution must be paid before the inmate gets any money
c. Reasonable efforts must be made to find any victims of the prisoner to tell them about the damage award

2. Attorney fees are severely limited
    a. Fees can only be awarded for time spent in proving actual violation or enforcing a court order
    b. Hourly rate cannot exceed 150 percent of court appointed lawyers in criminal cases
    c. Must be proportional to how successful the inmate was on claims
    d. Up to 25% of damage award can be applied to attorney fees – if the inmate agreed with attorney for a higher fee – the inmate is responsible for the difference, not the defendant

The Act restricts the authority of the federal judge

1. Court cannot order injunctive relief (facility must or must not do ….) unless they court uses the least intrusive means, the relief is narrowly drawn, and goes no further than necessary to fix an immediate problem. Court must find proof of actual harm to one or more prisoners, and the court must carefully consider the impacts of the order on the criminal justice system.
2. Courts can only order release of prisoners after a previous order to fix the problem has failed and after the facility has had a reasonable amount of time to address the issue.

3. Prisoner must ask for a three judge panel, and only a three judge panel may order release of prisoners. See *Brown v. Plata* 131 S Ct 1910 (2011) (upholding 9th Circuit order to force release California prisoners until facility at 130% of capacity or less).
4. Court cannot impose a special master unless done by three judge panel, and cannot order state or local government to pay costs of special master
5. Court can only impose an order which violates state law if necessary to correct an actual condition and there is no alternative to fix the issue
6. Court cannot approve a consent decree unless the decree meets the requirements of the PLRA

The Act Makes it Much Easier to Terminate Prior Consent Decrees

Prior to the PLRA being enacted, many facilities were operating under one or more permanent federal consent decrees, which specifically dictated how the facility operated. Many facilities were operating under multiple consent decrees, which governed every aspect of facility management such as the content of inmate law libraries, visiting hours, exercise opportunities, food temperature, and access to showers. The PLRA enacted a provision that is often referred to as an "automatic stay." 18 USC § 3626(b). When a facility operating under a consent decree moves the court for an order terminating the decree, the consent decree is automatically stayed (can no longer be enforced) thirty days after the motion is filed, and the stay remains in effect until the District Court rules on the motion.

Elmer M. Dickens
Sr. Asst. County Counsel
Washington County, Oregon

Elmer_Dickens@co.washington.or.us
Elmer@ELSILegal.com
(503) 704 1052 (cell)

[i] (Schlanger, M.) Trends in Prisoner Litigation as the PLRA Enters Adulthood, 5 U.C. Irvine L. Rev 153 (2015). Professor Margo Schlanger is one of the nation's foremost experts on the PLRA and inmate litigation, and her excellent work in this area is invaluable for legal practitioners, researchers and anyone wanting a deeper

understanding of this issue. See also her earlier article on the PLRA, (Schlanger, M.) Inmate Litigation, 116 Harv. L Rev 1555 (2003).