

5-3-2010

Butters v. Valdez Respondent's Brief Dckt. 36856

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IN THE SUPREME COURT OF THE STATE OF IDAHO

TODD ALLAN BUTTERS, _____

Petitioner/Appellant,

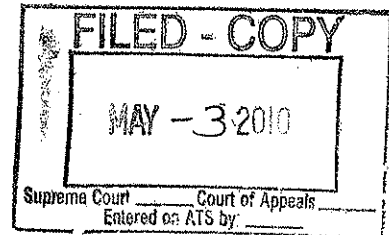
vs.

PHILLIP VALDEZ, DANIEL PRADO,
JOEL VANCE YOUNG, FERMIN
VILLIARREAL, SHANE JEPSEN,
BRENT ARCHIBALD, DANIEL
CHANEY, BRIAN DOSER, JUSTIN
ACCOSTA, SARA FINK, FLEMMING
GREEN, BRIAN TITSWORTH, C/O
MCCALL, JOHN and JANE DOES I-VI,
and their successors in office, sued in their
individual official capacities,

Defendants/Respondents.

IDAHO SUPREME COURT
DOCKET NO. 36856

Ada County District Court
Case No. CV OC 0906794



BRIEF OF RESPONDENTS

Appeal from the District Court of the Fourth Judicial District for Ada County,
Before the Honorable Darla Williamson, Presiding

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I.

STATEMENT OF THE CASE

A. Nature of the Case

This case arises out of Plaintiff Todd Allan Butters' failure to comply with the simple and well-established grievance process at the Idaho Correctional Center ("ICC") following two separate altercations with other inmates. Rather than submitting timely grievances to prison officials following the altercations, Butters instead brought a civil action against ICC employees, claiming they failed to protect him from the harm he faces as a result of his status as a sex offender. In neglecting to submit timely grievances with prison officials prior to filing his civil lawsuit, Butters failed to exhaust his administrative remedies as required by Idaho law. Consequently, Idaho's Fourth Judicial District Court correctly granted summary judgment in favor of Defendants. Butters now appeals the district court's grant of summary judgment, yet he has not submitted any evidence indicating that he exhausted his administrative remedies. Therefore, Butters' appeal must be dismissed.

B. Factual and Procedural History

1. ICC's Grievance Procedure

ICC is a private corporation that houses inmates under the jurisdiction of the Idaho Department of Correction ("IDOC"). ICC follows the same grievance procedures as IDOC. R., p. 61. IDOC Directive Number 316.02.01.001,¹ which was in effect between September 16, 2004 and November 28, 2007, sets forth a three-step inmate grievance process. R., p. 61, and Appendix A.

¹ A copy of IDOC Directive Number 316.02.01.001 is attached hereto as Appendix A for the Court's convenience.

The three-step process requires an inmate to submit a concern form, a timely grievance form, and a timely grievance appeal form. *Id.*; App. A, Section 05.00.00 - 05.03.00. The inmate grievance procedure may be used for complaints regarding all policies, conditions of confinement, actions by employers, actions by other inmates, and incidents occurring within the jurisdiction of ICC that affect the inmate personally. Each facility provides a locked box for inmates to place concern, grievance, and appeal forms. *Id.*; App. A, Section 5.00.00.

In order to comply with the ICC's grievance procedure, an inmate must try to solve an issue or problem informally by submitting a concern form before filing a grievance. *Id.*, p. 62; App. A, Section 05.02.01. ICC staff should respond within seven working days of receiving a concern form. *Id.* If the issue cannot be resolved informally, an inmate may submit a grievance form. *Id.*, p. 62; App. A, Section 05.02.02. Inmates are required to file the grievance form within fifteen days of the incident or problem that is the basis of the grievance. The grievance must contain all information relating to the nature of the complaint. It must be specific as to dates, places, names of personnel involved, and how the offender has been adversely affected. The offender must also state the action that the offender believes the reviewing authority should take. *Id.* Additionally, inmates filing a grievance form must attach the concern form to the grievance in order to substantiate that they have taken steps to informally solve the issue. *Id.*; App. A, Section 05.02.02.

If the grievance form is both timely and correctly submitted, it is assigned to the applicable ICC staff, but not the staff that responded to the concern form. The grievance coordinator then assigns the grievance a number and logs to whom the grievance is assigned. The assigned staff has seven working days to answer the grievance and return it to the grievance coordinator. After an

answer is received, the grievance coordinator logs the response and forwards the grievance to the reviewing authority for a decision. *Id.*; App. A, Section 05.02.02.

The reviewing authority has fourteen working days to return the completed grievance to the grievance coordinator. After a response is received from the reviewing authority, the grievance coordinator logs the decision and returns the original (white) copy of the grievance to the inmate; the pink copy is forwarded to the Operations Deputy Administrator with the monthly Management Briefing report; the yellow copy is kept on file for five years and then destroyed. *Id.*; App. A, Section 05.02.02.

If the inmate is not satisfied with the reviewing authority's response, he may appeal by returning the original (white) copy of the grievance to the grievance coordinator; the appeal must be filed within ten days of the reviewing authority's response. *Id.*, p. 63; App. A., Section 05.03.00. When a grievance appeal is received, the grievance coordinator logs the appeal and forwards it to the appellate authority. The appellate authority has fourteen working days to respond and return the appeal to the grievance coordinator. After a response is received from the appellate authority, the grievance coordinator logs the appellate authority's response and forwards the completed appeal to the inmate. *Id.*

Upon completion of all three steps – a submission of an inmate concern form, as well as a timely submission of both a grievance form and grievance appeal form – the inmate grievance process is exhausted. *Id.*

2. Factual and Procedural Background

Butters is a prisoner incarcerated at ICC under the jurisdiction of IDOC. Butters claims he has been assaulted twice during his incarceration. He claims he was first assaulted on

October 5, 2007 because he is a sex offender. He claims the second assault occurred on October 15, 2007. On October 30, 2007, twenty-five days after the first alleged incident, Butters submitted separate concern forms to Defendants Tammy McCall and Sara Fink. R., p. 99. In so doing, Butters specifically complained of the October 5 incident. However, neither concern form made any mention of the alleged October 15 assault. *Id.* Butters also claims to have submitted a grievance form on November 10, 2007 complaining of the October 5 incident. However, the grievance form he claims to have submitted is not signed by an ICC staff member and the section entitled "For Administrative Use," which indicates the date a grievance is submitted to ICC, is not filled out. R., p. 100. Additionally, ICC has no record of Butters filing a grievance. R., p. 63-64.

A year later, on October 1, 2008, Butters submitted a concern form to Defendant Brent Archibald and complained of the alleged October 5, 2007 assault. R., p. 101. Butters also complained, for the first time, of the alleged October 15, 2007 assault. *Id.* Archibald responded by indicating that he did not find enough evidence to determine who participated in the assault. *Id.* On October 7, 2008, Butters submitted another concern form to Archibald, which reiterated the same complaints mentioned in the October 1, 2008 concern form. *Id.* Archibald responded by referencing his earlier response. *Id.*

On October 10, 2008, Butters submitted a grievance appeal form. R., p. 102. In the appeal, Butters complained of the two alleged October 2007 assaults and mentioned that he filled out concern forms in both October 2007 and October 2008. *Id.* However, Butters made no mention of ever filling out and submitting a grievance form to ICC. *Id.* ICC Grievance Coordinator, Jennifer Gardner, responded to Butters' appeal by indicating that his grievance was untimely, as the alleged

assaults occurred over a year earlier, which was well past the required fifteen-day filing deadline. R., p. 103.

On October 22, 2008, Butters submitted a second grievance appeal form complaining of the assaults that allegedly took place more than a year earlier. R., p. 104. Gardner again responded by indicating that his appeal was untimely. R., p. 105.

On April 10, 2009, Butters filed a civil action against Philip Valdez, Daniel Prado, Joel Vance Young, Fermin Villiarreal, Shane Jepsen, Brent Archibald, Daniel Chaney, Brian Doser, Justin Acosta, Sara Fink, Flemming Green, Brian Titsworth, and Tammy McCall (collectively "Defendants") claiming they failed to prevent him from being harmed and have not taken action to alleviate the future risk of harm he faces as a result of his status as a sex offender. On July 17, 2009, the district court granted Defendants' Motion for Summary Judgment, holding that Butters failed to exhaust his administrative remedies before filing his claim. R., p. 130. The Court also noted that even if there was evidence that Butters exhausted his remedies, Counts II, III, and IV must be dismissed because there is no apparent or claimed basis for monetary damages based on a violation of Article 1, Section 6 of the Idaho Constitution. *Id.*

Butters filed a Motion to Reconsider on July 30, 2009, claiming, *inter alia*, that Defendants failure to respond to his grievance resulted in a waiver of their ability to raise the exhaustion doctrine as a defense. However, the district court denied the motion on August, 10, 2009, stating that "the issue of whether Plaintiff received a response to a grievance only becomes relevant

if there was a timely grievance filed. [Plaintiff]² has introduced no new evidence that a timely grievance was filed." R., p. 141. Thus, the court denied Butters' motion.

On August 27, 2009, Butters appealed the district court's decision claiming the district court erroneously determined that he failed to exhaust his administrative remedies. Butters did not, however, appeal the district court's dismissal of Counts II, III, and IV of his lawsuit on the grounds that monetary damages are not available in a private cause of action under Article 1, Section 6 of the Idaho Constitution. Therefore, he is precluded from raising the dismissal of those claims on appeal.

II.

ISSUE ON APPEAL

The sole issue on appeal is whether Butters failed to exhaust his administrative remedies prior to filing his civil action when he (1) neglected to submit an inmate concern form for the alleged October 5, 2007 assault until ten days after the filing deadline; (2) neglected to submit an inmate concern form for the alleged October 15, 2007 assault until nearly a year after the filing deadline; and (3) never properly submitted a grievance form for any alleged assault as required by ICC's grievance policy.

III.

STANDARD OF REVIEW

When reviewing an order for summary judgment, the standard of review utilized by this Court is the same standard used by the district court in initially ruling on the motion. *Mendenhall v. Aldous*, 146 Idaho 434, 436 (2008). Under Idaho R. Civ. P. 56(c), summary judgment

² The Court inadvertently referred to the Plaintiff as the Defendant in its Memorandum Decision. R., p. 141.

is to be rendered to the moving party if “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” In considering summary judgment the Court liberally construes all facts and all reasonable inferences in favor of the non-moving party. *A & J Const. Co., Inc. v. Wood*, 141 Idaho 682, 684 (2005).

In order to withstand a motion for summary judgment, a non-moving party may not rest on allegations in the pleadings, but must produce evidence by affidavit or deposition to contradict the assertions of the moving party. I.R.C.P. 56(e); *Worthen v. State*, 96 Idaho 175, 176 (1974). A non-moving party may not rely on general or conclusory allegations unsupported by specific facts, particularly where opposing affidavits set forth specific and otherwise uncontroverted facts. *Cameron v. Neal*, 130 Idaho 898, 902 (1997). Rather, a party must provide factual details of specificity equal to those furnished by his opponent. *Bob Daniels and Son v. Weaver*, 106 Idaho 535, 541 (1984). “A mere scintilla of evidence or only *slight doubt* as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment.” *Finholt v. Cresto*, 143 Idaho 894, 897 (2007) (emphasis added). Moreover, even disputed facts will not defeat summary judgment when the non-moving party fails to establish the existence of an essential element of his or her case, *Badell v. Beeks*, 115 Idaho 101, 102 (1988), or when a plaintiff fails to establish a prima facie case on which he or she bears the burden of proof. *State v. Shama Res. Ltd. P’ship*, 127 Idaho 267, 270 (1955).

IV.

ARGUMENT

A. Plaintiff's Appeal Must be Dismissed for Failure to Exhaust his Administrative Remedies

Idaho law requires prison inmates to exhaust their administrative remedies before bringing a civil action with respect to the conditions of their confinement. The Idaho Code states in pertinent part:

Unless a petitioner who is a prisoner establishes to the satisfaction of the court that he is in imminent danger of serious physical injury, no petition for writ of habeas corpus *or any other civil action* shall be brought by any person confined in a state or county, or in a state, local or private correctional facility, with respect to conditions of confinement until *all available administrative remedies have been exhausted.*

I.C. § 19-4206(1) (emphasis added).³ Although Idaho courts have had few opportunities to precisely define what it means for inmates to exhaust their administrative remedies, "[i]t is well established that to exhaust – literally, to draw out, to use up completely, *see Oxford English Dictionary* (2d ed. 1989) – a prisoner must grieve his complaint about prison conditions up through the highest level of administrative review before filing suit." *McCoy v. Goord*, 255 F.Supp.2d 233, 246 (S.D.N.Y. 2003) (internal quotations omitted).

The Idaho Court of Appeals emphatically agreed in *Drennon v. Idaho State Corr. Inst.*, holding that "prisoners must exhaust available administrative remedies prior to bringing any civil action with respect to the conditions of his or her confinement" 145 Idaho 598, 604 (Ct. App. 2008) (citing I.C. § 19-4206(1)). Furthermore, the Court of Appeals also held that the

³A copy of I.C. § 19-4206 is attached hereto as Appendix B for the Court's convenience.

exhaustion doctrine may only be waived if an inmate is in imminent danger of physical harm or if the prison does not have a grievance system in place. *Drennon*, 145 Idaho at 604 (citing I.C. § 19-4206(1)). Otherwise, inmates must comply with the prison grievance system and grieve their complaints to the highest administrative level before filing a lawsuit in state court. I.C. § 19-4206(1).

1. Plaintiff was Required to Exhaust his Administrative Remedies

In *Drennon*, the Idaho Court of Appeal interpreted the scope of the exhaustion doctrine under I.C. § 19-4206(1) in the same manner in which nearly all federal courts have interpreted the exhaustion doctrine under 42 U.S.C. § 1997e(a) of the Prison Litigation Reform Act ("PLRA"), which is substantially similar to Idaho's exhaustion statute. The PLRA, as codified at 42 U.S.C. § 1997e(a), provides as follows: "No action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison or other correctional facility *until such administrative remedies as are available are exhausted.*"⁴ As a result of the similarity between Idaho's exhaustion statute and the PLRA's exhaustion requirement, this Court "may glean insight from the interpretations" of other courts as it often does when analyzing "similar or identical statutes." *Curlee v. Kootenai County Fire & Rescue*, 148 Idaho 391, 224 P.3d 458, 463 (2008); *see also, Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Ada County*, 123 Idaho 410, 418 (1993); *Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 431 (1993).

⁴ Federal courts definitively hold that the exhaustion requirement set forth in 42 U.S.C. § 1997e(a) applies to private prisons. *Roles v. Maddox*, 439 F.3d 1016, 1018 (9th Cir. 2006).

The United States Supreme Court has, on several occasions, discussed the integral purposes of the exhaustion doctrine in the context of prisoner lawsuits. *See, e.g., Woodford v. Ngo*, 548 U.S. 81 (2006); *Porter v. Nussle*, U.S. 516 (2002). For example, in *Ngo*, the Supreme Court stated that the purpose of the exhaustion doctrine is three-fold. 548 U.S. at 93. First, it "attempts to eliminate unwarranted federal-court interference with the administration of prisons, and thus seeks to 'affor[d] corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case.'" *Id.* (citing *Porter v. Nussle*, 534 U.S. 516, 525 (2002)). Second, the PLRA's exhaustion doctrine "intended to reduce the quantity" of prisoner lawsuits. *Id.* at 93-94 (citing *Nussle*, 534 U.S. at 524) (internal quotation omitted). And third, the exhaustion doctrine is meant to "improve the quality of prisoner suits." *Id.* (internal quotation omitted).

The Court determined that proper exhaustion effectively serves all of these goals. With respect to the first goal, it stated that the exhaustion doctrine gives "prisoners an effective incentive to make full use of the prison grievance process and accordingly provides prisons with a fair opportunity to correct their own errors." *Id.* at 94. This is particularly notable in relation to state correctional systems because it is "difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Id.* (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 491-92 (1973)). Next, the Court reasoned that the exhaustion doctrine reduces the quantity of prisoner suits "because some prisoners are successful in the administrative process, and others are persuaded by the proceedings not to file an action in federal court." *Id.* at 94. In turn, this process helps "filter out some frivolous claims." *Nussle*, 534 U.S. at 624 (internal quotation omitted). Finally, the Court stated that proper exhaustion also improves the quality of prisoner suits that are eventually filed

"because proper exhaustion often results in the creation of an administrative record that is helpful to the court." *Ngo*, 548 U.S. at 94-95. It stated that "[w]hen a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved." *Id.* at 95.

Due to the crucial role the exhaustion doctrine plays in the prisoner grievance system, Idaho's inmate exhaustion statute requires all inmates to exhaust their administrative remedies, regardless of whether the relief sought is available. I.C. § 19-4206(1) states that inmates may not file any civil action relating to the conditions of their confinement until "all *available* administrative remedies have been exhausted." (Emphasis added.) Likewise, 42 U.S.C. § 1997e(a) states that inmates may not file a lawsuit with respect to prison conditions "until such administrative remedies *as are available* are exhausted." (Emphasis added.) Like Idaho's inmate exhaustion statute, the PLRA's exhaustion statute requires inmates to exhaust *available* administrative remedies.

The United States Supreme Court interpreted the meaning of the term "available" in the context of PLRA's exhaustion statute in *Booth v. Churner*, 532 U.S. 731 (2001). In *Booth*, a state prisoner brought a civil rights action under 42 U.S.C. § 1983 alleging that prison guards assaulted him. He sought various forms of injunctive relief and money damages. However, the prison grievance system had no provision for the recovery of money damages. Before resorting to federal court, the prisoner filed an administrative grievance with the prison, but did not seek administrative review after he was denied relief. The prisoner's failure to seek administrative review with the prison resulted in the district court's dismissal of his complaint for failure to exhaust. The Third Circuit Court of Appeals affirmed. *Booth*, 532 U.S. at 734-35. In appealing the decision to the United States Supreme Court, the prisoner alleged that the PLRA's exhaustion statute did not require him

to comply with the prison's grievance process because it could not provide the monetary relief he was seeking. Thus, he argued that the administrative remedy he sought was not "available" under 42 U.S.C. § 1997e(a). *Id.*

The Supreme Court rejected the prisoner's argument and affirmed the dismissal of his complaint for failure to exhaust. *Id.* at 741. In so doing, the Court *mandated* that all prisoners must exhaust their administrative remedies under the PLRA, regardless of whether the relief sought is available. *Id.* *Booth* expressly rejected an interpretation of 42 U.S.C. § 1997e(a) that would have required an effective remedy to actually be available. Instead, the Court noted that prior to the enactment of an amendment in 1995 that created the present version of the statute, courts had discretion to require a state inmate to exhaust "such . . . remedies as are available" but only if those remedies were "plain, speedy and effective." *Id.* at 739 (citing 42 U.S.C. § 1997e(a) (1994 ed)). But, under the present statute, courts lack discretion to discard the exhaustion requirement. The Supreme Court concluded that exhaustion is a procedural requirement, rather than a substantive or result-driven one, and that the term "exhaust," in the context of the statute, requires exhaustion of a process, not exhaustion of possible relief. *Id.* Thus, the phrase, "such administrative remedies as are available" "requires a prisoner to exhaust the grievance procedures offered, whether or not the possible responses cover the specific relief the prisoner demands." *Id.* at 738.

The *Booth* decision clearly supports the proposition that Idaho's inmate exhaustion statute requires all inmates to exhaust their administrative remedies regardless of whether the relief sought is available. As noted in *Booth*, prior to 1995, the PLRA's exhaustion statute required prisoners to exhaust their available remedies only if the remedies were "plain, speedy, and effective." *Id.* at 740 (citing *McCarthy v. Madigan*, 503 U.S. 140, 155-56 (1992)). However, the Idaho

legislature, in adopting its inmate exhaustion statute in 1992, purposely excluded the "plain, speedy, and effective" language that was then contained in the federal statute. *See* I.C. § 19-4206(1). In so doing, the legislature clearly intended to require that all inmates exhaust their administrative remedies regardless of the remedy sought and regardless of whether the remedy is "plain, speedy, and effective." Three years later, in 1995, the federal government amended the PLRA's exhaustion requirement and also omitted the "plain, speedy, and effective" language. Thereafter, the United States Supreme Court interpreted the amended statute as requiring prisoners to exhaust their remedies regardless of the remedy sought. *Booth*, 532 U.S. at 738. Both the Idaho and federal inmate exhaustion statutes currently provide that a prisoner must exhaust administrative remedies before filing any action relating to prison conditions, and neither includes any language limiting the exhaustion requirement to situations where there is an "effective" remedy or where the relief requested is readily available or even possible. I.C. § 19-4206(1); 42 U.S.C. § 1997e(a). Thus, Idaho's inmate exhaustion statute clearly applies to Butters and he was required to exhaust his administrative remedies with ICC prior to filing his lawsuit.

Significantly, Butters tacitly admits that the exhaustion doctrine applies to his claim, as he has never once disputed its applicability in any of his pleadings. Moreover, Butters does not claim that the exhaustion doctrine should be waived in his case under the two limited exceptions set forth in I.C. § 19-4206(1). Nor does Butters question the availability of ICC's grievance procedure or its applicability to inmates as set forth in ICC's supporting affidavit. *R.*, p. 60-64. Rather, he argues that he complied with ICC's grievance process and therefore exhausted his administrative remedies prior to filing this lawsuit. Thus, because Butters admits that he was required to exhaust his administrative remedies, it is important to review the strict guidelines imposed by the exhaustion

doctrine. In so doing, the facts will clearly demonstrate that Butters failed to comply with ICC's three-step grievance process and therefore failed to exhaust his administrative remedies.

2. **Plaintiff Failed to Timely Comply with ICC's Three-Step Grievance Policy and Therefore Failed to Properly Exhaust his Administrative Remedies**

The United States Supreme Court held in *Woodford v. Ngo* that the exhaustion doctrine requires inmates to complete the administrative review process in accordance with a prison's applicable procedural rules, including filing deadlines, as a precondition to bringing suit. 548 U.S. at 94. In *Ngo*, a state prisoner was allegedly prohibited from participating in certain prison programs, including a variety of religious activities. Approximately six months after the restriction was imposed, the prisoner filed a prison grievance challenging that action. The grievance was rejected as untimely because it was not filed within fifteen working days of the action being challenged. *Id.* at 87.

The prisoner brought a civil rights action under 42 U.S.C. § 1983 against prison officials challenging the restrictions on his participation in the prison programs. The district court dismissed the claim on the ground that the prisoner had not fully-exhausted his administrative remedies. The Ninth Circuit reversed, holding that the prisoner exhausted his remedies because none remained available to him. The prisoner appealed and the United States Supreme Court granted certiorari. *Id.*

The question presented on appeal was whether a prisoner can satisfy the exhaustion doctrine by filing an untimely or otherwise procedurally defective administrative grievance or appeal. *Id.* at 83. The Supreme Court decidedly determined that the answer is no. In reversing the Ninth Circuit's decision, the Supreme Court determined that administrative law requires proper exhaustion

of remedies. It maintained that proper exhaustion requires prisoners to comply with a prison's deadlines and other critical procedural rules before filing a claim in court. *Id.* at 93-95. The Court noted that because the prisoner filed a grievance after the fifteen-day deadline, his grievance was untimely and he failed to exhaust his administrative remedies. *Id.* It therefore indicated that the prisoner's claim should be dismissed, as a failure to exhaust must carry a sanction in order to avoid a "toothless" exhaustion requirement. *Id.* at 95.

In so holding, the Court repeatedly emphasized that a prisoner must comply with a prison's filing deadlines and procedural rules in order to satisfy purposes of the PLRA's exhaustion statute. *Id.* at 93-95. "The benefits of exhaustion can be realized only if the prison grievance system is given a fair opportunity to consider the grievance. The prison grievance system will not have such an opportunity unless the grievant complies with the system's critical procedural rules." *Id.* at 95. To illustrate the importance of an exhaustion scheme that requires strict compliance with a prison's procedural rules and filing deadlines, the Court used the following example:

"[A] prisoner wishing to bypass available administrative remedies could simply file a late grievance without providing any reason for failing to file on time. If the prison then rejects the grievance as untimely, the prisoner could proceed directly to federal court. And acceptance of the late grievance would not thwart the prisoner's wish to bypass the administrative process; the prisoner could easily achieve this by violating other procedural rules until the prison administration has no alternative but to dismiss the grievance on procedural grounds. We are confident that the PLRA did not create such a toothless scheme."

Id. Consequently, the Supreme Court conclusively established that inmates may not proceed to court until they have exhausted their administrative remedies, which, by definition, requires them to strictly comply with all of the prison's procedural and filing deadlines. *Id.* at 95-96.

In the present case, Butters failed to properly exhaust his administrative remedies in accordance with *Ngo*, as he did not comply with the deadlines and procedural rules of ICC's grievance process. IDOC Directive Number 316.02.01.001, which was in effect between September 16, 2004 and November 28, 2007, sets forth a three-step inmate grievance process. *R.*, p. 61; Exhibit A. The three-step process requires an inmate to timely submit three separate forms: a concern form, a grievance form, and a grievance appeal form. *Id.*; App. A., Section 05.00.00. An inmate must first attempt to solve a problem or issue by submitting a concern form before filing a grievance. If the issue cannot be resolved informally, an inmate must file a grievance form. However, ICC's grievance process requires that "[t]he grievance be filed within *fifteen (15) days* of the incident or problem that is the basis of the grievance." *Id.* (emphasis added.)

Butters clearly failed to exhaust his administrative remedies prior to filing his civil action, as he (1) neglected to submit an inmate concern form for the alleged October 5, 2007 assault until ten days after the filing deadline; (2) neglected to submit an inmate concern form for the alleged October 15, 2007 assault until nearly a year after the filing deadline; and (3) never properly submitted a grievance form for either alleged assault as required by ICC's grievance policy.

With respect to the October 5, 2007 altercation, Butters had fifteen days from the date of the incident, or until October 20, 2007, to submit both a concern form and a grievance form to ICC. However, the concern forms Butters submitted to ICC and attached to his affidavit are dated October 30, 2007, which is twenty-five days after the altercation. *R.*, p. 99. Clearly, his concern forms were untimely, as they were filed ten days late. With respect to the alleged October 15, 2007 altercation, Butters had another fifteen days, or until October 30, 2007, to submit both a concern and grievance form to ICC. However, Butters failed to submit either form prior to the filing deadline.

Although Butters filed two separate concern forms on October 30, 2007, neither one made any mention of the alleged October 15 altercation. R., p. 99. Rather, they only mentioned the October 5 altercation. The first time Butters ever submitted any form mentioning the October 15 incident to ICC was nearly a year later on October 1, 2008.

Even if Butters had properly submitted a timely grievance for either the October 5 or October 15, 2007 altercations, he never filed a grievance form for either incident. Although Butters claims he submitted a grievance form on November 10, 2007, R., pg. 94, it is clear that it was never submitted to ICC. The grievance form Butters submits for the record and claims to have submitted to ICC is not signed by an ICC staff member. R., p. 100. The section of the form entitled "For Administrative Use," which is where ICC staff makes a notation indicating when the form is submitted, is not filled out. *Id.* Additionally, ICC has no record of Butters ever filing a completed grievance. R., p. 63-64. Furthermore, Butters' own statements belie his claim. On October 10, 2008, Butters submitted a grievance appeal form to ICC. R., pg. 102. In the appeal, Plaintiff referred to the alleged October 5 altercation and stated: "I was told that something would be done about it but nothing was. I want to know why sex offenders and old people are put in danger all the time. I have sent concern forms to Fink and Chaney at the time of the problem and now I have sent two concern forms to investigator Archibald." *Id.* Notably, Butters referenced the concern forms he submitted on October 30, 2007, yet did not allege that he ever submitted a grievance form. The fact that he specifically mentions the concern forms but makes no mention of any grievance form indicates that he failed to file a grievance altogether.

Regardless, even if Butters had filed a grievance on November 10, 2007, as he claims, it still would have been untimely. As already discussed, ICC's grievance policy required Butters to

submit both a concern form and a grievance form within fifteen days of the incident giving rise to the grievance. Thus, he had until October 20, 2007 to file a grievance form for the October 5 altercation, and until October 30, 2007 to file a grievance form for the October 15 altercation. With respect to the October 5 altercation, Butters admits that he failed to submit a concern form until October 30, 2007 – ten days after the filing deadline – and that he failed to submit a grievance form until November 10, 2007 – twenty days after the filing deadline. Clearly, Butters did not comply with ICC's filing deadlines with respect to the October 5 altercation. Moreover, Butters did not even attempt to file a grievance form with respect to the October 15 altercation and therefore waived his right to grieve the incident. The grievance form Butters claims to have submitted to ICC makes no mention of the October 15 altercation. Rather, he merely refers to the concern forms he filed on October 30, 2007, which only mention the October 5, 2007 incident. In any event, even if Butters had not waived his right to grieve the October 15 altercation, he still failed to file the grievance form until November 10, 2007, which was eleven days past the October 30, 2007 deadline.

Finally, as a result of Butters failure to submit timely concern and grievance forms, he also failed to submit a timely grievance appeal form with ICC. ICC's three-part grievance system allows inmates to appeal decisions with which they are not satisfied. In order to do so, they must first submit a concern form before also submitting a timely and procedurally sufficient grievance form. R., pg. 63; App. A., Section 05.03.00. As previously mentioned, both of these forms must be submitted within fifteen days of the incident giving rise to the grievance. If an inmate properly submits these forms, an ICC staff member will issue a response, which is logged in ICC's grievance system and given to the complaining inmate. At that point, the inmate has ten days to appeal. *Id.* In the present case, Butters neglected to correctly fill out and submit timely concern and grievance

forms. Even if he had done so, Butters did not submit a grievance appeal form until October 10, 2008, which was a year after the alleged assaults and well past the ten-day deadline. R., pg. 102.

Butters clearly failed to exhaust his administrative remedies prior to filing his lawsuit. Although the Supreme Court in *Ngo* required inmates to strictly comply with a prison's filing deadlines and procedural rules in order to satisfy the exhaustion doctrine, Butters rejected ICC's three-step grievance system, ignored both its filing deadlines and procedural requirements, and instead insisted on a grievance process that enforces no deadlines and provides no penalties for haphazard and neglectful compliance. In so doing, he (1) neglected to submit an inmate concern form for the alleged October 5, 2007 assault until ten days after the filing deadline; (2) neglected to submit an inmate concern form for the alleged October 15, 2007 assault until nearly a year after the filing deadline; and (3) never properly submitted a grievance form for either alleged assault as required by ICC's grievance policy. Clearly, Butters did not exhaust his administrative remedies and his appeal must be dismissed.

3. ICC was not Required to Respond to Plaintiff's Untimely and Procedurally Deficient Grievance

The record clearly indicates that Butters never filed a grievance with ICC. Nonetheless, assuming *arguendo* that he did file a grievance on November 10, 2007 as he claims, he still did not exhaust his administrative remedies regardless of whether Defendants responded to his grievance. Butters claims that Defendants did not respond to his grievance and therefore waived their ability to rely on the exhaustion doctrine as a defense. In essence, he claims that he cannot be required to exhaust when Defendant's failed to respond to his grievance. Butters' allegation is without merit, as ICC is not required to respond to untimely and deficient grievances.

Idaho courts indicate that ICC staff is not obligated to respond to an inmate's untimely and procedurally deficient grievance. *Drennon*, 145 Idaho at 603-04. In *Drennon*, an Idaho inmate filed an action against various prison officials regarding the conditions of his confinement. The inmate did not comply with the prison's three-step grievance process, claiming that he was not required to exhaust in order to raise his tort claims. The district court dismissed the complaint, ruling that the inmate failed to exhaust his administrative remedies pursuant to I.C. § 19-4206(1). *Id.* at 600-01.

On appeal, the inmate alleged that he submitted several concern forms to prison officials as part of the administrative grievance process. *Id.* at 603. However, he claimed that prison officials never responded to any of his forms and therefore suggested that he did not need to proceed with the exhaustion process. The Idaho Court of Appeals rejected the inmate's arguments and affirmed the district court's dismissal of the inmate's complaint. In so doing, the Court indicated that it was immaterial whether or not prison officials responded to the inmate's complaints, as the inmate could not establish that he submitted a timely grievance form. *Id.* at 603-04. Therefore, the Court affirmed the district court's dismissal. *Id.* at 604.

Butters correctly points out that some courts do hold that prisoners have satisfied the exhaustion requirement if they do not receive a response to their grievances from prison officials. *See, Dole v. Chandler*, 438 F.3d 804 (7th Cir. 2006); *Pozo v. McCaughtry*, 286 F.3d 1022 (7th Cir. 2002). However, those same courts hold that prison officials are not obligated to respond to untimely or otherwise deficient grievances. For example, in *Pozo*, a prisoner filed a timely complaint but thereafter filed an untimely grievance with prison officials. *Id.* at 1023. The prisoner filed suit and alleged that he attempted to exhaust his administrative remedies but the prison did not

respond to his grievance. *Id.* at 1025. The Seventh Circuit acknowledged that prisoners have satisfied the exhaustion requirement when prison officials fail to respond to a timely and sufficient grievance. Nonetheless, the Court went on to hold that in order "[t]o exhaust remedies, a prisoner must file complaints and appeals in the place, and at the time, the prison's administrative rules require." *Id.* Because the prisoner failed to file a timely grievance, the Court determined that the prisoner had not exhausted his administrative remedies and prison officials were not obligated to entertain his appeal. *Id.*

Both *Drennon* and *Pozo* held that inmates are only entitled to a response to a grievance if the grievance is timely and sufficiently submitted. *Drennon*, 145 Idaho at 603-04; *Pozo*, 286 F.3d at 1025. Consequently, Defendants are only required to respond to grievances that are timely filed and comply with ICC's procedural requirements. Thus, ICC's response to Butters' grievance is only relevant if Butters submitted a timely grievance. As already established, Butters never filed a grievance with ICC and even if he did the grievance was untimely. Butters alleged that he was assaulted on October 5 and October 15, 2007. He therefore had fifteen days – or until October 20 or October 30, 2007, respectively – to submit a grievance. However, Butters admits that he did not submit a grievance until November 10, 2007. *R.*, pg. 94. In so doing, Butters filed an untimely grievance. As a result, Butters failed to properly exhaust his remedies in accordance with *Drennon* and *Pozo*, and ICC was not required to respond to his untimely and deficient grievance.

4. **Plaintiff's Claim That ICC Prevented him From Filing a Timely Grievance is Inadmissible, Contradictory, and Factually Inaccurate**

On appeal, Butters claims he did not file timely concern or grievance forms with ICC because he was in administrative segregation following the alleged assaults and ICC staff did not

provide him with the proper forms until October 30, 2007. Appellant's Br. at 3. This allegation is not only contradictory with his previous statements and factually incorrect, it is also inadmissible.

In order to withstand a motion for summary judgment, a non-moving party may not rest on allegations in the pleadings, but must produce evidence by affidavit or deposition to contradict the assertions of the moving party. I.R.C.P. 56(e); *Worthen v. State*, 96 Idaho 175, 176 (1974). A non-moving party may not rely on general or conclusory allegations unsupported by specific facts, particularly where opposing affidavits set forth specific and otherwise uncontroverted facts. *Cameron v. Neal*, 130 Idaho 898, 902 (1997). Rather, a party must provide factual details of specificity equal to those furnished by his opponent. *Bob Daniels and Son v. Weaver*, 106 Idaho 535, 541 (1984).

In the present case, Butters' claim that ICC prevented him from submitting timely concern and grievance forms is improper, as he rests solely on his pleadings and failed to produce any "evidence by affidavit" supporting his conclusory allegation. See I.R.C.P. 56(e); *Worthen*, 96 Idaho at 176. When Butters filed his Complaint, he never once mentioned that he was unable to submit timely concern and grievance forms because he was in administrative segregation or because he was not provided the appropriate forms. R., pg. 5-14. Likewise, when Butters filed his affidavit, he never once mentioned he was prevented from submitting a timely grievance. He instead waited to first mention the allegation at a hearing on Defendants' Motion for Summary Judgment before the district court. This proves problematic for Butters, as I.R.C.P. 56(e) provides that a non-moving party to a motion for summary judgment may not "rest upon the mere allegations or denials of that party's pleadings," but instead must set forth by affidavit "specific facts showing that there is a genuine issue for trial." Because Butters never claimed in either his Complaint or affidavit that he

was prevented from filing timely concern or grievance forms, he failed to comply with Rule 56(e) and his allegation should be dismissed along with his appeal.

Even if this Court chooses not to disregard Butters' allegation, it is important to note that the allegation is not supported by any evidence, it is contradictory with Butters' previous statements, and it is factually inaccurate. As a preliminary matter, Butters' timing in claiming that he was prevented from submitting a grievance is, at best, suspicious. Butters never made the allegation in his Complaint, his affidavit, or his Reply Brief to Defendants' Motion for Summary Judgment. Instead he first advanced the unsworn allegation at a hearing before the district court on July 9, 2009 to consider Defendants' Motion for Summary Judgment. At the hearing, Butters stated that he did not submit a timely grievance for the alleged October 5, 2007 until October 30 because he "did not have access to anything until the 18th [of October]." Tr., July 9, 2009 Hearing, pg. 3, L. 24-25.

Eight days after the hearing, on July 17, 2009, the district court granted Defendants' Motion for Summary Judgment. R., pg. 122-131. In so doing, the Court stated:

During the hearing on the motion, Plaintiff claimed that he was unable to file a grievance until October 18, 2007 because he had been in SMU from the time of the first incident until that October 18, 2007 with the exception of thirty minutes. However, Plaintiff did not establish why he could not have immediately filed a grievance to meet the October 20, 2007 deadline for the first incident or why he could not have filed a grievance by October 30, 2007 for the second incident.

R., pg. 129.

Following the district court's decision, Butters changed his story. On July 30, 2009, he filed a Motion to Reconsider with the district court. R., pg. 122-135. In the motion, rather than

stating he was unable to file a grievance until October 18, Butters instead claimed in an unsworn briefing that October 30, 2007 was the "first time [he] had a chance to do anything about either assault." R., pg. 132-33.

In his appellate brief, Butters changed his story yet again. He now claims that after he was placed in administrative segregation following the first alleged assault, he requested a concern form from ICC staff. However, he alleges that he was not provided a form because "they did not have any available to give him." Appellant's Br. at 3. He also claims that "[i]t wasn't until October 30, 2007 when staff gave him a concern form to submit." *Id.* Curiously, Butters never mentioned any of these allegations in any of his concern, grievance, or appeal forms. Furthermore, none of these newly-created explanations are made in a sworn affidavit, but only through unsworn testimony.

Butters' three separate renditions of the same allegation are not enough to raise a genuine issue of fact for trial regarding his ability to file a timely grievance form. In order to withstand a motion for summary judgment, a non-moving party must "come forward with evidence by way of affidavit or otherwise which contradicts the evidence submitted by the moving party . . ." *Gray v. Tri-Way Const. Servs., Inc.*, 147 Idaho 378, 383 (2009). Rather than coming forward with evidence by way of affidavit contradicting Defendant's evidence, Butters instead comes forward with a conclusory allegation by way of a pleading that contradicts his own previous statements.

Moreover, Butters' evolving allegation does not fully-explain why he failed to submit a timely concern or grievance form. Butters could have filed a grievance on October 5, 2007 following the first altercation and he could have filed one the next day before he was placed in administrative segregation. Additionally, Butters admitted at the hearing before the district court that

he had access to the grievance process beginning on October 18, 2007. However, he fails to explain why he did not file a grievance at that time. Furthermore, Butters' allegation that he was unable to procure any grievance forms from ICC staff is not delineated with any specificity, let alone any "specific facts" as required by Rule 56(e). *See Cameron*, 130 Idaho at 902. He does not mention when he asked for the forms, who he asked, or whether he ever once followed up for a form following his initial request.

The evidence clearly demonstrates that Butters failed to produce any evidence by affidavit supporting his claim that he was prevented from submitting a timely grievance with ICC staff. Moreover, his vague and ever-evolving allegation is conclusory, contradictory and factually inaccurate. Therefore, Butters' appeal must be dismissed, as he failed to exhaust his administrative remedies.

B. Defendants are Entitled to an Award of Costs and Attorney Fees for Defending Against Plaintiff's Frivolous Appeal

Under I.C. § 12-121 and I.A.R. 41, this Court may grant attorney fees to the prevailing party. I.C. § 12-121 provides in pertinent part: "In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties, provided that this section shall not alter, repeal or amend any statute which otherwise provides for the award of attorney's fees." An award of attorney fees is appropriate when the court is left with "the abiding belief that the appeal has been brought or defended frivolously, unreasonably, or without foundation." *Drennon*, 145 Idaho at 604 (citing *Rendon v. Paskett*, 126 Idaho 944, 945 (Ct. App. 1995)).

In the present case, Butters failed to exhaust his administrative remedies prior to filing his lawsuit. The facts definitively establish that Butters (1) neglected to submit an inmate concern

form for the alleged October 5, 2007 assault until ten days after the filing deadline; (2) neglected to submit an inmate concern form for the alleged October 15, 2007 assault until nearly a year after the filing deadline; and (3) never properly submitted a grievance form for any alleged assault as required by ICC's grievance policy. Even if we accept, *arguendo*, Butters' unsupported claim that he submitted a grievance form with ICC, it is important to note that Butters admits that he failed to comply with ICC's filing deadlines.

As already discussed, ICC's grievance policy required Butters to submit both a concern form and a grievance form within fifteen days of the incident giving rise to the grievance. Thus, he had until October 20, 2007 to file a grievance form for the October 5 altercation, and until October 30, 2007 to file a grievance form for the October 15 altercation. Butters, however, specifically admits that he submitted a grievance form with ICC on November 10, 2007, Appellant's Br. at 2, despite the fact that filing deadline had already expired. In clear violation of Idaho's inmate exhaustion statute, *see* I.C. § 19-4206(1), Idaho case law, *see Drennon*, 145 Idaho at 604, as well as a wealth of United States Supreme Court case law, *see Ngo*, 548 U.S. at 93-95, Butters failed to exhaust his administrative remedies, in that he failed to comply with ICC's filing deadlines.

At every step of the litigation process, Butters has utterly failed to produce any evidence suggesting that he complied with the simple and well-established mandate set forth in Idaho's inmate exhaustion statute. Nonetheless, he continues to pursue his frivolous claim with conclusory allegations and evolving explanations. Yet, he still fails to legally justify his failure to comply with Idaho law prior to filing his lawsuit. Thus, Defendants request attorney fees for the time, expense, and burden of defending against his claim, which is clearly frivolous, unreasonable, and without foundation.

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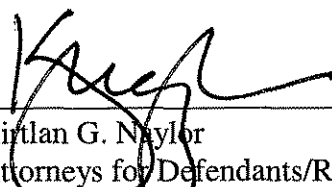
CONCLUSION

The facts conclusively show that Butters failed to exhaust his administrative remedies prior to filing his claim. Butters neglected to timely comply with ICC's three-step grievance process in that he failed to (1) submit an inmate concern form for the alleged October 5, 2007 assault until ten days after the filing deadline; (2) neglected to submit an inmate concern form for the alleged October 15, 2007 assault until nearly a year after the filing deadline; and (3) never properly submitted a grievance form for any alleged assault as required by ICC's grievance policy. Additionally, Defendants' were not obligated to respond to Butters' untimely and procedurally deficient grievance forms. Lastly, Butters' claim that ICC prevented him from filing a timely grievance is inadmissible, contradictory, and factually inaccurate. Therefore, Butters' failed to exhaust his administrative remedies and his appeal must be dismissed. We also request this Court award attorney fees and costs to Defendants.

DATED this 3rd day of May, 2010.

NAYLOR & HALES, P.C.

By

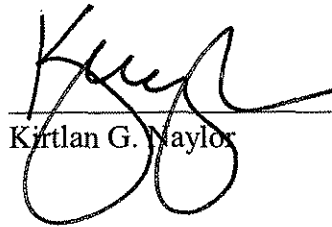

Kirtlan G. Naylor
Attorneys for Defendants/Respondents
Valdez, Prado, Young, Villiarreal, Jepsen,
Archibald, Chaney, Doser, Acosta, Fink, Green,
Titworth and McCall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of May, 2010, I caused to be served, by the method(s) indicated, two (2) true and correct copies of the foregoing upon:


Todd Allan Butters, #54276
I.C.C., N-8-A
P.O. Box 70010
Boise, Idaho 83707

U.S. Mail
 Hand Delivered
 Federal Express
 Fax Transmission



Kirtlan G. Naylor

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DEPARTMENT OF CORRECTION 	OPERATIONS Prisons	DIRECTIVE NUMBER: 316.02.01.001	PAGE NUMBER: 1 of 7
		SUBJECT: Offender Grievance Process	Reviewed: 02-05-03 Revised: 09-16-04

01.00.00. POLICY OF THE DEPARTMENT

It is the policy of the Idaho Board of Correction that the Idaho Department of Correction provide a process that enables each offender to resolve problems and find answers to questions concerning the operation of the Department as it relates to the offender. It is the purpose of this policy to provide a responsive offender grievance process whereby the offender will be able to address complaints concerning the Idaho Department of Correction.

01.01.00. PURPOSE

It is the purpose of this policy to provide a responsive offender grievance process whereby the offender will be able to address complaints concerning the Department.

02.00.00. TABLE OF CONTENTS

- 01.00.00. POLICY OF THE DEPARTMENT
- 01.01.00. Purpose
- 02.00.00. TABLE OF CONTENTS
- 03.00.00. REFERENCES
- 04.00.00. DEFINITIONS
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 - 05.01.00. Communication Of Offender Grievance Procedures
 - 05.02.00. Offender Grievance Process
 - 05.02.01. Concern Form Process
 - 05.02.02. Grievance Form Process
 - 05.02.03. Appeal Process

03.00.00. REFERENCES

Attachment A, Offender Concern Form.

Attachment B, Grievance/DOR Appeal Transmittal.

Attachment C, Grievance Form.

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Department Policy 318, Disciplinary Procedures.

Division Directive 318.02.01.01, Disciplinary Procedures.

Standards for Adult Correctional Institutions, Fourth Edition, Standard 4-4284.

04.00.00. DEFINITIONS

Appellate authority. The facility head. (Also referred to as warden.) The appellate authority for medical grievances shall be the regional manager or regional vice president employed by the contractor.

Board. The state Board of Correction.

Department. The state Department of Correction.

Facility. A building or residence, including the property and land where the building or residence is located, owned or leased and operated or managed by the Board or Department.

Facility Head. The person with primary responsibility to oversee, manage or operate a Department facility. (Also referred to as Warden.)

Offender. A person under the legal care, custody, supervision or authority of the Board including a person within or without the state pursuant to agreement with another state or a contractor.

Offender grievance. A written complaint by an offender or on the offender's behalf regarding a policy applicable within a facility, a condition in a facility, an action involving an offender of a facility, or an incident occurring within an facility.

Reprisal. Any action or threat of action against anyone for the use of, or participation in, the grievance procedure.

Reviewing Authority. The Deputy Warden.

05.00.00. PROCEDURE

The offender grievance process is a three-step process consisting of the Concern Form (See Attachment A, Offender Concern Form), the Grievance Form (See Attachment C, Offender Grievance Form), and the grievance appeal.

The offender grievance procedure may be used for complaints by offenders regarding

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all policies, conditions of confinement, actions by employees, actions by other offenders and incidents occurring within the jurisdiction of the Department that affect the offender personally. Grievances about a disciplinary offense report are an exception and must be handled through the disciplinary appeal process of Policy 318, Disciplinary Procedures.

Offenders are entitled to use the grievance procedure regardless of classification or restrictive housing status.

Reprisals against offenders who file offender grievances are strictly prohibited. Offenders have the right to file grievances against any employee for any reprisal resulting from the filing of a grievance.

Each facility will provide a locked box for offenders to place grievances, offender concerns, etc.

All offender grievances shall be treated as confidential and viewed only by staff on a need to know basis.

Response to grievances should be returned to the offender in a sealed envelope or folded and secured.

An offender may only have three (3) grievances at one (1) time.

The grievance coordinator shall submit a monthly report to the facility head showing the number of grievances filed by category and the number granted, modified, or denied.

Grievance Categories are:

- Access To Courts;
- Administration;
- Classification;
- Commissary;
- Complaint Against Staff;
- Conditions Of Confinement;
- Food;
- Mail;

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Medical;
Programs;
Property; and,
Security.

Grievances and appeals shall be maintained by the grievance coordinator for five (5) years and then destroyed.

05.01.00. Communication Of Offender Grievance Procedures

The written offender grievance procedure shall be readily available to all offenders.

Each offender shall, upon arrival at the facility, receive written notification and an oral explanation of the procedure, including the opportunity to have their questions regarding the procedure answered orally. The written procedure shall be available in any language spoken by a significant portion of the institution's population. Appropriate provisions shall be made for those speaking other languages and for the disabled or those requiring special accommodations.

05.02.00. Offender Grievance Process

Each facility shall create field memoranda explaining in detail the method of processing offender grievances. Each facility shall review its applicable field memoranda to ensure consistency with this directive.

05.02.01. Offender Concern Form

An offender shall try to solve an issue or problem informally by using a Concern Form before filing a grievance.

The Concern Form must be handwritten. Typed Concern Forms will not be accepted. Staff should respond within seven (7) working days of receiving an Offender Concern Form.

05.02.02. Offender Grievance Form

If the issue cannot be solved informally, the offender may obtain a grievance form from the unit staff.

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The grievance shall be filed within fifteen (15) days of the incident or problem that is the basis of the grievance. The reviewing authority may extend the time limit for up to sixty (60) days.

Reasons for time limit extensions could include but are not limited to transfer of staff or offenders, sickness of staff or offender, staff vacation or other time off, loss of documentation.

The offender shall fill out the grievance by hand legibly and completely. Typewritten grievances shall not be accepted. Steps taken to solve an issue shall be documented on the Offender Concern Form and attached to the grievance.

The grievance must contain all information relating to the nature of the complaint. The grievance must be specific as to dates, places, names of personnel involved, and how the offender has been adversely affected.

The offender must state the action that the offender believes the reviewing authority should take.

The grievance coordinator shall determine if the grievance has been correctly and completely filled out.

If the grievance is not correctly filled out, the grievance coordinator shall return the grievance to the offender using the Grievance/DOR Appeal Transmittal form (See Attachment B, Grievance/DOR Appeal Transmittal.)

If the grievance is correctly filled out, the grievance shall be assigned to the most applicable staff, but not the same staff who responded to the concern. The coordinator shall number the grievance and log whom the grievance was assigned to.

Log numbers will consist of a six (6) digit number. The first two (2) digits indicate the facility, the second two (2) indicate the month, and the last two (2) the number of grievances received. As an example, if IMSI receives fifteen (15) grievances in the month of December, they would be numbered 101201 through 101215.

If the grievance is related to a medical issue, the section entitled "the response from the staff member being grieved or in charge of the area/operation being grieved" should be completed by healthcare staff employed by the contractor and supervised by the health services administrator, employed by the contractor.

The section entitled "your grievance has been reviewed and I find," should be completed by the health services administrator employed by the contractor.

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The assigned staff shall answer the grievance and return it to the coordinator within seven (7) working days. If staff fail to respond within the time frame, a reason should be provided in the staff response.

All grievances shall be answered professionally and as clearly as possible. The assigned staff shall put his answer in the space provided on the grievance form.

The coordinator shall log when the assigned staff returns the grievance and forward the grievance to the reviewing authority for a decision.

The reviewing authority shall return the completed grievance to the grievance coordinator, within fourteen (14) working days.

The institution grievance coordinator will ensure that the facility head receives a copy of all grievance, appeals and responses.

The grievance coordinator shall then log the grievance and return the original (white) copy to the offender.

The pink copy shall be forwarded to the Operations Deputy Administrator with the monthly Management Briefing report.

The yellow copy shall be kept on file for five (5) years and then destroyed.

05.03.00. Appeal Process

If the offender is not satisfied with the reviewing authority's response, the offender may appeal by returning the original (white) copy of the grievance to the grievance coordinator. The appeal must be filed within ten (10) days of the reviewing authority's response.

The grievance coordinator will log the appeal and forward to the appellate authority. The appellate authority for medical grievances shall be the regional manager or regional vice president employed by the contractor. The regional manager or regional vice president shall complete the section entitled, "your appeal has been reviewed and I find". The appellate authority shall respond and return the appeal to the grievance coordinator. The grievance coordinator will log the appellate authority's response and forward the completed appeal to the offender. The completed appeal shall be returned to the offender within fourteen (14) working days from receipt. If an extension is required, the offender shall receive written notification.


If the grievance is related to a medical issue, the regional manager or regional vice president employed by the contractor shall forward copies of his responses to the

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Department's medical services manager at the same time the responses are returned to the institution grievance coordinator. In addition to copies of responses, the regional manager or regional vice president shall include copies of all documents (summaries, medical records, etc.) upon which he relied to determine his decision.

The appellate authority may forward the grievance appeal to the director or other division administrator when, in the opinion of the appellate authority, the resolution to the grievance is beyond the appellate authority's control.



Administrator, Operations

9-16-04

Date

Idaho Statutes

TITLE 19

CRIMINAL PROCEDURE

CHAPTER 42

HABEAS CORPUS AND INSTITUTIONAL LITIGATION PROCEDURES ACT

19-4206. PRISONERS REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES IN CONDITIONS OF CONFINEMENT CASES. (1) Unless a petitioner who is a prisoner establishes to the satisfaction of the court that he is in imminent danger of serious physical injury, no petition for writ of habeas corpus or any other civil action shall be brought by any person confined in a state or county institution, or in a state, local or private correctional facility, with respect to conditions of confinement until all available administrative remedies have been exhausted. If the institution, or state, local or private correctional facility does not have a system for administrative remedy, this requirement shall be waived.

(2) At the time of filing, the petitioner shall submit, together with the petition for writ of habeas corpus a true, correct and complete copy of any documentation which demonstrates that he has exhausted administrative remedies described in subsection (1) of this section.

(3) If at the time of filing the petition for writ of habeas corpus the petitioner fails to comply with this section, the court shall dismiss the petition with or without prejudice.

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