Texas Civil Rights Project

PLRA Horror Stories

Exhaustion screws people with meritorious claims:

Manemann v. Garrett, No. A-10-CA-601-SS (W.D. Tex. Aug. 8, 2011) (adopting June 21, 2011 report and recommendation of magistrate) (currently pending before the Fifth Circuit, No. 11-50828) – Mr. Manemann needed to wear a special "build up boot" to accommodate a disability – one of his legs was shorter than the other due to a previous injury. He was arrested and booked into the Llano County Jail on a drug offense. His footwear was confiscated at book-in, and he immediately began requesting his medical boot. (Other prisoners were permitted to wear their free-world footwear in the jail.) Because he was required to work in the kitchen, he was forced to stand on his uneven legs several hours each day. Though he constantly asked jail officials for his boot and to see a doctor, his leg began to swell, and eventually became infected. Ultimately, his leg was amputated below the knee. His Fourteenth Amendment and ADA claims were dismissed by the trial court because he failed to exhaust the jail's grievance procedures, even though the jail never informed him the procedures existed. "Even if he was unaware of the grievance procedures, Plaintiff is not excused him from complying with them in order to exhaust his administrative remedies."

Turner v. Community Education Centers, Inc., No. 5:09-cv-127 (E.D. Tex. 2009) – Defendants, private prison contractors, denied Mr. Turner urgently needed medical care for a pre-existing neck injury. During a custodial police interview, detectives allowed him to lay on the floor because of intense pain, but took no action to provide him with medical treatment. Other inmates had to help him write sick call requests because the pain was so unbearable. When he finally got to the infirmary, a nurse accused him of "faking," and dumped him out of a wheelchair. Eventually, he was air-lifted out of the jail to a hospital, where spinal surgery was performed. When Mr. Turner recovered, he was placed in another jail, and never had an opportunity to grieve the facility's failure to provide him medical care. When counsel tried to help Mr. Turner file grievances, the jail's warden testified he intentionally failed to respond to letters from counsel because "I wasn't going to assist you in trying to sue me."

Bustinza v. Rubio, No. 1:09-cv-00231 (S.D. Tex. 2009) – Mr. Bustinza, a man with a mental illness, was sexually assaulted by a prison officer. Mr. Bustinza lived in fear of this officer, and never spoke about what happened to him until after he was transferred out of the prison where he was raped. Many rape survivors, and especially prisoners forced to live with their attackers, cannot discuss what happened to them for years after the assault. After his transfer, he filed a pro se lawsuit, though he never exhausted his administrative remedies. By that time, the prison's 15 day grievance deadline had passed, and he could not bring an administrative complaint.

Exhaustion is difficult:

Arrington v. Livingston, No. D-1-GN-10-000515 (Travis Co., Tex. Dist. Ct. Apr. 3, 2012) (currently pending before the Texas Third Court of Appeals, 03-12-0025-CV) – Plaintiffs are deaf women incarcerated in a state prison facility. The prison denies them accommodations for their disability, such as sign-language interpreters. For the deaf, written English is a second language – their first language is American Sign Language. Reading and writing is difficult.

The deaf community also has a limited understanding of all judicial processes, including the concept of an "appeal." The Texas Department of Criminal Justice never provided the Plaintiffs an interpreter during prison orientation, or to explain the grievance program. Despite these problems, Plaintiffs were required to file an initial grievance and perfect an appeal before they could bring their disability rights claims in court. To make matters worse, counsel's efforts to assist the Plaintiffs with the grievance process was frustrated by the remote location of the prison (four hours round-trip from counsel's office, with a population under 16,000), and the prison system's total control over responses to the grievances. (For example, when counsel wrote the initial grievances for the Plaintiffs, the prison system granted itself an arbitrary extension of its deadline to respond, throwing off the Plaintiff's deadlines to appeal. Counsel could not know about without driving to the prison, hiring a sign-language interpreter, and conferring with the Plaintiffs.) When the prison did respond, the responses to their grievances were often incorrect statements of the law (such as "it was revealed that deaf interpreters are not required for religious services") or promises of future action that were never followed through on (like "[accessible] telephones will be made available in the future," though that only happened after an injunction was granted). Ultimately, the grievance process delayed filing the Plaintiffs claims for over a year.

Galloway v. Texas Youth Commission, No. 1:07-CV-276-LY (W.D. Tex. 2007) – Plaintiffs were teenagers with mental disabilities in the Texas juvenile prison system. They had been physically and sexually assaulted, and denied accommodations for their mental disabilities to complete TYC's mandatory rehabilitation programming. Because they could not complete the programming, their sentences were arbitrarily extended. At the time, TYC routinely failed to inform children and their parents about how to file a grievance. Responses to grievances merely stated "an investigation will be conducted," and did not mention any requirement to appeal.

Though the Texas Department of Criminal Justice, the state prison system, has a uniform grievance procedure, each of Texas' 254 counties is free to devise its own grievance mechanism. To educate pre-trial detainees about exhaustion, TCRP has drafted 39 different brochures laying out counties' different policies.

State Auditor's report:
In 2008, the Texas State Auditor's Office found TDCJ prisoners "are not always aware of the grievance process" and are "concerned about issues such as retaliation." Sixty-two percent of inmates surveyed complained they had been retaliated against for filing a complaint. (p. 12). Another thirty-five percent said they were afraid to file a complaint because of retaliation from staff. (p. 12). Seventy-eight percent of inmates surveyed believed they grievance system did not "work." (p. 8). Fifty-five percent of inmates surveyed were never informed about the grievance system, and did not know how it works. (p. 7, 10). In sixty-four percent of grievances TDCJ simply found "no further investigation was warranted." (p. 8). The Auditor found different prisons in the TDCJ system gave prisoners different information about the grievance system, though the system is supposed to be uniform across all TDCJ units. (p. 9).

The Department only took action on eight percent of grievances that were filed. (p. 8). Grievance staff only properly notified security staff about "life endangerment situation[s]" in nineteen percent of cases where prisoners complained about a life-threatening emergency, as required by TDCJ policy. (p. 14).
http://www.sao.state.tx.us/reports/main/09-004.pdf

Exhaustion is Pointless:

Doe v. Carter, 7:10-CV-147 (N.D. Tex. 2010) – Mr. Doe was sexually assaulted by a prison guard. He promptly complained, and the prison initiated a criminal investigation. Though the prison knew of the criminal complaint, Mr. Doe also had to file an administrative grievance to exhaust his administrative remedies. The response to Mr. Doe's grievance read "an investigation into your allegations has been opened. … No further action at this time." Though DNA evidence Mr. Doe collected eventually resulted in the officer's conviction, the grievance process provided him no relief. Had he failed to complete it, his claims would have been barred.