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Your Responsibility When Using the Information Provided Below:

When putting this together, we did our best to give you useful and accurate information because we know that incarcerated people often have trouble getting legal information, and we cannot give specific advice to all incarcerated people. Laws and policies change often and can be looked at in different ways. We do not always have the resources to make changes to this material as soon as laws or policies change. If you use this pamphlet, it is your responsibility to make sure that the law or policy has not changed. Most of the materials you need should be available in your institution's law library.

ARIZONA'S INMATE GRIEVANCE SYSTEM
Medical and Non-Medical Grievances
 (Updated July 2021)

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This guide describes how to file three types of grievances in the Arizona Department of Corrections (ADC):

- Emergency Grievances
- Medical Grievances
- Non-Medical Grievances

You may file a grievance about any part of prison life or condition of confinement that directly and personally affects you. You can file grievances for both the actions and the lack of action of ADC staff and ADC's contractors, like health care providers. You can also file grievances about written instructions, policies, and procedures. Even when filing a grievance seems useless, having a paper trail can be very helpful for you and people advocating for better prison conditions. Also, if you want to file a civil lawsuit against the ADC in federal court about conditions of confinement, you must first go all the way through ("exhaust") the prison's grievance procedure, according to the Prison Litigation Reform Act.

The rules that set out how to file grievances in ADC are Department Order # 802, "Inmate Grievance Procedure," and Department Order # 803, "Inmate Disciplinary Procedure," most recently updated February 7, 2021. Throughout this guide, we will refer to these Department Orders as "DO 802" or "DO 803."

EXHAUSTION OF ADMINISTRATIVE REMEDIES

"Exhaustion of Administrative Remedies" means going all the way through the prison's grievance procedure. If you want to file a federal lawsuit (like a lawsuit that alleges someone violated the U.S. Constitution or federal law) then you must exhaust administrative remedies. If you want to file a state law claim (like a lawsuit stating that someone violated the Arizona State Constitution or Arizona State law), then exhaustion of administrative remedies may be required, and is a good idea.

FEDERAL CLAIMS – EXHAUSTION

Under the Prison Litigation Reform Act, courts will dismiss an incarcerated person's federal lawsuit regarding conditions of confinement, unless the incarcerated person first exhausts the prison's grievance procedure. This requirement is true for all federal civil rights claims, also known as "section 1983" claims. 42 U.S.C. § 1997e(a); *Ross v. Blake*, 136 S.Ct. 1850, 1856 (2016). There are a few limited exceptions to exhaustion.¹

¹ An incarcerated person does not need to exhaust a prison's grievance procedure before filing a lawsuit if the incarcerated person can *prove* the grievance procedure "operates as a simple dead end — with officers unable or consistently unwilling to provide any relief to aggrieved inmates," or if a grievance procedure is so complicated that "no ordinary prisoner can navigate it," or "when prison administrators thwart inmates from taking advantage of it through machination, misrepresentation, or intimidation." *Ross v. Blake*, 136 S.Ct. 1850, 1853-54 (2016). An incarcerated person must provide specific evidence that either of these three exceptions apply in their situation, if

If you file a lawsuit without completely or correctly exhausting the administrative grievance procedure, your lawsuit will be dismissed without prejudice meaning you are theoretically allowed to file the same lawsuit again. *Newton v. Eatmon*, 830 Fed. Appx. 961, 962 (9th Cir. 2021) (citing *McKinney v. Carey*, 311 F.3d 1198, 1199-1200 (9th Cir. 2002)). But in reality, your grievance will be late by the time your lawsuit is dismissed and you may not be able to re-file your case. So, it is very important you get your grievance right the first time.

If you are only asking for money damages, you still must exhaust the prison's grievance procedure, even though money damages are generally not available through the grievance procedure. *Booth v. Churner*, 532 U.S. 731, 733 (2001). If you file a federal claim, like a section 1983 claim, in a state court, you still have to exhaust the prison's grievance procedures. *Baker v. Rolnick*, 210 Ariz. 321, 325 (Ariz. Ct. App. 2005). Your grievance has to be detailed enough to put the prison staff on fair notice of what happened and give them an opportunity to respond. *Sapp v. Kimbrell*, 623 F.3d 813, 824 (9th Cir. 2010). This detailed notice should be done in writing and through the grievance procedure.

Prison officials cannot keep you out of court by simply ignoring your grievances, but you must show that you have tried to exhaust. If your grievance is denied, you must appeal to the next level, until you have a response from the Director's level for non-medical issues or from the Contract Facility Health Administrator for medical issues. If you win your grievance (it is "granted") before the final level of review, then you have exhausted, because it makes no sense to appeal if you have won. *Brown v. Valoff*, 422 F.3d 926, 935 (9th Cir. 2005) (holding that an incarcerated person "need not press on to exhaust further levels of review once he has either received all available remedies at an intermediate level of review."); *Barrett v. Maricopa County Sheriff's Office*, 2010 WL 46786, *4-5 (D. Ariz. Jan. 4, 2010) (an incarcerated person who got his medication, which was all he sought through the pre-grievance informal process, had exhausted).

ARIZONA STATE CLAIMS – EXHAUSTION

Before filing an Arizona state tort claim, you must put the prison on notice of the claim within 180 days of the incident. A.R.S. § 12-821.01. A "tort" is an act or failure to act that causes injury. Arizona state tort claims brought by incarcerated people must allege a serious physical injury, like a broken limb, severe concussion, disfiguring wounds, new permanent disability, etc. A.R.S. § 31-201.01(L); *Tripati v. State*, 199 Ariz. 222, 225 (Ariz. Ct. App. 2000) (holding that A.R.S. § 31-201.01(L) limits incarcerated people's tort claims against the State to those involving serious physical injury).

It is unclear whether you are legally required to exhaust the prison's grievance procedure before filing an Arizona state tort claim. DO 802 requires incarcerated people to exhaust the grievance process before filing a complaint with any "State Board," which some courts have implied includes Arizona state courts. See *Kosman v. State*, 199 Ariz. 184, 186 (Ariz. Ct. App. 2000) (stating that ADC achieves its goal of not "unnecessarily burdening the courts" by requiring an incarcerated people to exhaust the internal grievance procedure "prior to filing any complaint with any state board"). Due to this lack of clarity,

they did not exhaust the grievance procedure before filing a lawsuit.

completing the grievance process before proceeding with a state tort claim is the best way to ensure that your claim is not dismissed.

In Arizona, people who are incarcerated or on parole cannot file a state court petition for a writ of habeas corpus to challenge a prison or parole conditions issue. *Foggy v. State ex rel. Eyman*, 107 Ariz. 532, 533-34 (1971) (holding that the “rule in Arizona has always been that the writ of habeas corpus may not be utilized for the purpose of correcting alleged mistreatment of a prison inmate by prison authorities subsequent to valid judgment and commitment.”).

PRACTICE TIPS FOR FILING GRIEVANCES

- **There are strict time limits for each step of the process.**
 - You need to file your grievance as soon as – and no later than 10 workdays after – the action or inaction affected you for the first time. Grievances about sexual abuse do not have a time limit. Keep good notes of the dates you file documents, and when you should get them back. Make sure to write down if the time limit specifies “workdays” (Saturday, Sunday and official holidays don’t count) or “calendar days” and “days” (Saturday and Sunday do count). ADC also has time limits for when they are supposed to respond to you. The maximum length of time for completion of the non-medical grievance process from the initiation of the Formal Grievance process to final disposition is 120 days.

- **Even if ADC does not respond to your grievance by the time they are supposed to, you must continue with the next level of the grievance procedure.**

As soon as you file a grievance, count out all the deadlines in the entire process on a calendar and write them down, so you know when you should be getting responses and/or filing the next level of appeal. At every stage of the process, if you don’t get a response by the date ADC staff should respond to you, or you have not been notified in writing that ADC staff need more time to respond, you still must go forward to the next level of the process. DO 802.01, 1.10; *Williams v. Arpaio*, 2007 WL 2903025, *3 (D. Ariz., Sept. 28, 2007).

- **If you don’t get a response, make sure to write at the very top of the next level grievance form that you fill out, “I did not get a timely response at the prior level of grievance.”** That way ADC can’t throw out your appeal for not having all documents and responses with it.
 - But, if you receive written notification from ADC staff that they need more time to respond to your grievance, then you need to wait until the new deadline to go to the next step. (DO 802.01, 1.10, 1.4).
- **Save copies of all paperwork.**
 - In addition to making copies for you to hold on to, you may also want to send copies of everything to a family member in the community, in case your copies are lost. You need to

have copies of everything, because every time you go to the next level in the process, you must attach copies of all papers you have filed so far, and responses (if any).

- **Each grievance you file can only be about one topic.** If you have multiple complaints, file a separate grievance for each issue, and follow it through to the end of the process. For example, if you want to complain about not seeing a specialist for a medical problem, and not getting enough food, and also about not getting access to the law library, these have to be written on separate grievance forms.
- **Do not do any of these things that will get your grievance automatically thrown out.** No matter what, do not be emotional, sarcastic, make insults or accusations in what you write, because that is grounds to throw out your grievance. (DO 802.07; 802.09). Your grievance will be rejected if it:
 - Threatens serious bodily harm to staff, other incarcerated people, or the general public
 - Is one of multiple or duplicate grievances on the same issue
 - Raises multiple unrelated issues on a single form
 - Raises an issue previously addressed through the grievance process
 - Is filed late and there are no extenuating circumstances (very good excuses)
 - You have been designated a “Vexatious Grievant” by ADC, and you did not use the Grievance Request form (*See* Step Three of How to File a Non-Medical Grievance)

Write clearly and legibly. When filling out your grievance form, write clearly and legibly, or type it if you can use a typewriter. Be brief and get to the point.

HOW TO FILE A GRIEVANCE

EMERGENCY GRIEVANCES

What is an emergency according to ADC?

ADC defines an emergency as a situation where “if processed through the normal grievance time frames, would subject the inmate to substantial risk of medical harm, personal injury or cause other serious and irreparable harm.” (DO 802, 1.8.1). In other words, if your situation would cause you or someone else serious and permanent harm, like death or a severe physical injury, then an emergency grievance is appropriate.

How do I file an emergency grievance?

For emergency grievances, you can notify staff or the Grievance Coordinator in writing or verbally. While you are allowed to file an emergency grievance verbally, having a paper record is always a good idea. You do not have to use the formal Inmate Grievance Procedure Forms.

What happens after I file an emergency grievance?

Emergency grievances are supposed to be immediately reviewed by staff, who will decide if they agree that the situation is an “emergency,” as defined by ADC. Staff must respond to Emergency Grievances immediately. If an emergency grievance describes a sexual assault, staff must immediately initiate certain safety procedures under the federal Prison Rape Elimination Act (PREA).

MEDICAL GRIEVANCES

How do I file a Medical Grievance?

STEP ONE: Fill out Form 802-11 Inmate Informal Complaint Resolution to the Contract Assistant Director of Nursing **within 10 workdays** of the original incident. You must use Form 802-11; a Health Needs Request (HNR) will not work as an “informal” grievance.

In your letter, (1) describe the problem, (2) describe what the impact is on you because of the problem, and (3) request or suggest how the problem could be fixed. Make sure to be clear and to the point. You must attach copies of any documentation that supports your complaint. Keep a copy of the Form 802-11 for yourself.

STEP TWO: Wait **15 workdays** or until the Contract Assistant Director of Nursing responds to your “informal” grievance in writing, whichever comes first. Then, you have **5 workdays** to file a formal Medical Grievance (Step Three).

If ADC staff requests extra time to respond to your informal grievance, then you have **5 workdays** from their new deadline or whenever you receive the response (whichever comes first) to file a formal Medical Grievance.

STEP THREE: To file a formal Medical Grievance, you must use either the Inmate Grievance Form and/or the Inmate Grievance-GF Supplement forms. The Inmate Grievance Form should be submitted to the CO IV Grievance Coordinator of your unit.

In the grievance, (1) describe what the medical problem is, (2) how you tried to resolve it informally, and (3) what you want them to do. You must attach a copy of your original inmate letter (Step One), and a copy of the Director of Nursing’s response. If you did not receive a response, write, “I did not get a response to my inmate letter within 15 workdays.”

The CO-IV is required to immediately forward your formal Medical Grievance to the Contract Director of Nursing.

STEP FOUR: Wait **15 workdays** or until the Contract Director of Nursing responds to your formal Medical Grievance, whichever happens first. Then, you have **5 workdays** to file a Medical Grievance Appeal (Step Five).

STEP FIVE: To file a Medical Grievance Appeal, you must use Form 802-3 Inmate Grievance Appeal. This form should be submitted to the CO IV Grievance Coordinator of your unit.

The CO IV is required to forward your Medical Grievance Appeal to the Contract Facility Health Administrator within **5 workdays**. Then, the Contract Facility Health Administrator is supposed to respond within **30 calendar days**, unless they inform you that they are going to take extra time.

If 5 workdays plus 30 calendar days have passed since you filed your Inmate Grievance Appeal and staff did not request a time extension, you have exhausted the medical administrative grievance procedure.

TIMELINE FOR AN EXHAUSTED MEDICAL GRIEVANCE

- **Within 10 workdays of the original incident**, you must file Form 802-11 Inmate Informal Complaint Resolution.
 - The Contract Assistant Director of Nursing is supposed to respond to you within 15 workdays of when you filed your Form 802-11 Inmate Informal Complaint Resolution.
- **Within 5 workdays of receiving a response to your Inmate Informal Complaint or within 5 workdays from when you were supposed to receive a response to your Inmate Informal Complaint** (whichever comes first), you must file a formal Medical Grievance using the Inmate Grievance Form.
 - The Contract Director of Nursing is supposed to respond to you within 15 workdays of you filing your Inmate Grievance Form.
- **Within 5 workdays of receiving a response to your Inmate Grievance Form or within 5 workdays of when you were supposed to receive a response to your Inmate Grievance Form** (whichever comes first), you must file your Medical Grievance Appeal using Form 802-3 Inmate Grievance Appeal.
 - The Contract Facility Health Administrator is required to respond to you within 35 days of you filing the Inmate Grievance Appeal. This is the end of the Medical Grievance Procedure.

If ADC staff or its contractors ask for an extension at any time, then that new timeline applies.

NON-MEDICAL GRIEVANCES

How do I file a Non-Medical Grievance?

STEP ONE: Fill out Form 802-11 Inmate Informal Complaint Resolution and submit it to the CO III of your unit within **10 workdays** of the original incident.

The first line of your grievance should say, “I am trying to informally resolve the following problem” and then describe the problem in one sentence. After writing that line, (1) describe the problem, (2) describe what the impact is on you because of the problem, and (3) request or suggest how the problem could be fixed. Be clear and to the point. Attach copies of all documentation that supports your complaint. Keep a copy of the 802-11 for yourself.

STEP TWO: Wait **15 workdays** or until you get a response to your Inmate Informal Complaint, whichever comes first. Then, **within 5 workdays**, you must file a formal grievance (Step Seven).

STEP THREE: You must determine if ADC has labeled you a “Vexatious Grievant.”

ADC defines a Vexatious Grievant as someone who has filed:

- Two or more grievances primarily for the purpose of harassment, as determined by ADC staff;
- Two or more grievances without “substantial justification, which includes groundless grievances and grievances filed not in good faith,” as determined by ADC staff; or
- Two or more grievances making “unreasonable, repetitive or excessive requests for information,” again as determined by ADC staff.

STEP FOUR (VEXATIOUS GRIEVANTS ONLY): If ADC has labeled you a “Vexatious Grievant,” regardless of whether that is true, you have to take extra steps in the grievance procedure. If you are not labeled as a Vexatious Grievant, skip to Step Seven.

If you are labeled as a Vexatious Grievant, you must submit, Form 802-13 Grievance Request to the Warden. The Warden will decide whether to accept or deny your request within **five calendar days**. If the Warden accepts your Grievance Request, skip to Step Seven. If the Warden rejects your Grievance Request, continue to Step Five.

STEP FIVE (VEXATIOUS GRIEVANTS ONLY): If you have been labeled a Vexatious Grievant and the Warden rejected your Grievance Request, you must appeal the Warden’s decision by filing Form 802-3 Inmate Grievance Appeal within five *calendar* days. This Grievance Request Appeal should be submitted to the CO IV Grievance Coordinator for your unit.

With your Grievance Request Appeal, you must include a copy of the original Grievance Request Form (Step Four). Keep additional copies of both forms for yourself.

STEP SIX (VEXATIOUS GRIEVANTS ONLY): The CO IV is required to send your Grievance Request Appeal to the Central Office Appeals Officer. **Within 15 calendar days**, the Director is required to respond to your Grievance Request Appeal. If your Grievance Request Appeal is accepted, then you must move on to Step Seven. If your Grievance Request Appeal is rejected or you do not get a response, then you have exhausted administrative grievances. If you choose to file a lawsuit over this grievance, you should inform the court that your Grievance Request Appeal was denied or ignored.

STEP SEVEN: **Within 5 workdays** of receiving a response to your Inmate Informal Complaint or your Grievance Request form, you must file you must a Formal Non-Medical Grievance. If you did not receive a response to your Inmate Informal Complaint, you must file a Formal Non-Medical Grievance **between 15 and 20 workdays** after filing your Inmate Informal Complaint.

To file a Formal Non-Medical Grievance, you must fill out a Form 802-1 Inmate Grievance Form. The Inmate Grievance Form should be submitted to the CO IV Grievance Coordinator of your unit.

Your grievance must be about only a single issue or else it will be thrown out. If you have multiple issues, you must repeat this process for each issue. In your grievance, (1) describe what the problem is, (2) how you tried to resolve it informally, and (3) what you want them to do. Attach a copy of your original inmate letter (Step One), and a copy of the response. If you did not receive a response and/or ADC staff did not tell you that they need more time to respond, write, "I did not get a response to my inmate letter within 15 workdays." Give everything to the CO IV Grievance Coordinator on your yard, and save a copy of the 802-1 and all other documents for yourself.

After you submit your grievance, the CO IV will log your grievance and assign it a number. Take note of this number.

STEP EIGHT: Wait **15 workdays** or until you get a response to your Inmate Grievance Form from the Deputy Warden, whichever comes first. Then, you must file your Grievance Appeal **within 5 workdays**.

STEP NINE: To file your Grievance Appeal, use Form 802-3 Inmate Grievance Appeal. Submit the Inmate Grievance Appeal for to the CO IV Grievance Coordinator for your unit.

In the appeal, (1) describe what the problem is, (2) how you tried to resolve it so far, and (3) what you want them to do. You must also attach a copy of your original inmate letter and any response (Step One), and a copy of your inmate grievance and any response (Step Two). If you did not receive a response from the Deputy Warden at step two and/or ADC staff has not told you that they need more time to respond, write, "I did not get a response to my inmate grievance appeal within 15 workdays." Save a copy of the 802-3 (and copies of the attached forms) for yourself, and give everything to the CO-IV Grievance Coordinator on your yard.

After you submit your appeal, the CO IV will log your appeal and assign it a number. Take note of this number.

The CO IV has **5 workdays** to send your appeal to the Central Office Appeals Officer. Then, the Central Office Appeals Officer has **30 workdays** to respond to your appeal, unless they request a time extension.

After 35 days or after you receive your response from the Central Office Appeals Officer, you have exhausted the administrative grievance procedure.

TIMELINE FOR AN EXHAUSTED NON-MEDICAL GRIEVANCE

- **Within 10 workdays of the original incident**, you must file Form 802-11 Inmate Informal Complaint Resolution.
 - The CO III is supposed to respond to you within 15 workdays of when you filed your Form 802-11 Inmate Informal Complaint Resolution.
- **Within 5 workdays of receiving a response to your Inmate Informal Complaint or within 5 workdays of when you were supposed to receive a response to your Inmate Informal Complaint** (whichever comes first), you must file a formal Non-Medical Grievance using the Inmate Grievance Form.
 - The Deputy Warden is supposed to respond to you within 15 workdays of you filing your Inmate Grievance Form.
- **Within 5 workdays of receiving a response to your Inmate Grievance Form or within 5 workdays of when you were supposed to receive a response to your Inmate Grievance Form** (whichever comes first), you must file your Non-Medical Grievance Appeal using Form 802-3 Inmate Grievance Appeal.
 - The Director is required to respond to you within 35 days of you filing the Inmate Grievance Appeal. This is the end of the Non-Medical Grievance Procedure.

If ADC staff or its contractors ask for an extension at any time, then that new timeline applies.

This timeline and procedure is slightly different for people who ADC has labeled “Vexatious Grievants.”

HOW TO EXHAUST A NON-MEDICAL GRIEVANCE

START HERE

ADC Grievance Procedure
Prison Law Office
Updated July 2021

File an "Informal Inmate
Complaint Resolution"
Form 802-11

Has ADC labeled you a
"Vexatious Grievant"?

YES

NO

File a "Grievance Request"
Form 802-13

DENIED

ALLOWED

File an "Inmate Grievance
Appeal" Form 802-3

DENIED

File an "Inmate Grievance"
Form 802-1

File an "Inmate
Grievance Appeal"
Form 802-3

EXHAUSTED

OTHER TYPES OF GRIEVANCES

In addition to the medical and non-medical grievance procedures outlined above, there are independent appeals processes for the following:

- Sexual Offense Grievances, Department Order #802.08
- Inmate Discipline, Department Order #803
- Inmate Mail, Department Order #914
- Protective Custody, Department Order #805
- Security Threat Groups, Department Order #806
- Inmate Classifications, Department Order #801

REMINDER: Make sure that you are following the right grievance process or else your grievance will be rejected.

Our office has compiled information for incarcerated people on how to file a civil rights case in federal court, and another handout on filing a tort case in Arizona state court. If you want either handout, or both of them, write us back and we will send you a free copy.