

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GOVERNOR PHIL BREDESEN,)	
et al.,)	
)	
Defendants-Appellants,)	No. 07-5562
)	Execution Date: May 9, 1:00 a.m.
v.)	
)	
PHILIP WORKMAN,)	
)	
Plaintiff-Appellee.)	

PHILIP WORKMAN’S REPLY ON PETITION FOR REHEARING *EN BANC*
AND MOTION FOR STAY

Appellants have falsely told this Court that there is no time limit for grievances in Tennessee. Appellants’ Response, p. 15. Under the Tennessee Department of Corrections’ “Inmate Grievance Procedures,” #501.01.VI.C.1 (Attached), Workman had 7 calendar days to file his grievance in this matter: “Grievances must be filed . . . within seven (7) calendar days of the occurrence or most recent occurrences giving rise to the grievance. . . .”

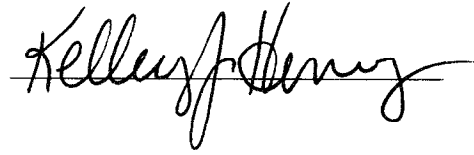
Without question, Workman complied with 501.01 when he challenged the new April 30, 2007 Protocol on May 2, 2007. He filed within 2 days. Workman’s grievance was clearly timely, which is why the Commissioner denied his claim on the merits. Workman did not unduly delay and he is entitled to full federal review under this Court’s controlling decision in Horton v. Potter, 369 F.3d 906 (6th Cir. 2004).

CONCLUSION

This Court should grant rehearing, dismiss the appeal and/or affirm the grant of the TRO.

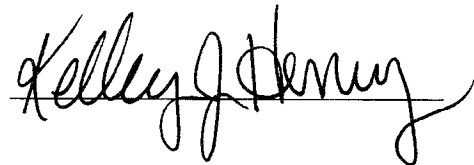
Respectfully Submitted,


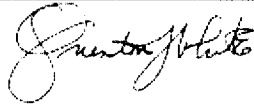
Kelley J. Henry
Gretchen L. Swift
Office of the Federal Public Defender
Middle District of Tennessee
810 Broadway, Suite 200
Nashville, Tennessee 37203
(615) 736-5047



CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by e-mail to Mark Hudson, Office of the Attorney General, 425 5th Avenue North, Nashville, Tennessee 37243 on this 8th day of May, 2007.



 <p style="text-align: center;">ADMINISTRATIVE POLICIES AND PROCEDURES State of Tennessee Department of Correction</p>	Index #: 501.01	Page 1 of 9
	Effective Date: May 1, 2004	
	Distribution: B	
	Supersedes: 501.01 (5/1/03) 9501.01 (5/1/03)	
<p>Approved by: </p>		
Subject: INMATE GRIEVANCE PROCEDURES		

- I. AUTHORITY: T.C.A. 4-3-603, T.C.A. 4-3-606, T.C.A. 41-24-110.
- II. PURPOSE: To establish a standard procedure for the expression and resolution of inmate complaints.
- III. APPLICATION: To TRICOR employees, employees and inmates of TDOC and privately managed facilities, except those offenders assigned to and actively participating in a Special Alternative Incarceration Unit (SAIU) program.
- IV. DEFINITIONS:
 - A. Advocate: An inmate chosen by a grievant from his/her peers or from those appointed by the warden to assist in the filing and/or appeal of a grievance.
 - B. Calendar Days: A time limit that begins to run at 12:01 a.m. on the day following the date of the triggering event. Example: if an inmate files a grievance and the alleged triggering event occurred on April 1st, the seven (7) calendar day's time limit for filing grievances set by Section VI. (C) (1) below would begin to run at 12:01 a.m. April 2nd, and end at 11:59 p.m. on April 8th.
 - C. Emergency Grievance: The resolution of a grievance subject to the normal time limits which could cause the grievant substantial risk of personal injury or irreparable harm.
 - D. Grievance: A written complaint concerning the substance or application of a written or unwritten policy or practice, any single behavior or action toward an inmate by staff or other inmates, or any condition or incident within the department or institution which personally affects the inmate complainant.
 - E. Grievance Committee: A committee composed of a staff chairperson appointed by the warden and members consisting of elected staff and inmates. This committee provides a forum for which an inmate may resolve a grievance at Level II of the inmate grievance process.
 - F. Reprisal: Any action or threat of action against anyone for the good faith use of or good faith participation in the grievance procedure.
- V. POLICY: The Tennessee Department of Correction (TDOC) ensures that every inmate shall have the right to utilize the grievance procedure without fear of reprisal. All grievances shall be considered in a fair and impartial manner and resolved at the lowest possible level in the grievance procedure.

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VI. PROCEDURES:

A. A handbook entitled TDOC Inmate Grievance Procedures shall provide detailed instructions for the filing and processing of inmate grievances and appeals, and for the election/appointment/removal of grievance committee members. Copies of the handbook, and any current departmental and institutional policies concerning inmate grievances, will be available to inmates in the institutional legal library. Access to copies of the handbook shall be provided to all grievance committee members and alternates. All living units for housing segregated inmates shall also be provided with a copy of the handbook and policies regarding inmate grievances.

B. Access to the grievance procedure: Inmate Grievance, CR-1394, and locked grievance depositories shall be made available for use by all inmates. Inmates shall have unimpeded access to grievance forms (CR-1394). If required to ask staff for the form (i.e., an inmate in segregation), the inmate shall be given the form without question or discussion. All inmates will be informed of grievance procedures during orientation.

C. Levels of Review

1. First Level: Grievances must be filed utilizing CR-1394 within seven (7) calendar days of the occurrence or most recent occurrences giving rise to the grievance, with the exception of Title VI complaints. All such complaints must be filed within one hundred eighty (180) days of the occurrence of an alleged discriminatory act. (See TDOC Policy #103.10.) Only one (1) subject or incident shall be addressed in a grievance. All copies of the form must be legible and intact.

Grievance forms which are improperly completed or contain insufficient information for processing shall be returned to the inmate with instructions as to proper completion. It should not be logged as received (which starts the deadline times running) until the corrected version is submitted.

If more than one (1) inmate files a grievance on the same incident, the hearing and responses may be consolidated. This shall be noted on the grievance response forms and on Grievance (LIBG) on the Description Detail Screen.

The chairperson shall review all grievances, enter them on Grievance (LIBG) (with a flag indicating Title VI if the grievant alleges discrimination on the basis of race, color or national origin) and then forward them to the supervisor of the employee or department involved for a signed, written response on CR-3148.

Grievances allegedly involving Title VI complaints shall be simultaneously forwarded to the Title VI Site Coordinator (deputy warden/assistant warden at privately managed facilities) for review and final determination as to Title VI designation. Those deemed to be actual Title VI complaints (regardless of validity or issue) shall remain flagged as Title VI and investigated as such in accordance with policy. The Title VI Site Coordinator shall notify the grievance board chairperson to remove the Title VI flags for those complaints which he/she determines do not fall within the parameters of a Title VI issue. (See TDOC Policy #103.10.) The flag shall be removed in such cases within one (1) workday of receipt of notification by the grievance board chairperson.

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The chairperson's response shall be written on CR-1394 following the chairperson's receipt and review of the supervisor's response. There will be a seven (7) working day time limit at Level I, starting the day the grievance begins to be processed. If grievant accepts the supervisor's response, the grievance chairperson shall enter approval on Grievance (LIBG).

2. Second Level: Within five (5) calendar days of being notified of the Level I response, the grievant may appeal the response to the grievance committee and warden. A hearing shall be held within five (5) working days of an appeal's filing. Within five (5) working days of the hearing, the committee's proposed response shall be forwarded to the warden. Within seven (7) working days of receipt, the warden shall forward his/her decision to the chairperson. Within five (5) working days of receiving the warden's response, the chairperson will allow the grievant to review the grievance materials and responses. If the grievant accepts the Level II response, the grievance chairperson shall enter approval on Grievance (LIBG). Failure of staff to comply with a directive by the warden as a result of the warden's review of the grievance may result in disciplinary action.

If the warden agrees to the grievant's requested solution, the grievant shall not have the right to appeal to Level III.

Grievances concerning Tennessee Rehabilitative Initiative in Correction (TRICOR), over which the warden has no line authority, shall be forwarded from the committee to the warden for comments (if any) and then to Level III. The Assistant Commissioner of Operations/designee shall review and, if necessary, may forward for review/response of the Executive Director of TRICOR.

3. Third Level: A grievant may appeal the Level II response within five (5) calendar days of receipt of that response. The chairperson shall forward one (1) legible copy of the grievance and all documentation to the Assistant Commissioner of Operations/designee. The Level III response shall be sent to the grievance chairperson for distribution within twenty-five (25) working days of the date the appeal was received. The chairperson shall enter the final decision on Grievance (LIBG). This response is final and is not subject to appeal. Failure of staff at TDOC managed facilities to comply with a directive by the Assistant Commissioner of Operations as a result of the Level III review may result in disciplinary action. (At privately managed facilities, the Deputy Commissioner will make a determination as to appropriate action to be initiated.)
- D. If a time limit expires at any stage of the process without the required response, the grievant may move the grievance to the next stage of the process, unless the inmate agrees in writing to a fixed extension of the time limit for response.
 - E. Committee election and hearing procedures shall be developed at each institution, and shall be forwarded to the Assistant Commissioner of Operations for review. Any subsequent revisions to said procedures shall also be forwarded to the Assistant Commissioner of Operations for approval. The warden/designee shall enter elected committee members' names on Board/Committee Members (LIBM).

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- F. The good faith use of, or good faith participation in, the grievance process will not result in formal or informal reprisals against an inmate. An inmate shall be entitled to pursue, through the grievance procedure, a complaint that a reprisal occurred as the result of the filing of a prior grievance.
- G. Matters Inappropriate to the Grievance Procedure: If the chairperson determines a matter to be non-grievable, the grievant may appeal that decision as outlined in the handbook TDOC Inmate Grievance Procedures. The grievance process is inappropriate for:
1. Appealing or seeking review of procedures or punishment imposed under established disciplinary procedures of the TDOC. These issues may be appealed pursuant to Policy #502.01 (Privately managed facilities will use Policy #9502.01 until it is incorporated into #502.01.) When this determination is made, the chairperson shall cite the incident number associated with the disciplinary report.
 2. Appealing decisions or actions of the Board of Probation and Parole or any other agency outside the TDOC.
 3. Addressing classification matters such as institutional placement and custody level, which may be appealed through other avenues outlined in the TDOC #400 policy series, except where policy violations are alleged. Cell assignments not due to a classification or reclassification are grievable.
 4. Appealing or seeking review of any decision regarding the awarding of sentence credits. Sentence credit procedures shall be as provided in Policy #505.01.
 5. Seeking monetary compensation for injuries or property loss. Monetary claims against the TDOC or its employees based upon negligent care of persons or personal property should be filed with the Tennessee Claims Commission pursuant to T.C.A. 9-8-101 et seq. Monetary claims by inmates against employees of privately managed facilities shall be filed with the managing company in accordance with CCA Policy #14-6.
 6. Addressing questions regarding sentence structures. Such problems should be addressed to the counselor, institutional records office and Sentence Information Services (SIS) through established inmate inquiry procedures.
 7. Visitors' behavior which results in disciplinary action is not grievable by an inmate.
 8. Diagnoses by medical professionals, medical co-payments when TDOC Policy #113.15, Section VI. (G) has been adhered to, and requirements of substance abuse therapeutic programs.
 9. Security Threat Group (STG) program placement which may be appealed as described in Policy #506.26.
 10. Mail rejection, which may be appealed as described in Policy #507.02.

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H. Abuse of the Grievance Procedure

1. Inmates shall not be permitted to submit more than one (1) grievance arising out of the same or similar incident.
2. Inmates shall not be permitted to have more than one (1) grievance pending at the first level of review.
3. Profanity, insults, and racial slurs, unless an alleged direct quote of another party, shall not be permitted in grievances. Threats may result in disciplinary action.

I. Emergency Grievances

1. Grievances deemed to be emergencies shall be expedited. The grievance chairperson or designee shall immediately bring emergency grievances to the attention of the appropriate person by whom corrective action may be taken. The action taken on any emergency grievance may be appealed through expedited emergency grievance procedures, as outlined in the handbook.
2. The determination that a grievance is not an emergency may be appealed through normal grievance procedures.

J. Records

1. Records concerning inmate grievances shall be kept confidential. Only the chairperson shall process grievances after they have been answered by the warden. Grievance (LIBG) should be available only to employees who have a need for access because of their assigned duties.
2. Records shall be kept regarding inmate grievances as detailed in the handbook, TDOC Inmate Grievance Procedures.
3. Upon resolution, grievances shall be distributed as indicated on CR-1393 and entered on Grievance (LIBG). An extra copy of health-related grievances shall be supplied to the institutional health administrator by the chairperson.

K. Each institution will submit an annual evaluation of the grievance procedures as outlined in the handbook, TDOC Inmate Grievance Procedures. Staff preparing these reports may review actual grievances.

L. Documentary Evidence: Any TDOC policy referred to in any description of problem or response shall be cited by number, paragraph and section. Copies of any institutional policies, post orders, or documents referred to, will accompany all grievances to the third

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level. The grievant shall be furnished with a copy of all documentation unless deemed inappropriate by the chairperson for security reasons.

VII. ACA STANDARDS: 4-4016, 4-4180, 4-4284, and 4-4344.

VIII. EXPIRATION DATE: May 1, 2007.