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Prison Litigation Reform Act

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Prison Litigation Reform Act

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"The Prison Litigation Reform Act requires prisoners bringing actions concerning prison conditions under 42 U.S.C. § 1983 or other federal law to exhaust all available administrative remedies before suing in federal court. When a prisoner fails to exhaust his administrative remedies before filing a civil rights complaint, dismissal of the complaint is appropriate." *Young v. Martin*, 83 Fed.Appx. 107 (6th Cir. 2003) (citations omitted). See also *Williams v. Luttrell*, 99 Fed.Appx. 705 (6th Cir. 2004) (holding pro se pretrial detainee failed to exhaust his administrative remedies, as required under the PLRA, in his § 1983 action against county jail officials alleging that he was subjected to unconstitutional conditions of confinement and excessive use of force, where the detainee specifically stated in his complaint that he did not file any grievances related to his claims); *Jones v. Warren County*, 67 Fed.Appx. 909 (6th Cir. 2003) (holding that the district court properly dismissed pro se inmate's § 1983 claim against the county and two jail employees for failure to exhaust his administrative remedies under the PLRA); *Atman v. Hutchison*, 57 Fed.Appx. 642 (6th Cir. 2003) (holding federal pretrial detainee at county jail could not bring § 1983 lawsuit challenging interference with his legal mail where he failed to comply with the exhaustion requirement of the PLRA). State regulations require that facilities shall provide an inmate grievance procedure to all inmates. The grievance procedure must include at least one level of appeal. Rules of the Tennessee Corrections Institute, Rule 1400-1-.05(12).

The PLRA provides in pertinent part that:

No action shall be brought with respect to prison conditions under section 1983 of this title, 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.

42 U.S.C. § 1997e(a). In *Porter v. Nussle*, 534 U.S. 516, 122 S.Ct. 983, 152 L.Ed.2d 12 (2002), the Supreme Court held that the PLRA's exhaustion requirement "applies to all prisoners seeking redress for prison circumstances or occurrences," *id.* at 520, 122 S.Ct. 983, irrespective of whether those conditions are general to all prisoners or affect only one prisoner in particular, see *id.* at 532, 122 S.Ct. 983. Previously, in *Booth v. Churner*, 532 U.S. 731, 121 S.Ct. 1819, 149 L.Ed.2d 958 (2001), the Supreme Court noted that the PLRA required exhaustion if available administrative process had the ability to provide "some relief for the action complained of" (emphasis added), even if grievance procedures could not provide the relief sought, *id.* at 738-39, 121 S.Ct. 1819. If no administrative remedies are available, however, then the PLRA does not require exhaustion. *Id.* at 736 n. 4, 121 S.Ct. 1819 ("Without the possibility of some relief, the administrative officers would presumably have no authority to act on the subject of the complaint, leaving the inmate with nothing to exhaust."); see also *Mojias v. Johnson*, 351 F.3d 606, 609 (2d Cir. 2003) ("[The PLRA] clearly does not require a prisoner to exhaust administrative remedies that do not address the subject matter of his complaint." (internal quotation marks and citation omitted)).

Handberry v. Thompson, 436 F.3d 52, 58-59 (2d Cir. 2006).

Before the district court may adjudicate any claim set forth in a prisoner's complaint, it must determine that the plaintiff has complied with this exhaustion requirement. Not only is a prisoner-plaintiff required to exhaust as to each defendant, he must show that he has exhausted every claim presented in his complaint. If a prisoner fails to show that he has exhausted his administrative remedies, his complaint is subject to sua sponte dismissal.

McCullough v. Barnes, 2005 WL 2704878, *2 (M.D. Tenn. 2005) (citations omitted).

To establish that he has exhausted his administrative remedies, a prisoner-plaintiff must show that he presented his grievance(s) "through one complete round" of the established grievance process. A prisoner does not exhaust available administrative remedies when he files a grievance but "d[oes] not appeal the denial of that complaint to the highest possible administrative level." Neither may a prisoner abandon the process before completion and then claim that he exhausted his remedies, or that it is now futile for him to do so.

Id., (citations omitted).

The plaintiff-prisoner has the burden of proving that a grievance has been fully exhausted, *Baxter v. Rose*, 305 F.3d 486, 488 (6th Cir. 2002), and the prisoner must attach documentation to the complaint as proof. *Brown v. Toombs*, 139 F.3d 1102, 1104 (6th Cir. 1998). Exhaustion is not jurisdictional; it is mandatory, *Wyatt v. Leonard*, 193 F.3d 876, 879 (6th Cir. 1999), even if proceeding through the administrative system would be "futile." *Hartsfield v. Vidor*, 199 F.3d 305, 308-10 (6th Cir. 1999).

Bey v. Johnson, 407 F.3d 801, 805 (6th Cir. 2005) (holding that the PLRA requires a complete dismissal of a prisoner's complaint when that prisoner alleges both exhausted and unexhausted claims). *See also Boyd v. Corrections Corp. of America*, 380 F.3d 989, 995 (6th Cir. 2004) ([A] prisoner-plaintiff may bear his pleading burden either "by attaching a copy of the applicable administrative dispositions to the complaint or, in the absence of written documentation, describ[ing] with specificity the administrative proceeding and its outcome.").

If the jail has no grievance procedure, the exhaustion requirement of the PLRA will be excused. *Rancher v. Franklin County*, 122 Fed.Appx. 240 (6th Cir. 2005).

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