

## MDOC GRIEVANCE PROCEDURE

**I. THE GRIEVANCE PROCEDURE:** The grievance procedure is covered by PD 03.02.130 and OP 03.02.130. If you read those and this Information Sheet, you should have a good idea of how to use the grievance process and avoid being put on modified access status. Use the grievance procedure to challenge a decision by MDOC staff, a violation of rules or policies, or unconstitutional conditions of your confinement. It is a process established by the MDOC so you can try and resolve your complaints without litigation. PD 03.02.130. Therefore, the first thing you must do is try to settle your complaint with the staff involved. If that does not work, you file a Step I Grievance. The last two steps a Step II appeal and a Step III appeal. All three steps of the grievance process must be filed on MDOC forms. (See sample forms on page 8.) You do not have to go to the next step if you do not want to, but you cannot file a state or federal civil action about your confinement unless you do complete all three steps of the grievance procedure. This is called exhausting your administrative remedies. There is no appeal to circuit court from a grievance response.

Parolees use this grievance procedure, but different personnel are involved in the review and response process. This Information Sheet does not address parolee grievances. Prisoners at the Michigan Youth Correctional Facility (MYC) use the grievance process in PD 05.01.145, "Michigan Youth Correctional Facility." Prisoners at Huron Valley Center (HVC) use this grievance process for complaints about incarceration (time computation, disciplinary credits, good time, access to law books, etc.). They are processed by the Huron Valley Complex (HVM) Grievance Coordinators. Prisoners at Huron Valley Complex for mental health treatment use the Department of Community Health (DCH) patient grievance process for complaints about treatment such as not receiving hygiene items, complaints regarding staff, or visitor restrictions.

**II. GRIEVABLE ISSUES:** You cannot grieve everything. PD 03.02.130 lists the subjects that are "grievable issues:"

1. Policy or Procedure violations:

- a. You may grieve applications of policy or procedures only if the issue directly affects you personally and the MDOC has control over the issue. For example, you can grieve the quartermaster if s/he would not honor your request for replacement of your state-issued clothing because you wrote it on a kite. PD 04.07.110(R) says, "a request from a prisoner for the replacement of state-issued clothing and linens shall be processed even if the standardized form is not used." On the other hand, you cannot grieve the quartermaster unless your request was improperly rejected. You cannot file a grievance because the quartermaster rejected someone else's request for clothing. You also could not file a grievance about something the MDOC does not control.
- b. You can grieve violations of policies, including the grievance policy and related procedures. For example, you can grieve staff members who retaliate against you for filing a grievance. According to PD 03.02.130(K), "Staff shall avoid any action that gives the appearance of reprisal for using the grievance process or for assisting other grievants in its use. If a grievant believes s/he has been subjected to acts of reprisal, s/he may file a grievance."

2. Conditions of Confinement:

You can grieve unsatisfactory conditions of confinement which directly affect you. The US Supreme Court has addressed conditions of confinement and held that prison officials have a duty to provide "humane conditions of confinement"; and must "ensure that inmates receive adequate food, clothing, shelter and medical care, and must take reasonable measures to guarantee the safety of the inmates." Farmer v Brennan, 511 US 825, 832 (1994).

3. Staff Decisions:

You can grieve a decision made by a staff member where the relevant policy says that filing a grievance is the way to challenge it. For example, PD 04.04.113(AA) says that if you are designated as a Security Threat Group (STG) member, you may file a grievance to contest the basis for the designation. PD 05.01.130(E) states that if you think that your security classification is based on incorrect information or inaccurate computation, you may file a grievance.

**III. NON-GRIEVABLE ISSUES:** PD 03.02.130 also describes issues you cannot grieve. These are "non-grievable issues:"

1. You cannot grieve the decisions made in major/minor misconduct hearings, or any other decision that is appealable by a Request for Rehearing (CSJ-418), PD 03.03.105. Some things involving the misconduct hearing process can be grieved. You can file a grievance if the Hearing Investigator will not give you your hearing investigation packet. Read DOM-2005-9 "State Office of Administrative Hearings and Rules" for information about grieving hearing officers.
2. You cannot grieve parole board decisions and recommendations to grant, deny, rescind, amend or revoke parole, or not to proceed with a lifer interview or public hearing. However, parole guideline calculations, including the accuracy of the information used in calculating the score, can be grieved. PD 06.05.100(H).
3. You cannot grieve matters that are outside the MDOC's authority. For example, the MDOC shall not make any additions, corrections, or deletions to the Pre-sentence Investigation Report (PSI) not specifically ordered by the court. PD 01.04.130(X); PD 06.01.140(N). But once the PSI has been ordered corrected by the court, the MDOC's Probation Department is responsible for correcting the PSI. See PD 06.01.140(K)-(M); R791.9901.
4. You cannot grieve issues which affect the entire population or a significant number of prisoners. These issues must be

taken to the Warden's Forum for resolution. For example, the content of the menu served to the entire population is not grievable. Your meals can be grieved if you did not get an item or you are not receiving a special diet that was ordered. You cannot grieve the content of a policy or procedure. Those complaints must be made through the Warden's Forum. Write to your representative and ask to have it raised at a Forum meeting. If you cannot talk to a Forum member, write to the Warden and ask him/her to present the issue to the Forum. PD 04 .01 .1 50. Warden's Forum meeting minutes are sent to Prisoner Affairs. The minutes are supposed to be reviewed for issues relevant to policies, procedures, and the grievance process. PD 03.02.130(E). Save a copy of your kite and the Forum meeting minutes, if your complaint is discussed, to show exhaustion of administrative remedies.

**IV. GRIEVANCE REJECTION:** The Step I Grievance Coordinator reads your grievance and returns it to you if it is rejected.

1. Your grievance can be rejected if it is about a non-grievable issue.
2. Your grievance can be rejected for the language you use in it, including swearing, vulgar language or profanity, making threats of physical harm, or using words which demean the character, race, ethnicity, physical appearance, gender, religion or national origin of any person, unless it is part of the description of the issue being grieved. E.g., if you are complaining about race discrimination, you may quote what the staff said to you. That grievance should not be rejected if the language you include is essential to describing the incident. However, if you simply use profanity to describe an officer you are complaining about it can be rejected and may subject you to a major misconduct.
3. Your grievance can be rejected if it vague or illegible. That means the Grievance Coordinator cannot understand what you are saying, cannot read your handwriting, or cannot make sense of it.
4. Your grievance can be rejected if you write in the margins, i.e., out to the edge of the grievance form.
5. Your grievance can be rejected if it is about multiple unrelated issues. You can put several incidents in one grievance if they are related, e.g., an officer denies you a shower and then refuses to give you a food tray. You can grieve those actions together because they are connected (same officer, same day, events closely followed one another). But, if one officer denies you store and the next day another officer withholds your mail, you must grieve them separately.
6. Your grievance can be rejected if it duplicates one you already filed. If you file two grievances on the same issue, the first will be responded to and the second rejected. Both cannot be rejected because they are duplicates.
7. Your grievance can be rejected if you are on modified grievance status and did not get prior permission to file it.
8. Your grievance can be rejected if you made no attempt to resolve the issue with the staff member involved before you file the grievance. If it was impossible for you to do so, you must explain that in the grievance.
9. Your grievance can be rejected if it is untimely. It should not be rejected if there is a valid reason for the delay, if you were being transferred on the last day and couldn't get access to your property, metered envelopes, or account for several days, or you were denied a postage loan to mail it to the correct prison and you did not have access to state interdepartmental (ID) mail.
10. Your grievance can be rejected for raising a non-grievable issue, but you must be given a specific reason. The Cain v MDOC Access to Courts Settlement says it cannot be rejected with the code 28 "Z," "non-grievable - other."

**V. REASONS TO USE THE GRIEVANCE PROCESS:** 1) You may win some relief. 2) Filing a grievance takes your complaints to the supervisor of the staff you are grieving. This helps keep staff accountable. 3) You receive information, evidence, or statements that may help you in future litigation, even if your grievance is denied. Staff members may be more open in responding to your grievance than they would be to a lawsuit. 4) State and federal courts must reject your lawsuit unless you have "exhausted" all administrative remedies, including the three-step grievance procedure.

**VI. GRIEVANCE TIME LIMITS:** See PD 03.02.130 for additional details.

Attempt to Resolve:	must be started within 2 days of the incident	Section VII
Step I Grievance:	must be filed within 5 business days of your effort to resolve it	Section IX
Step I Response:	must be given to you within 15 business days of when your Step I was received by the Step I Grievance Coordinator, or by the extended due date	Section XI
Step II Appeal:	must request appeal form within 5 days of getting Step I response must be filed within 5 days of receiving the form	Section XII
Step II Response:	must be received by you within 15 business days of when Step II appeal was received by the Step I Grievance Coordinator, or by extended due date	Section XIV
Step III Appeal:	must be filed within days of receiving the Step II response	Section XV
Step III Response:	no time limit, but the entire grievance process cannot last longer than 90 days plus any extensions of time that were granted, after that it is considered completed	Section XV

**VII. ATTEMPT TO RESOLVE THE PROBLEM:** Before you can file a grievance, you must try to resolve your complaint with the staff member involved, if possible. This is an important part of the process. You might actually resolve the problem.

Try to resolve it within two business days after you become aware of the violation. PD 03.02.130(R). Explain to the staff member that you are trying to resolve the problem before filing a grievance. If your effort to resolve the matter does not work, immediately write down what you and the staff member discussed. You can use the statement in your Step I Grievance.

If for some reason, you cannot get personal access to the staff person involved to try to resolve your complaint, you can send a kite. Even if you do not resolve your complaint, you may get a response that helps support your claim in the grievance process. Keep a copy of your kite and any response you receive.

If it was impossible for you to attempt to resolve the problem with the staff member for a reason beyond your control (transfer, the staff member was on vacation, s/he would not talk to you), explain this in first the section of the Step I Grievance form.

**VIII. GENERAL TIPS FOR WRITING YOUR GRIEVANCE:** Your grievance must be legible, PD 03.02.130(T). Do not use fancy handwriting. It may be beautiful, but it is often hard to read. Print if you cannot type or write very neatly. Press down hard on the paper so that your copy will be readable and you will be able to get good copies. It is a good idea to write your grievance on a sheet of paper first. After you finish, read it over to make sure you didn't leave out a word or some important fact or that you didn't repeat the same thing several times. After you get it worded the way you want it, copy it to the grievance form. Remember, keep your writing the same distance from both edges of the paper as the printed questions; do not write in the margins.

**Extra Pages:** If your grievance does not fit on the form, you can use extra pieces of plain letter size paper. If you add extra pages, write See continuation attached on the form. You must give the grievance coordinator four copies of each extra page. You cannot use extra grievance forms for this purpose, PD 03.02.130(T). If you add pages, do not say more than necessary.

**Exhibits:** Attach four copies of any exhibits that support your grievance, if you can. Do not ever send your only copy of an exhibit with your grievance. You do not get your exhibits back. Do not worry if you cannot get copies of exhibits. The settlement in Cain v MDOC requires the MDOC to accept your grievance without exhibits attached. Of course, you need to refer to them in your grievance. Explain how they support your position. If the Grievance Coordinator or respondent thinks the exhibit(s) are needed for the grievance investigation, the MDOC will pay for the copies, PD 03.02.130(H).

**Mailing:** You can use the state's ID mail run to mail a grievance or grievance appeal to another prison if ID mail is available at your facility. If ID mail is not available and you do not have enough funds, the postage must be loaned to you. Use a Disbursement Authorization (CAR-893) form. PD 05.03.118(P). Grievances, grievance appeals, and Rehearing Requests are not eligible for Expedited Legal Mail processing. However, your grievance or administrative appeal is considered "filed" on the date you mail it. PD 03.02.130(U). If possible, use a Disbursement Authorization to mail it because you will have documentation of when you mailed it. If you cannot do so, write down the date and keep track of it.

**Deadlines:** PD 03.02.130(V) allows you to appeal a grievance which has not been answered by the due date, including any extensions that were granted. You may go to the next step of the grievance process within 10 business days after the response deadline.

**IX. STEP I GRIEVANCE:** If you are still unsatisfied after your attempted resolution, you can file a Step I Grievance.

**Getting the Grievance Form:** You must use the Prisoner/Parolee Grievance Form (CSJ-247A). You get a form from the Housing Unit Officers, your RUM/ARUS, or Case Manager. (See Section XVII if you cannot get a form.) Do not fill in the blanks at the top for Date Received at Step I or Grievance Identifier. The Grievance Coordinator completes that part.

**Date of Incident:** Your grievance must be filed within five business days of the attempted resolution, PD 03.02.130(X). You should follow the grievance system's procedural time limits, if possible. If you do, then the administration should address your issues instead of denying your grievance for being late. Your time limits are strictly enforced by the MDOC.

However, sometimes the incident date is not when you think it would be. If you had to write to the staff person involved at another facility and received an answer two weeks later, that would be the date of the incident, and you have five more days to file your grievance. Sometimes you do not find out about the policy violation until long after the five days are past. For example, you sent a document to the library for copying. It was lost the first week, but you did not know it. After a month, and the grievance deadline has long since passed, staff notifies you it was lost. When you file your grievance, use the date on which you found out about the violation as the date of the incident. When writing your grievance, explain why you put that date as the date of the incident if it is different than the actual event.

**Filing After the Deadline:** If you have a complaint that you think is serious enough to litigate, go ahead and file a Step I Grievance even though you are past the deadline. In Thomas v Woolum, 337 F3d 720, 733 (6th Cir. 2003), the Sixth Circuit held that if you present your grievance through one complete cycle of the prison review process (all three Steps in Michigan), you have exhausted your administrative remedies for 42 U.S.C. §1983 litigation, even if you did not comply with the policy's deadlines. The MDOC may not respond to your complaint, but you will be able to litigate the issue.

**Description of Your Attempts to Resolve Complaint:** In the first section of the form, describe what you did to resolve the problem and the date you took those actions. If you could not try to resolve it, you must explain why it was not possible.

**Description of Your Problem:** In the second section of the Step I Grievance form you must explain who did what, when, where, and how. Explain why this was a violation or "grievable issue." Be accurate and truthful. If it turns out that you

misrepresented one thing, readers may not believe anything you say. Stick to one issue. If you are complaining about one officer mistreating you, do not write about how you have been harassed since R&GC. Even if that is true, it is not part of this grievance. It takes attention away from your current problem and may cause your grievance to be rejected for including "extraneous" or unrelated information.

1. Describe the incident or violation. State what happened in the order it took place. Give the date, time and place of the incident or violation. Include specific facts that support your complaint. This statement will be the basis for appeals or litigation. Fully describe the violation, but be clear, be specific, and be brief. This makes your grievance easier to read.
2. State the staff member's name and position. If more than one staff member is involved, give all names and positions. If you do not know all the names and positions, state that there were other staff members involved or present, but you do not know their names. Describe what they look like if you can. Always be respectful.
3. If possible, identify by number, the rule, policy or procedure that you say was violated or applied incorrectly. Rules, DOMs, policies and procedures are in the law library and at camps. PD 05.03.115(l). If you do not have time to do this research, it is more important to file your grievance on time.
4. Describe the relief that you want. Be specific and be reasonable. You will have a better chance to win. There is no point in asking for a million dollars or that the officer be fired. Realistically, neither is going to happen. It makes you look unreasonable and may cast doubt on your entire complaint. It can be hard to decide what relief to request. If the damage has already been done and cannot be repaired, you may have to ask for relief that will help prevent it in the future. Take a situation where an officer would not let you out of the housing unit to go to the law library, even though you had a pass, and this made you miss a filing deadline. If the deadline you missed was for filing a Request for Rehearing or a Petition for Judicial Review of an MDOC administrative decision, ask to have the document re-issued with a new date so you can go on to the step you missed. But, if you missed a Michigan Supreme Court deadline, there is no way to undo that harm. An acknowledgment of fault might help in federal court with a habeas petition or a 42 USC §1983 action for damages. But, you are still unable to seek review in the Michigan Supreme Court. Give some thought to the relief you request.

**Filing/Mailing:** After you write your Step I grievance, you sign it. Keep the goldenrod copy for your file. Send the completed Step I grievance form to the Step I Grievance Coordinator designated for your facility, field office, or other office being grieved; if the office being grieved does not have a designated Grievance Coordinator, the grievance shall instead be sent to the Step I Grievance Coordinator for the facility in which you are housed or the appropriate field office for processing. If you are in a CFA facility alleging conduct under the jurisdiction of the Internal Affairs Division you may send the grievance to the inspector of your facility for investigation and processing as set forth in Section XVII of this infosheet.

**X. STEP I PROCESSING:** The first thing the Grievance Coordinator does after s/he receives your grievance is check to see if it is completely filled out, if it is legible, and if it was sent to the right prison. If not, it will be returned to you. If it passes this first review, the Coordinator gives your grievance an identifier, assigns a grievance category code, and enters it in a log. S/he writes the identifier in the space at the top right side of the form. The first three spaces of the identifier show the prison where it is filed. The next two spaces are for the last two numbers of the year, the next two spaces show the month, and the next five spaces are the number assigned to your grievance. E.g., if you filed a grievance at Muskegon Correctional Facility on February 28, 2005, and you were the 100<sup>th</sup> person to file a grievance there in that year, the identifier would read MCF 05 02 00100. The last four spaces are for the Grievance Category Code.

Next, the Grievance Coordinator accepts or rejects your grievance. If rejected, it is returned to you with an explanation. PD 03.02.130(Y). If it is rejected as "non-grievable," it must be signed by the Grievance Coordinator's Supervisor, also.

If it is accepted, the Grievance Coordinator assigns it to someone to investigate and answer. Usually, this will be the supervisor of the person who did what you are complaining about. The Grievance Coordinator fills out a "First Step Grievance Receipt" (CAJ-976) and sends it to you, usually within five (5) business days. The receipt tells you the date your Step I grievance was received by the Coordinator, gives you the identifier, tells you the date the response is due. It will also tell you to write to the Step I Grievance Coordinator to get a Step II appeal form if you do not receive a response by the due date. You must put your grievance identifier on your request. Keep this form. It may be necessary to prove later on that you actually filed this Step I Grievance.

A Respondent must ask the Grievance Coordinator for an extension of time. It must be approved in writing by the Coordinator or by Prisoner Affairs. It cannot be for more than 15 additional business days. You will get written notice. PD 03.02.130(U).

**XI. STEP I RESPONSE:** You are supposed to receive the Step I response within 15 days of when your grievance was received by the Coordinator, or by the due date if an extension was granted. If possible, the person assigned to answer your grievance is supposed to interview you before preparing a written response. You should be allowed to explain your grievance in more detail at the interview and show the interviewer your documents if you could not attach copies. The interview can be waived if you are not at the same prison as the respondent or you do not want to be interviewed. If you are not interviewed, the reason must be included in the written Step I response.

The Step I response must identify the policies, rules or procedures that cover your complaint. The Step I response is reviewed by the respondent's supervisor before it is returned to the Step I Grievance Coordinator. The Coordinator also reviews the

response to be sure that a thorough investigation of the grievance was done, that the response addresses the issue raised in the grievance, and that it accurately reflects MDOC policy and procedure. If you are satisfied with the Step I response, you can "sign off." That means you sign and date the bottom of the Step I grievance form indicating that it has been resolved. The resolution is written down in the response section of the form. If you sign off, you cannot go to Step II or Step III. Sometimes, the agreed upon resolution is not implemented. Then, you file a new Step I grievance based upon that problem.

**XII. STEP II GRIEVANCE APPEAL:** You can file a Step II appeal if you did not receive a Step I response within 15 business days or by the approved extension date, or you received a response but are not satisfied. If you do not file a Step II appeal, you will not be able to litigate this issue in court later on.

**Getting the Step II Appeal Form:** Ask the Step I Grievance Coordinator at the prison where you filed Step I for a Step II Prisoner/Parolee Grievance Appeal Form (CSJ-247B). You must ask for the Step II grievance within 5 business days of the response or due date. Put the grievance identifier on your request and date it. Keep a copy of your request for your records. When the Grievance Coordinator receives your request, s/he fills in the grievance identifier number on the appeal form and the date the response is due. The Step II appeal form is sent to you. The top part of the Appeal form is for your Step II appeal statement, the middle part is for the Step II response, and the bottom part is for a Step III appeal, if you take one.

Check the grievance identifier to be sure it is correct. It should be the same as the Step I identifier number. Sometimes, a wrong number is written on this form and that is used to reject the Step II appeal.

If you do not receive a response to your request for the Step II appeal form within a couple of days, send another dated kite. If you get no answer within a week, send a copy of your Step I grievance and a copy of your kites asking for a Step II appeal form to Prisoner Affairs, P.O. Box 30003, Lansing, Michigan 48909. Send a cover letter clearly explaining that you are requesting a form, not filing a Step III grievance. Keep a copy of this letter also. You will get the appeal form or some other response. It is best to send your mail to Prisoner Affairs with a disbursement so that you can prove when you mailed it.

**Late Requests for Step II Appeal Forms:** If your request for a Step II appeal is late, the Grievance Coordinator will send you the appeal form but will write on it that your Step II appeal was untimely. You will be told to proceed to Step III. At Step III, explain why your Step II was late. Some examples of valid reasons include: you were transferred near the end of the due date, you could not get your property after a transfer or while in detention, or you were hospitalized until after the deadline.

**Step II Appeals From Step I Responses:** In Step II, do not repeat the information you put in Step I. At Step II, you want to show why the Step I response was wrong, inadequate, or based on factual mistakes. If the Respondent misstated facts, point out the error and state the correct facts and perhaps name additional witnesses. If you could not identify the policy or procedure that was violated when you filed at Step I and the response says no policy or procedure was violated, now is your chance to name the correct policy or procedure. You do not need to attach copies, but you can quote short sections. You cannot raise new issues at Step II. Focus on your original complaint. Type, print or write clearly. **NOTE:** PD 03.02.130(BB) says to send your completed appeal to the Step II Grievance Coordinator designated for the facility, field office, or other office being grieved within ten business days after receiving the Step I response, or if no response was received, within ten business days after the date the response was due including any extensions. If the office being grieved does not have a designated Grievance Coordinator, the grievant is to send the grievance to the Step II Grievance Coordinator for the facility in which s/he is housed or appropriate field office for processing. Caution: Many Step II Coordinators assign a due date ten days from the date they mail the Step II forms.

**Step II Appeals Without a Step I Response:** Follow the same instructions to get the Step II appeal form. Explain that you did not get a response within 15 days or by the due date, if an extension was granted. After you get the form, fill it out. Type, print or write clearly. Do not repeat everything you said in Step I. If you have new arguments or newly discovered evidence, put those in your appeal. You cannot add or change issues. Send your completed Step II appeal to the Step II Grievance Coordinator at the prison where you filed Step I. **See "NOTE" above.**

**XIII. PROCESSING STEP II APPEALS:** The Step II Grievance Coordinator sends you the form. It tells you who to send the appeal to and your deadline for submitting it. After you submit it, it is assigned to someone for a response. PD 03.02.130 (FF) lists the usual Step II respondents: the warden, the regional health administrator for medical grievances, the Administrator of the Bureau of Correctional Industries for MSI related grievances, the Administrator of the Office of Policy and Hearings for related grievances (but see DOM 2005-9), the Parole Board Chair for grievances about the Board, or the Regional Business Manager of CFA Region III for grievances about administrative support functions for Jackson prisons. You receive a Grievance Appeal Receipt (CAJ-978) showing that your Step II appeal was received and telling you the response due date.

**XIV. STEP II APPEAL RESPONSE:** You should receive a response to your Step II appeal within 15 business days, or by the extension date, if one was granted. You will be notified if an extension is granted. After you get the response, read it carefully. If you think the response is acceptable, you do not go to Step III. If the Step II response is not acceptable, then file a Step III

appeal. If you do not receive a Step II response by the due date and you want to pursue the grievance, you also go to Step III. If you do not go to Step III you will not be able to file an action in court about this particular complaint.

**XV. STEP III APPEAL:** The Step II form will tell you where to send your Step III. The Step III appeal is filed on the white copy of the Prisoner/Parolee Grievance Appeal Form (CSJ-247B) that you used for the Step II appeal. If you did not get a Step II response, you use your goldenrod copy of the CSJ-247B. A Step III appeal is due within 10 business days of the deadline for the Step II response. PD 03.02.130(HH). If you do not file a Step III appeal, you cannot litigate this issue in court.

**Step III Appeal From a Step II Response:** If you get a Step II response, read it carefully. If you want to appeal, go to Step III. Write your Step III appeal on the bottom of the white copy of the CSJ-247B Appeal Form. Send it with the white copy of your Step I Grievance, that you got back with the Step II response. Explain why you are appealing to Step III and why the Step II response was wrong. Do not repeat everything you put in Steps I and II.

**Step III Appeal Without a Step II Response:** If you did not get a Step II response within 15 business days or by the extension date, you can still go to Step III. However, since you did not get the white copy of Step III back with a response, you have to use your goldenrod copy of the Step II/Step III appeal form to go to Step III and attach your pink copy of the Step I grievance. Explain in your Step III appeal that you did not receive a Step II response.

**Copying Your Step III Appeal:** Policy says that the Step I grievance and all the exhibits submitted with it are supposed to be attached to the Step III appeal. However, the Step III appeal and attachments will not be returned to you and you are not entitled to indigent photocopies for grievances, grievance appeals or grievance exhibits, PD 05.03.115(III)(GG).

If you have new exhibits that support your Step III appeal, you should discuss them in your Step III appeal. Explain how they support your grievance. If you cannot afford to pay for copies, there are two choices. You can file the Step III without the exhibits; explain why you couldn't attach copies; and refer to PD 03.02.130(H) and OP 03.02.130(III)(B). The settlement in Cain v MDOC requires the MDOC to accept your grievance without exhibits. This does not apply to the copies of your Step I grievance, and any responses you received at Step I and Step II. These must be attached to Step III.

If you have to attach your copy of Step I and the Step I/Step II responses, if any, to the Step III appeal, make handwritten or typed copies of your grievances, the responses you received, and any exhibits you attach. In addition to copying the substance of your Step I Grievance and the Step I/Step II responses, be sure to include the grievance identifier, the dates you filed the different steps and the dates of the responses. It is very important for you to keep actual or reproduced copies.

**Mailing your Step III Appeal:** Mail your Step III to Prisoner Affairs, P.O. Box 30003, Lansing, MI 48909 within 10 business days of the deadline for the Step II response. Step III grievances are routinely "lost" or "not received" by Prisoner Affairs. It is strongly recommended that you use a Disbursement Authorization (CAR-893 ) so that you can prove you mailed your Step III appeal. You are entitled to a postage loan to mail it if state ID mail is not available to you and you do not have the funds in your account, PD 03.02.130(T) and PD 05.03.118(P). Write the grievance number on the disbursement.

**Step III Response:** There is no deadline for you to receive a response at Step III. The entire grievance process must be completed within 120 days, plus any extensions that were granted. If you have not received a Step III response within 120 days (or 120 days plus the extensions) of the date you filed Step I, the process is completed for "exhaustion" purposes. The Office of Legislative Corrections Ombudsman no longer exists so you cannot go there for relief. There is no appeal from a grievance to a circuit court.

**XVI. GRIEVANCE OR APPEAL FORM NOT AVAILABLE:** If you cannot get the grievance or appeal form for some reason other than being on modified access status, write out your grievance or appeal on a piece of paper. Explain that you are doing this because you could not get the proper form. Briefly explain what you did to try to get a form. Follow all the noted procedures and deadlines that are outlined in this Information Sheet and in PD 03.02.130. Include all of the information required on the official forms. Always make a copy of everything you send. Keep it in your records. This should be sufficient for exhausting your administrative remedies for litigation even if it is rejected by the Grievance Coordinator or respondent at that step. You must still attempt to go through all three steps to complete the exhaustion requirements. At any point in the grievance process, you can contact Prisoner Affairs and explain that you cannot get an appeal form.

**XVII. FILING A STEP I GRIEVANCE DIRECTLY TO THE INSPECTOR:** You can file a Step I grievance directly with the inspector with the institution which you are housed instead of with the grievance coordinator if the grievance alleges conduct which falls under the jurisdiction of the Internal Affairs Division pursuant to PD 01.01.140 "Internal Affairs" (i.e. based on racial or ethnic discrimination, staff brutality, or corruption); this includes claims alleging staff sexual misconduct. If you decide to do this, send a Step I grievance to the inspector within five business days after you attempted to resolve the matter. These grievances are referred to the Internal Affairs Division for review. If it is determined that the grievance is not within the jurisdiction of the Internal Affairs Division, the grievance shall continue to be processed as a Step I grievance in accordance with the Grievance Policy.

**XVIII. MODIFIED ACCESS STATUS:** You can be placed on "modified access status" by the warden or by Prisoner Affairs in Lansing for up to 90 days if you file an "excessive" number of grievances that are frivolous, vague, duplicative, raise non-grievable issues, use prohibited language, or are unfounded. You may get a major misconduct if you deliberately file an

unfounded grievance, PD 03.03.130(L). You should not be put on modified access status based only on the number of grievances filed. You will be notified in writing if you are put on modified access status.

The Grievance Coordinator makes a recommendation to the warden that must include a list of the grievances that form the basis and the reason for the recommendation. The Grievance Coordinator and his/her supervisor must both sign it. PD 03.02.130(KK). The settlement in Cain v MDOC requires these two steps before you can be put on modified access status.

The final decision is made by the warden or by Prisoner Affairs. If the warden puts you on modified access, Prisoner Affairs will be notified and if it makes the decision, the warden will be notified.

While on modified access, if you need to file a grievance, you must ask the Step I Grievance Coordinator for a grievance form within five (5) business days of the incident. Explain what you want to grieve. The Step I Grievance Coordinator will decide if your issue is grievable and meets the other criteria in the policy. If approved, the Step I form will be sent to you with an identifier already on it. If you file grievances without permission while you are on modified access status, your modified access can be extended for another 30 days for each violation. These grievances will not be processed, PD 03.02.130(JJ). The Grievance Coordinator keeps a record of requests for grievance forms and whether the request was approved or denied.

**XIX. EXHAUSTION OF ADMINISTRATIVE REMEDIES:** State and federal laws require you to "exhaust" your administrative remedies before you can file a civil lawsuit concerning your incarceration. Generally, this means that you must complete all three steps of the grievance procedure, and you must comply with the requirements of the grievance policy to protect your ability to litigate the issue. Proper exhaustion demands compliance with the grievance's deadlines and other critical procedural rules such as dates, times, places, and names of all those involved in the issue being grieved (who, what, when, where, why, and how).

**Limitations in filing a lawsuit:** There is a three-year statute of limitations in filing a lawsuit. This means that if you wait more than three years after the date of the act you are grieving, you cannot sue. MCL 600.5805(10); Wilson v. Garcia, 471 US 261, 275, 278, 280 (1983); Owens v. Okure, 488 US 235, 243-250 (1989).

**Filing a lawsuit:** The following will give you a general description of state and federal laws as they apply to prisoners filing a lawsuit concerning their conditions of confinement.

**State Courts:** Under Michigan's Prisoner Litigation Reform statute, MCL 600.5501, "A civil action concerning prison conditions shall be brought in the circuit court or the court of claims, as appropriate. Additionally, according to MCL 600.5503, prisoners cannot file "an action concerning prison conditions until the prisoner has exhausted all available administrative remedies." In Stewart v MDOC, 433 Mich 867 (1998), the Supreme Court remanded the case to the MDOC to determine if the prisoner received the appropriate forms in time to file for rehearing. The MDOC was ordered to conduct a rehearing if the forms were not provided in time for him to appeal the ticket. The Stewart decision involved a misconduct appeal, but the principle is the same – the MDOC cannot prevent you from exhausting your administrative remedies by failing to provide a necessary form in time.

**Caution:** According to MCL 600.5507, a prisoner who brings a civil action or appeals a judgment concerning prison conditions shall, upon commencement of the action or initiation of the appeal, disclose the number of civil actions and appeals that the prisoner has previously initiated, even when that number is zero. If not, the inmate's lawsuit will be dismissed as required by statute. Tomzek v. Dept. of Corrections, 258 Mich. App. 222, 224-25 (2003); Komejan v. Dept. of Corrections, 270 Mich. App. 398, 399-400 (2006).

**Federal Courts:** The Prison Litigation Reform Act (PLRA), 42 USC § 1997e reads:

No action shall be brought with respect to prison conditions under [42 USC] § 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.

According to 42 USC § 1997e(a), a prisoner may not bring a claim under 42 USC § 1983 until the prisoner has exhausted all administrative remedies that are available. Porter v. Nussle, 534 US 516 (2002). The United States Supreme Court acknowledged this requirement in the case of Booth v. Churner, 532 US 731, 739 (2001), and went on to hold in that case that prisoners must exhaust the administrative remedies available to them even if those remedies include a grievance procedure that does not offer relief in the form specifically sought by the prisoner. 532 US 731, 734 (2001). For example, in Booth, the Court determined that an inmate who seeks monetary damages must exhaust a grievance process prior to suing in federal court, even when the grievance procedure does not provide for monetary relief. Id. As the Court made clear, exhaustion of administrative remedies is a mandatory precursor to a prisoner's filing a lawsuit in federal court. Id.

In Woodford v. Ngo, 548 US 81 (2006), the US Supreme Court held that in order to comply with the exhaustion requirement of 42 USC § 1997e(a), an inmate must "properly exhaust," which means that the inmate must comply with the specific requirements of the policies and procedures of the individual prisoner grievance policy. For example, in Woodford, the Court determined that when a prisoner misses a filing deadline set by the grievance policy, they have failed to "properly exhaust" their administrative remedies.

Additionally, in Jones v. Bock, 549 US 199 (2007), the US Supreme Court decided three issues relating to exhaustion. The Court held that:

1. "failure to exhaust is an affirmative defense under the PLRA, and that inmates are not required to specifically plead or demonstrate exhaustion in their complaints." Under Jones, the burden now rests on the Defendants to show whether the Plaintiff exhausted his or her administrative remedies. Id. at 228-29;
2. "exhaustion is not per se inadequate simply because an individual later sued was not named in the grievances." Id. at 230. However, this decision was based on the grievance policy in effect at the time Jones was filed, which did not require you to name those involved. Nevertheless, since the decision in Jones, the MDOC has since revised its grievance policy. The policy that is now in effect is different from the one that was at issue in Jones, and it mandates that you specifically include all those involved in the issue being grieved (i.e. who, what, when, where, why, and how); and
3. where a complaint contains both exhausted and unexhausted claims, the district court should proceed with the exhausted claims while dismissing the unexhausted claims, rather than dismissing the complaint in its entirety. Id. at 230-33.

The Jones Court explained that the individual grievance procedures must be complied with by inmates seeking to sue, and that the nature of the grievances will necessarily vary based upon the individual system's policies: "The level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison's requirements, and not the Prison Litigation Reform Act ("PLRA"), that define the boundaries of proper exhaustion." Id. At 230.

Thus, to comply with the PLRA in Michigan, you must "properly exhaust" administrative remedies as to each claim you may raise and against each defendant you may sue. The following are examples of ways an individual could fail to exhaust his or her administrative remedies using the MDOC grievance process:

- a. by failing to explain how you attempted to resolve the issue with the staff member involved within two (2) business days after becoming aware of a grievable issue, unless prevented by circumstances beyond your control or if the issue falls within the jurisdiction of the Internal Affairs Division in the Operations Support Administration. PD 03.02.130(P);
- b. by failing to list a date on which you attempted to resolve the issue being grieved;
- c. by failing to file within five (5) business days after attempting to resolve the issue with appropriate staff. PD 03.02.130(P)&(V);
- d. by failing to include dates, times, places, and names of all those involved in the issue (mistreatment or misconduct) being grieved. PD 03.02.130(R);
- e. by raising issues that are vague, illegible, contains multiple unrelated issues, or raise issues that are duplicative of those raised in another grievance. PD 03.02.130(G);
- f. by filing grievances in an untimely manner, unless there is a valid reason for the delay; e.g. transfer. PD 03.02.130(G);
- g. by failing to exhaust all the steps of the grievance process. PD 03.02.130(V)-(GG); and
- h. by filing beyond the three-year statute of limitations period. MCL 666.5805(10).

**Lost Grievances:** If the Defendants claim they did not get your Step III grievance, the court will take their word unless you have evidence proving that you sent it, such as a regular disbursement (CAR 893). Dismissal is appropriate if the Plaintiff is unable to prove his or her claims under any circumstances. Jenkins v. McKeithen, 395 US 411, 422 (1969). If you do not receive a Step III response before you file suit, explain in your complaint that you sent the Step III grievance in by disbursement and attach a copy of the disbursement showing the grievance number.

Even if the MDOC officials misplaced, discarded, or failed to respond to your grievance in a timely manner, you can still file in the federal courts if you attempted to complete all three steps. You must state that you attempted to exhaust the grievance procedure through all three steps, or tried to complete whatever administrative remedy was provided by the MDOC, and present documentation. If the subject of your anticipated litigation is a "non-grievable" issue, you may be required to present it to the warden's forum.

In Boyd v. Corrections Corporation of America, 380 F3d 989, 996 (6th Cir. 2004), the Sixth Circuit ruled that administrative remedies are exhausted when prison officials fail to respond in a timely manner to a properly filed grievance. The Court said that Boyd specifically alleged that (1) he submitted a grievance form by giving it to a corrections officer, (2) the grievance covered the events of the evening of August 11, 1998, (3) the grievance was delivered to the Grievance Chairperson, who is designated in the grievance procedure as the appropriate recipient of grievances, and (4) prison officials totally failed to respond to the grievance. The Sixth Circuit said that these detailed allegations satisfied Boyd's burden to 'describe with specificity' the administrative proceeding and its outcome and showed that Boyd had exhausted his administrative remedies.

**NOTE:** This information gives you a starting point. It is current as of the date in the bottom right hand corner. It is not a substitute for research or critical thinking. Read the latest administrative rules, policies, operating procedures. Read and Shepardize the cases and statutes.