

H A R L A N R I C H A R D S

January 31, 2012

Wisconsin Department of Corrections  
Inmate Complaint Review System  
How Good Is It?

Both the federal and Wisconsin Prison Litigation Reform Acts require exhaustion of administrative remedies before litigation can be filed against DOC officials. The theory is that it is possible to resolve grievances administratively and thus avoid clogging the courts with prisoner litigation. But how well does the reality match up with the theory? Not very well in my opinion.

My cynical view - based on decades of experience - is that the prison grievance system exists to provide a procedural hurdle to block meritorious litigation from judicial consideration. If a prisoner misses a deadline or does not adequately present all of his claims in his grievance, he or she faces the prospect of dismissal of a subsequent court action for failure to exhaust administrative remedies.

In my January 16, 2012 posting, I described how I obtained a court order to return me to my previous status at a work release center and the DOC official involved refused to comply with the court order. Due to a unique quirk of certiorari proceedings, the court is powerless to enforce its own order.

Shortly after obtaining the favorable court order, I filed a grievance seeking enforcement of the order. Surely, I thought, the DOC would ensure that the subject of the court order complied with the court's directive. And since there are mandatory time limits on processing of grievances, I assumed that I would be shortly returned to a work release center. Not!

I am posting the 12 pages which constitute the entire proceedings in the grievance I filed. After a lengthy delay, my grievance was dismissed at all levels because a "letter for reconsideration dated 7/25/11 has been filed with Judge Foust on his 7/5/11 decision and order." In other words, Mark Heise objected to the order and since he didn't agree with the order, he refused to comply with it. The court never granted the reconsideration and the order remains in full force and effect. Yet the DOC refuses to require one of its own high ranking officials to obey a lawful court order.

Read the documents and form your own opinion. Are we a nation of laws or are we ruled by the will of men?