

## **Grievances**

*Ramon Rogers*

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The California Code of Regulations, Title 15, Section 3084.1 (a) states: “Any inmate may appeal (file a grievance) any policy, decision, action, condition, or omission by the department or its staff that the inmate can demonstrate as having a material adverse effect upon his or her health, safety, or welfare”.

After decades of utilizing the same system the California Department of Corrections and Rehabilitation (CDCR) proposed significant changes to the grievance process by issuing new forms and procedures that went into effect on an emergency status on January 28, 2011. A Form 22 was added as an informal level of appeal to help streamline the grievance process. The CDCR 602 form was reformatted with less writing space, reducing the ability to clearly and completely describe the issue being appealed. An Attachment “A” form was introduced as the only document to be used for any additional explanation. If needed, however, it was formatted to allow only a few truncated lines of text. If you used additional paper, or doubled up sentences between each line, or used a font smaller than 12 pitch, the grievance would be rejected by the appeals coordinator. Officers were not receptive to the new Form 22 and refused to sign or forward them.

If the form was processed, often there would be no reply. Yet, a Form 22 had to be filed first before you could proceed to the first level of appeal on the 602 form. The unit sergeant or lieutenant usually reviewed issues at the first level. If you were not satisfied with the results you could submit the appeal to the second level, which was reviewed by the chief deputy warden or warden. If you were still dissatisfied, you could submit the appeal to the third level, which was the secretary of the Department of Corrections and Rehabilitation. The third level review exhausts 602 appeal administrative remedies. Prisoners and CDCR staff must adhere to specific rules, as well as time constraints, when processing an appeal or the grievance can become invalidated for either party. But, as with any governmental bureaucracy, CDCR’s attempt to ameliorate the appeal process has been a huge failure and was only successful in making it visible.

For the past fifteen years I have been a death row prisoner in San Quentin State Prison, California. I avoided filing 602 grievances for fear of retaliation by staff because of the many stories I heard from other prisoners. Even though the California Code of Regulations (Title 15) states: “No

reprisals shall be taken against an inmate for filing an appeal,” reprisals are commonplace and exacted with impunity.

I finally caved and filed a 602 grievance when the prison continued to return my parents’ mail with a label attached that read: “Deceased, Unable to Deliver”. This of course horrified my parents and sent emotional shock waves through my family circle. But after filing the 602, all parties involved (CDCR and USPS) claimed ignorance, not knowing how or who attached the labels. So my 602 was denied at every level. For many years afterward I did not file any grievances. It was a losing battle and a waste of time.

In 2007, San Quentin started a worker program for death row prisoners, which allowed those who met certain criteria to work within the unit without wearing handcuffs or being escorted around by officers. The workers did various general cleaning duties like sweeping and mopping the building. They also assisted in the unit feeding program by setting up the food trays and bag lunches, collecting trash, passing out bi-monthly toilet paper and soap supplies, and assisting the canteen and property officers with boxes and packages. I qualified for a position as the unit clerk, ordering the supplies, writing maintenance work orders, typing disciplinary reports and memos, and formatting files on the computer per the needs of the unit.

When the worker program began, some officers were vehemently opposed to having death row prisoners out of their cells walking around freely and having access to common areas and items normally strictly prohibited. There were incidents of harassment and intimidation toward the prisoner workers by several staff members, but the workers put up with the behaviour in fear of jeopardizing the unique privileges and opportunities the job offered. The workers were reluctant to file grievances causing additional friction with staff because threats of losing their jobs were always held over the prisoner’s head.

It is my opinion that having a more exclusive job with a higher position of responsibility and trust made me a bigger target for harassment than the other workers. Incidents against me escalated more when I was promoted from the unit clerk to an institutional disciplinary clerk. Prior to having the job, I experienced no hassles and served twelve disciplinary-free years as a model prisoner. After being assigned the job I was subjected to excessive, even destructive, cell searches, called derogatory and obscene names, was doused with a bucket of water, and received frivolous and fabricated write-ups that caused considerable grief and stress.

One of my first write-ups was when a sergeant saw me walking to my office and did not approve of the military style clothing I wore, even though the facility captain and various lieutenants complimented me on how well dressed I always looked. These were regular prison-issued clothing that I had been wearing for years. Nevertheless, this sergeant made a colossal issue of my creased shirt and pants and polished boots. He said my pants were unauthorized, then ordered me, since I was the clerk, to type my own 115 Rules Violation Report (RVR) for "Altered State Pants". He also confiscated the pants as "evidence". It was an incredulous situation that, at first, other officers thought was a joke. But it was not.

When I brought the issue before the lieutenant, I got no relief. Shortly afterward, the lieutenant left the unit to become the acting facility captain who ended up classifying my 115 RVR as a "Serious" offense. He later returned to the unit and insisted on being the hearing officer adjudicating my write-up. This was a serious conflict of interest, and against policy and procedure. I filed a 602 grievance, and the write-up was eventually dismissed and removed from my record. I also requested the return of my pants and I got them back.

During a cell search an officer confiscated some leather weightlifting gloves and wrote me up for possessing "escape paraphernalia". I filed a 602 grievance against the officer because the gloves were a prison-approved item that was listed on my prisoner property card. With a lot of opposition from the persistent officer and his likeminded lieutenant, my appeal was granted at a higher level. The gloves were returned to me and the write-up was removed from my file. Of course the officer was not happy that I prevailed.

Later, during another search by the same officer, he confiscated extra stamps I had for overseas postage. He also confiscated excess stamps from my co-worker neighbour. When we exercised our option to send the excess stamps home, we learned they were mysteriously "lost" and could not be found. I again filed a grievance against the officer. The prison admitted culpability and agreed to compensate me for the value of the missing stamps as long as I submitted forms to the state board of claims.

There was an officer who continuously berated and humiliated me in front of peers and staff. For months his unprovoked hatred toward me was so blatant and out of control that I finally spoke to various sergeants and lieutenants who ultimately did nothing. Then a responsible sergeant

observed this behaviour and reported it to the facility captain. The misconduct lessened but did not stop. With his open disregard for authority and his escalating threats, I felt I had no choice but file a staff misconduct complaint. After I submitted the appeal, the officer stopped harassing me, but his clique of vindictive buddies picked up where he left off. I forwarded the grievance all the way to the third level of review. The lower level of appeal found the officer did in fact violate institutional policy, but the higher level found no fault in the officer's actions. I could not comprehend the contradictory findings with the overwhelming evidence that was presented. My 602 grievance was ultimately denied and the officer continued working in the unit, spreading his vile hatred and acerbic attitude toward others. At least he stopped harassing me. Unfortunately, his co-workers did not.

One day I was doing inventory and cleaning the law library office, and collecting the clerk's mail from the mail table. This was a common practice that I had performed for over three years that all staff were aware of. I was not doing anything wrong or out of the ordinary. But one officer decided to retaliate on me for the staff misconduct complaint on his buddy. So he wrote me up for entering the law library and being at the mail table. Of course he put his own special twist to the write-ups so they were misleading and inaccurate, stating I was "out of bounds" in a "restricted area" and "ferreting through confidential mail for lieutenants and counselors". Trying to drive the final nail in the coffin, the officer then wrote me a 115 RVR later that same day for "Misappropriation of Institutional Mail". His actions resulted in a fifteen-day CTQ, a two-month suspension from work, threats of termination, lies and lambasting throughout the unit. During the adjudication of the write-up the truth was revealed and I was found not guilty. I was reinstated into my job position and the write-up was removed from my record. This infuriated the officer and his cohorts.

Other incidents of harassment continued but nothing quite worthy of a formal complaint. Then a few months later during another cell search, maps of the San Francisco Bay area were found in my atlas. These maps were issued to me by prison staff and had been in my possession for over five years and through multiple searches, some with highly-trained investigative services unit officers. The maps were never an issue or concern before. But this time these harmless maps somehow became a threat to the safety and security of the institution. So I was immediately terminated from my job and transferred to the Adjustment Center, the

harshest and most restricted unit in the institution. I was then issued a 115 RVR for “Contraband, Escape Paraphernalia”. The RVR was adjudicated and I was found guilty of the charge.

I appealed the ruling and filed a grievance listing multiple errors and requested a dismissal. The second level reviewer agreed with my claims but refused to dismiss. However, the 115 RVR was ordered to be reissued and reheard. It was not what I wanted, but it allowed me a second chance to argue my case. While waiting for the rehearing to be scheduled, staff violated several Title 15 rules regarding time constraints, conflicts of interest, performance of duties and the investigative employee officer failed to submit an accurate report containing my statement and witness questions. When the rehearing finally commenced the hearing officer dismissed the 115 RVR up front for all the due process issues. Subsequently, the write-up was removed from my file.

Over a year after the two previously mentioned inaccurate 128 reports were placed in my file I submitted a 602 appeal for their removal. Beforehand, I had been adamantly informed by peers, staff, even my own counsellor, that the officer who wrote the reports was the only person able to remove them from the C-file. So I went through that process of verbally requesting then later writing a Form 22 to the officer, but both were met with negative results. I then decided to put together fourteen pages of supporting documents and submitted my appeal. About a month later, it was cancelled because the appeals coordinator said it “duplicated a pending appeal”. The appeal he referred to was a clearly marked exhibit that was part of the supporting documents.

So I filed another appeal on the appeals coordinator for the cancellation, stating he was in egregious error for delaying a timely resolution in this matter, jeopardizing due process and obstructing justice. It took almost three months but the appeal was granted at second level and I could resubmit a new appeal for removal of the reports, even after the appeals coordinator noted I violated the 30-day time constraints for filing eleven months after the incident. After filing a new appeal, it was also returned a month later stating it was cancelled for duplicating a previous appeal. I was upset and very frustrated with the appeals coordinator’s blatant mishandling of my appeals. However, I was interviewed by the lieutenant the day before who granted my original appeal. In the end, the original appeal was used and all these additional appeals I filed and the months delaying a final response

were the biggest waste of time and effort imaginable. The warden signed off on my appeal and directed that both 128 reports be removed from my file.

At the moment I am currently waiting response on an appeal filed for the reimbursement of pay lost from my clerk's job after the dismissal of a previous write-up. This appeal is substantiated with solid documentation, and some extenuating circumstances exist. No one knows which way a decision will fall in spite of how well prepared you think you are, but I am trying to remain optimistic. Now that the death row prisoner worker program has been terminated due to staff- and prisoner-related issues, I can only hope that the target has been removed from my back and the harassment subsides, at least for this chapter of my life.

I started off writing about the dissatisfaction and waste of time it is to file a grievance. But after reviewing my own history I realized that I have been somewhat successful at this process. My first appeals were basic trial and error, but assistance can be obtained from peers or specific books. Seek it out. You may experience denial or cancellation and wonder if the appeals coordinator or the reviewer actually reads what you wrote. But be patient and persistent. File again if need be. You will not get resolution if you do not try. If all else fails, after exhausting the appeal at the third level, you have the option to file a writ to the court. My advice is that if you have an issue you feel is important to you, file a grievance. Despite all their fallacies and shortcomings or the obstacles perpetrated by reviewing staff, grievances do work.

## **ABOUT THE AUTHOR**

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