

## CHAPTER 6: HOW TO PROTECT YOUR RIGHTS

### A. INTRODUCTION

This Chapter is an introduction to the topic of knowing your rights while in prison and knowing how to protect them. This Chapter addresses only claims regarding your prison conditions. For claims relating to the *cause* of your imprisonment or the *length* of your imprisonment, please read Chapters 2, 3, and 4 of the *Louisiana State Supplement*.

First, Part B will explain the difference between a tort action (a claim in court for personal injury and property damage) and the Administrative Remedy Procedure (the process where you try to resolve your problem through the prison's system for complaints). It will also discuss how they interact. (These topics will be discussed in more detail in Chapter 9 of the *Louisiana State Supplement—Inmate Grievance Procedures* and Chapter 10 of the *Louisiana State Supplement—Original Tort Actions*.) Part C will explain how to choose the proper court for your situation. Finally, Part D will teach you about the Louisiana Prison Litigation Reform Act (“LPLRA”). The LPLRA is meant to reduce the amount of prisoner litigation. It also makes it harder to file a claim under state law. It is important to learn about the LPLRA if you wish to file any claim under Louisiana state law because the LPLRA sets out many rules and restrictions that may apply to your claim.

### B. THE DIFFERENCE BETWEEN THE ADMINISTRATIVE REMEDY PROCEDURE AND A TORT ACTION

This Section will introduce you to two ways of addressing your claims: an administrative remedy procedure and a tort action. Because of “exhaustion” rules, which will be discussed below, you will typically ALWAYS want to address your claim through an Administrative Remedy Procedure, even if you also want to bring a tort action in court. This is because you may lose your ability to bring a tort action in court if you did not first use up, or “exhaust,” the Administrative Remedy Procedure. This is very important to keep in mind and will be discussed more below. This Section will first give you an introduction to Louisiana’s Administrative Remedy Procedure, and then introduce you to tort actions. Both of these topics will also be discussed in more detail in Chapter 9 of the *Louisiana State Supplement—Inmate Grievance Procedures* and Chapter 10 of the *Louisiana State Supplement—Original Tort Actions*.

#### 1. Louisiana’s Administrative Remedy Procedure

This section will introduce you to Louisiana’s Administrative Remedy Procedure (the “ARP”). Federal law<sup>1</sup> and Louisiana state law<sup>2</sup> both require you to exhaust (use up) all available administrative procedures before you take a complaint to federal or state court, so it is very important to use the ARP grievance procedure properly if you have a federal or state claim. Again, if you want to file a claim, you **MUST** first follow the Administrative Remedy Procedure or you will not be able to proceed in court. This is a brief introduction to the ARP, but the grievance procedure is actually very complicated. You should carefully read Chapter 9 of the *Louisiana State Supplement*, which explains in detail what you need to know about the ARP.

The ARP seeks to provide procedures for “receiving, hearing, and disposing of any and all complaints and grievances by [offenders] . . . within the custody or under the supervision of the

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<sup>1</sup> 42 U.S.C. § 1997e(a) (2012) (“No action shall be brought with respect to prison conditions under section 1983 of the Revised Statutes of the United States (42 U.S.C. § 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.”).

<sup>2</sup> LA. REV. STAT. ANN. § 15:1184(A)(2) (2017) (“No prisoner suit shall assert a claim under state law until such administrative remedies as are available are exhausted. If a prisoner suit is filed in contravention of this Paragraph, the court shall dismiss the suit without prejudice.”). This section applies to claims brought by prisoners in Louisiana state courts (unlike federal claims in footnote 1 above).

department, a contractor operating a private prison facility, or a sheriff.”<sup>3</sup> The laws creating the ARP are in the Louisiana Revised Annotated Statutes,<sup>4</sup> and the actual ARP guidelines are found in Title 22 of the Administrative Code of Louisiana.<sup>5</sup>

The ARP is a two-step system for reviewing prisoner complaints.<sup>6</sup> The first step you must take is to write a letter explaining the basis for your claim (what happened) and the relief that you seek (what result you want).<sup>7</sup> Unless your grievance involves sexual assault or extraordinary circumstances that would excuse you from the time limit, you must write to the Warden within ninety days of the incident you are complaining about.<sup>8</sup> The Warden must respond to you in writing within forty days from the date of your filing.<sup>9</sup> This is a step one decision. If you are unsatisfied with your step one decision, you can appeal this decision.<sup>10</sup> This appeal must be filed within five days of when you receive your step one decision.<sup>11</sup> The Warden then has forty-five days to respond to your appeal.<sup>12</sup> **BOTH** of these steps must be completed in order for the “exhaustion” requirement to be met before you can file your claim in state or federal court.<sup>13</sup>

Some claims are “grievable,” which means that you can raise a grievance about them. Others are “non-grievable,” which means you cannot make a grievance about them. The state legislature, state case law, and the policies of the Department of Public Safety and Corrections decide what “issues” are “grievable” for the purposes of addressing them through the ARP.<sup>14</sup> Part C of Chapter 9 of the *Louisiana State Supplement*, “Inmate Grievance Procedures in Louisiana,” explains how to figure out which group your claim fits into. There are also some “emergency grievances,” which have their own set of rules. These emergency grievances can only be used when waiting to follow the normal two-step process would cause major risk of injury or serious or lasting damage. The rules about these “emergency grievances” are explained in Part C(4) of Chapter 9 of the *Louisiana State Supplement*. The relief you can get from winning your grievance claim, or the grievance remedies, may include changing a policy or practice in your facility<sup>15</sup> or damages, which means that you get awarded money.<sup>16</sup> There is also a separate administrative remedy process for loss of property, which is explained in detail in Chapter 9, Part G of the *Louisiana State Supplement*.<sup>17</sup>

As stated in Chapter 15 of the main *JLM*, even if you believe that the grievance system in your prison is unfair or pointless, it is important that you still go through all of the steps of the process to try to resolve your grievance *before* you file a lawsuit in state or federal court.<sup>18</sup> Further, Chapter 14 of the main *JLM* states that even if you make a mistake or miss a deadline, a court may excuse your mistake if you can show the court that you made an honest, good-faith effort (you really tried) to meet as many of the requirements as you could. So even if the process seems hard or confusing, keep trying to go through all the steps of the grievance process.

<sup>3</sup> LA. REV. STAT. ANN. § 15:1171(B) (2017).

<sup>4</sup> LA. REV. STAT. ANN. §§ 15:1171–15:1179 (2017).

<sup>5</sup> LA. ADMIN. CODE tit. 22 § 325(I) (2017).

<sup>6</sup> Step one is meant to investigate the complaint and step two is for appealing the decision from the step one level. LA. ADMIN. CODE TIT. 22, §§ 325(G)(1), (J)(1)(B) (2017).

<sup>7</sup> LA. ADMIN. CODE tit. 22, § 325(G)(1)(A)(I)(A)–(B) (2017).

<sup>8</sup> LA. ADMIN. CODE tit. 22, § 325(G)(1) (2017).

<sup>9</sup> LA. ADMIN. CODE tit. 22, § 325(J)(1)(a)(ii) (2017).

<sup>10</sup> LA. ADMIN. CODE tit. 22, § 325(J)(1)(B)(I) (2017).

<sup>11</sup> LA. ADMIN. CODE tit. 22, § 325(J)(1)(B)(I) (2017).

<sup>12</sup> LA. ADMIN. CODE tit. 22, § 325(J)(1)(B)(II) (2017).

<sup>13</sup> LA. ADMIN. CODE tit. 22, § 325(J)(1)(B)(IV) (2017).

<sup>14</sup> LA. REV. STAT. ANN. § 15:1171(B) (2017) (“Such complaints and grievances include but are not limited to any and all claims seeking monetary, injunctive, declaratory, or any other form of relief authorized by law . . .”).

<sup>15</sup> LA. REV. STAT. ANN. § 15:1171(B) (2017).

<sup>16</sup> LA. ADMIN. CODE tit. 22, § 325(K) (2017).

<sup>17</sup> LA. ADMIN. CODE tit. 22, § 325(L) (2017).

<sup>18</sup> If you receive a satisfactory remedy from the ARP, then there will be no need to go to court. If you are unsatisfied with the result of the ARP, you may then file a lawsuit in federal court.

## 2. Tort Actions

A tort action is a claim that arises when damage is caused to you by another.<sup>19</sup> When you are filing a claim, you will usually choose federal court if the tort happened in federal prison and state district court if the tort happened in state prison. Chapter 10 of the *Louisiana State Supplement* on Torts will explain in detail what you need to know about filing a tort claim. This chapter explains who you can sue, gives you a lot of information about showing the elements of a tort action in Louisiana, what types of claims you would file a tort action about, how you might be able to try to get a lawyer to represent you, how to pay fees, and how to file the correct documents.

In addition to filing your claim under federal law, Louisiana also allows you to challenge decisions from the Administrative Remedy Procedures (ARP) in state courts under *state law*.<sup>20</sup> As discussed above, it is important to attempt all administrative remedies before filing a claim under federal or state court. State courts will review all injury or damage claims and decide the issue for themselves, even though the claim has already been decided through the ARP. This only applies, however, to “delictual” claims (meaning civil law claims like assault, battery, or other claims for “injury or damages”).<sup>21</sup> See Chapter 9 of the *Louisiana State Supplement*, Section C, for more detailed information on when and how state courts can review your ARP claim.

### C. CHOOSING A COURT

This Section will give you information about choosing a court for claims other than state court tort claims, which are discussed above. If you are deciding to bring a federal claim about your prison conditions, it is very important that you read Chapter 14 of the main *JLM*, “The Prison Litigation Reform Act.” The Prison Litigation Reform Act (“PLRA”), makes it harder for prisoners to take their complaints about prison conditions to federal court. Like the LPLRA, the PLRA also gives harsh consequences if you bring your claim incorrectly. Though the PLRA can be used only in federal court cases, Louisiana’s LPLRA is very similar to the PLRA, and is based on the PLRA. The LPLRA will be explained in detail below in Part D of this Chapter.

For federal court claims, the PLRA requires you pay the full court filing fee even if you proceed *in forma pauperis*, which means as a poor person. (The topic of filing a claim as a poor person will be explained in more detail in Part D, Section 3 of this Chapter.) If you file as a poor person, however, your fees will be taken in installments from your prison account. This means instead of having to pay all the fees at one time, you can pay a little at a time. But, if you file a federal claim *in forma pauperis* (as a poor person), you risk receiving a strike under the “three strikes” provision (section) of the PLRA. The three strikes provision states that if you have three cases dismissed as not having any serious value, malicious, or failing to state a valid legal claim, you will have to pay the full filing fee in whole (not a little at a time) to pursue your next claim. If you receive three strikes, you will not be able to use the *in forma pauperis* procedure (option). Moreover, if the court finds you have filed a lawsuit for ill-intent or harassing purposes, you may lose any good-time credit you have earned, which is credit for good behavior in prison that counts toward shortening your sentence.<sup>22</sup>

The PLRA has the same “exhaustion” requirement as the one discussed above in the LPLRA. You must use the ARP process before you bring a claim in federal court or your claim will be thrown out. Remember, these are only a few of the restrictions imposed by the PLRA. Therefore, you should read Chapter 14 of the main *JLM* before you file any federal claim.

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<sup>19</sup> LA. CIV. CODE ANN. art. 2315 (2017).

<sup>20</sup> LA. CONST. art. V, § 16(A) (“[A] district court shall have original jurisdiction of all civil and criminal matters.”); LA. REV. STAT. § 15:1177 (2017) (“Any offender who is aggrieved by an adverse decision . . . pursuant to any administrative remedy procedures under this Part, may . . . seek judicial review.”).

<sup>21</sup> LA. REV. STAT. § 15:1177 (2017) (stating that judicial review limitations only apply to “delictual actions for injury or damages”).

<sup>22</sup> 28 U.S.C. § 1932 (2012).

## 1. Section 1983

A federal law, 42 U.S.C. § 1983 (“Section 1983”), allows you to sue state and city prison or jail officials and guards if they violate (take away from you) your federal constitutional rights (like your right to adequate medical care, to be free from assault, and to have access to the courts and to legal materials). You **cannot** use § 1983 to attack your conviction or sentence. For more information on Section 1983, please read Chapter 16 of the main *JLM*, especially if you want to use Section 1983 to bring your lawsuit.

When you file a Section 1983 complaint, you must give a detailed description of the incident or practice that you want remedied. If the problem affects many prisoners, you might also be able to bring your lawsuit as a class action. A class action is a suit brought on behalf of you and others who experience the same problem or have the same complaint.<sup>23</sup> You can also add any additional state claims to your federal cause of action if a state claim involves the same facts as the alleged federal claim.<sup>24</sup>

Section 1983 has a statute of limitations, which is the limit on the amount of time you have before your right to file a lawsuit disappears. Section 1983 claims use the state statute of limitations for personal injury suits in the state in which the court is located, which is one year in Louisiana.<sup>25</sup> The statute of limitations period begins to run when you find out about (or should have found out about) the injury that you are complaining about.

A federal judge who hears a § 1983 claim may order any one or more of the following remedies: (1) an injunction (an order to prison officials to stop denying you your rights or to take steps to allow you to exercise your rights); (2) money damages (which means that you get awarded money for your injury); or (3) a declaratory judgment (a statement by the court about the nature and limits of your rights made before they have been violated).

After you determine the district court in which you must file, you should write to the clerk of that district court asking for the forms and information you need. You can complete the filing of your Section 1983 lawsuit simply by mailing the appropriate documents to the clerk. Chapter 16 of the main *JLM*, “Using 42 U.S.C. § 1983 and 28 U.S.C. § 1331 to Obtain Relief from Violations of Federal Law,” discusses Section 1983 suits in detail.

## 2. *Bivens* Actions<sup>26</sup> under 28 U.S.C. § 1331

*This is a broad introduction to Bivens actions, but this topic is discussed in much more detail in Chapter 16 of the main JLM. If you want to use a Bivens action to bring your lawsuit, please carefully read that Chapter in the main JLM.*

There is no statute similar to § 1983 allowing you to sue federal officials who deprive you of your federal rights. However, you can use what is called a “*Bivens* action” under 28 U.S.C. § 1331(a) to sue federal officials.<sup>27</sup> A *Bivens* action is similar to a § 1983 claim. Much of the information that applies to § 1983 claims also applies to *Bivens* actions. For example, just like a § 1983 action, you may use a *Bivens* action to complain about conditions or treatment violating your constitutional rights. The PLRA similarly requires that you exhaust all available administrative remedies before filing your *Bivens* action.

A *Bivens* action allows you to sue a federal officer who violated your rights. However, you can only sue a federal officer as an individual, but not as an official. This means that you can sue the officer as a

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<sup>23</sup> But keep in mind that you need a lawyer to file a class action. You cannot file one by yourself.

<sup>24</sup> See Part C(6)(b) of the main *JLM*, Chapter 16, “Using 42 U.S.C. § 1983 and 28 U.S.C. § 1331 to Obtain Relief from Violations of Federal Law,” for more information on supplementing your federal § 1983 case with state claims.

<sup>25</sup> LA. CIV. CODE ANN. art. 3492 (2017).

<sup>26</sup> For more information on *Bivens* actions, see Part E of Chapter 16 of the main *JLM*, “Using 42 U.S.C. § 1983 & 28 U.S.C. § 1331 to Obtain Relief from Violations of Federal Law.”

<sup>27</sup> The claim comes from the case *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 389, 91 S. Ct. 1999, 2001, 29 L. Ed. 2d 619, 622 (1971) (allowing a lawsuit against federal agents claiming a 4th Amendment violation).

person, but not as a government employee, and therefore your remedies are limited to what the individual can do to make you whole.<sup>28</sup> Additionally, you cannot bring a *Bivens* action against a federal agency or a private corporation that operates a federal prison facility.<sup>29</sup> If you are in a privately-owned prison facility, and want to sue the private corporation that owns the facility, you might have more success trying to bring a state tort claim. Federal courts also may not listen to your complaint if it sounds like you are suing for a harm that is relatively less serious, such as your personal items being taken from you.

If you bring a *Bivens* action, you must serve a copy of the summons and complaint on (1) the named defendants, (2) the U.S. Attorney for the district in which you bring your suit, and (3) the U.S. Attorney General in Washington, D.C.<sup>30</sup> If you seek injunctive or declaratory relief (meaning you are asking the court to stop something being done to you, but you are not asking for money), you may file your suit in the federal district where (1) any defendant resides, (2) where the events complained of occurred or are occurring, or (3) where you presently reside.<sup>31</sup> If you are suing under Section 1331 for only money damages, you need to serve the summons and complaint on (1) the U.S. Attorney for the district in which you bring your suit, (2) the U.S. Attorney General in Washington, D.C., and (3) the officer or employee you are suing.<sup>32</sup> To sue for damages, you must file in the federal district in which all the defendants reside or the district in which your claim arose (where the events you are complaining about occurred).<sup>33</sup> All service (delivery) must be by registered or certified mail.

### 3. Tort Suits in Federal Courts

If you are a federal prisoner and want to sue for a tort violation, you must sue using the Federal Tort Claims Act (“FTCA”)<sup>34</sup> instead of a *Bivens* action. The FTCA creates the procedures to sue the federal government for harm federal employees may have caused you or your property while they were doing their jobs. You must first send in a completed Form 95, “Claim for Damage, Injury, or Death,” and ask for damages from the federal agency whose employee allegedly caused the harm, which will normally be the Federal Bureau of Prisons.<sup>35</sup> Many FTCA cases go through the agency and are settled there. If your claim is denied, however, you may file suit in federal court. Remember, if you have not gone through the administrative remedies before going to federal court, the judge will dismiss your case.

### 4. Challenging Unconstitutional Prison Conditions Through the Department of Justice

The U.S. Department of Justice (“DOJ”) has authority under the Civil Rights of Institutionalized Persons Act to investigate state and local institutions for unconstitutional conditions.<sup>36</sup> This unit does not investigate federal institutions; you must use another agency like the Bureau of Prisons if you want to file

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<sup>28</sup> See *Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 510 (2d Cir. 1994) (stating that a *Bivens* action “must be brought against the federal officers involved in their individual capacities.”). If you sue an officer in his “official capacity,” it is like suing the federal government, and under the concept of “sovereign immunity,” the federal government cannot be sued.

<sup>29</sup> See *Federal Deposit Insurance Corp. v. Meyer*, 510 U.S. 471, 486, 114 S. Ct. 996, 1006, 127 L. Ed. 2d 308, 324 (1994) (holding that *Bivens* suits cannot be brought against a federal agency); see also *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 63, 122 S. Ct. 515, 517, 151 L. Ed. 2d 456, 461 (2001) (refusing to extend *Bivens* to allow recovery against a private company operating a halfway house under contract with the Federal Bureau of Prisons).

<sup>30</sup> Fed. R. Civ. P. 4(i).

<sup>31</sup> 28 U.S.C. § 1391(e) (2012).

<sup>32</sup> Fed. R. Civ. P. 4(i)(3).

<sup>33</sup> Fed. R. Civ. P. 4(k); LA. REV. STAT. § 13:3201(A)(4) (2017).

<sup>34</sup> Federal Tort Claims Act, 28 U.S.C. § 1346(b) (2012).

<sup>35</sup> You can get this form by writing to the clerk of the federal district court in which you plan to file your action. See U.S. Dep’t. of Justice Civil Division Forms—Form SF 95, available at <http://www.justice.gov/forms/dojform.php> (last visited Dec. 7, 2016).

<sup>36</sup> 42 U.S.C. § 1997 (2012). Some federal courts in New York have held that, under the PLRA, prisoners must exhaust the DOJ’s disability complaint procedure in addition to their internal prison grievance procedure before filing a disability-related complaint in federal court. Other courts have disagreed. For more information about whether your complaint would qualify as an “administrative remedy” under the PLRA, read Chapter 14, Part E, Section 1 of the main *JLM*.

a complaint about a federal prison.<sup>37</sup> The DOJ will only investigate allegations of systemic abuse—problems experienced by many prisoners. If you think your prison suffers from widespread constitutional abuses, you might consider writing to the DOJ. The DOJ can neither provide individual relief, nor can it bring a claim regarding your criminal sentence. For these matters, you should contact an attorney.<sup>38</sup>

The Special Litigation Section enforces federal civil rights statutes in four major areas: (1) conditions of institutional confinement (if the conditions you are being confined in are unlawful); (2) law enforcement misconduct; (3) access to reproductive health facilities and places of religious worship and (4) protection of institutionalized persons' religious exercise rights (if you are being unlawfully barred from practicing your religion).<sup>39</sup> The DOJ receives a large number of claims every year and cannot investigate every claim. The DOJ also takes a long time to investigate, so it is important to be patient if you do bring a claim.

If you write to the DOJ, try to be as specific and clear as possible. Your letter should include your name, prisoner ID number, race, the length of your sentence and how much of your sentence you have served, and a description of what happened or the condition you believe to be unconstitutional. When you talk about what happened, be sure to include all relevant information, including how many times the abuse happened, the names and races of the people involved, and whether the abuse has happened to other prisoners. If you know of others who have had similar experiences, encourage them to write letters too. Send the letter to:

Special Litigation Section  
U.S. Department of Justice, Civil Rights Division  
950 Pennsylvania Avenue NW  
Patrick Henry Building, Room 5028  
Washington, D.C. 20530  
Telephone: (877) 218-5228; (202) 514-6255;  
Fax: (202) 514-0212; (202) 514-6273

If you are disabled and filing a complaint under the Americans with Disabilities Act, you must write to a different division of the DOJ. Chapter 28 of the main *JLM*, titled “Rights of Prisoners with Disabilities,” will help you file this complaint.

#### D. THE LOUISIANA PRISON LITIGATION REFORM ACT

The Louisiana Prison Litigation Reform Act (“LPLRA”)<sup>40</sup> is similar to the Federal Prison Litigation Act, but applies to state law. The Federal Prison Litigation Reform Act is discussed in detail in Chapter 14 of the main *JLM*. It is important to understand the LPLRA in detail before taking a complaint to state court. The LPLRA was intended to make it harder for prisoners to file lawsuits.<sup>41</sup>

##### 1. When the Louisiana Prison Litigation Reform Act Applies

The LPLRA applies to any “civil action with respect to prison conditions,” including any civil proceeding with respect to the conditions of confinement or effects of actions by government officials on the lives of prisoners.<sup>42</sup> These restrictions do *not* apply to any appeals or challenges to a guilty verdict,

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<sup>37</sup> For more information, see Federal Bureau of Prisons, available at <http://www.bop.gov> (last visited Apr. 1, 2014).

<sup>38</sup> See United States Dep't. of Justice, available at <https://www.justice.gov/crt/filing-complaint> (last visited Oct. 11, 2017).

<sup>39</sup> For a summary of the Special Litigation Section's work, see U.S. Dep't. of Justice Civil Rights Division, available at <https://www.justice.gov/crt/special-litigation-section> (last visited Sept. 3, 2017).

<sup>40</sup> LA. REV. STAT. ANN. §§ 15:1181–1191 (2017).

<sup>41</sup> Rhone v. Ward, 45-008, p. 5 (La. App. 2 Cir. 2/3/2010), 31 So. 3d 591, 595, writ denied, 2010-0474 (La. 4/30/10); 34 So. 3d 291.

<sup>42</sup> LA. REV. STAT. ANN. § 15:1181 (2017); *McAlister v. Oilfield Instrumentation U.S.A., Inc.*, 09-1472, p. 1 (La. App. 3 Cir. 5/5/2010), 2010 WL 1780298, at \*1 (holding that the LPLRA does not apply to a prisoner suing a private company about wages he received for work performed while he was in prison); *Frederick v. Ieyoub*, 99-0616, p. 8 (La. App. 1 Cir.

including habeas corpus proceedings that challenge the *reason* or *length* of imprisonment.<sup>43</sup> For the LPLRA, “prison” means any state or local jail, prison, or any other correctional facility that imprisons or detains juveniles or adults who are accused of, convicted of, sentenced for, or adjudicated delinquent (a youth who has been found guilty by a judge of committing a delinquent act) for violating criminal law.<sup>44</sup> In other words, if you are imprisoned or detained for anything connected to criminal law, the LPLRA will apply to you. The LPLRA applies to suits in state court even if they are under federal laws, including Section 1983 claims such as that are discussed above.<sup>45</sup> The status of being a “prisoner” is determined at the time that the incident happened about which you brought your claim.<sup>46</sup>

## 2. An Overview of the LPLRA

Because of the strict rules of the LPLRA, it is important to be careful when preparing your claim. Under the LPLRA, you are not allowed to assert (make) a claim about emotional or mental injury unless you can also show physical injury.<sup>47</sup> The court can dismiss your complaint if it decides that your “action is frivolous, is malicious, fails to state a cause of action, seeks monetary relief from a defendant who is immune from such relief, or fails to state a claim upon which relief can be granted.”<sup>48</sup> If these conditions are met, the court can dismiss your suit even if you have pursued (used) all claims and remedies as fully as possible in your original court or jurisdiction.<sup>49</sup> In other words, you need to clearly explain the legal basis for your claim and communicate why it is a serious claim, without sounding overly angry or hateful. If you ask for money damages, you must make sure the person you request them from is not immune (can pay). A court may also take away earned good-time credit (credit for good behavior in prison that counts toward shortening your sentence) if it finds that your claim was filed for a malicious purpose, to harass the defendant, or if you say things that are false or provide false evidence or information.<sup>50</sup> Please read Chapter 10 of the *Louisiana State Supplement* on Tort Actions for more information on this topic.

The LPLRA lists the exhaustion requirements for completing the ARP before filing a claim. Remember that the defendant has the burden to prove with evidence that you have not exhausted administrative remedies.<sup>51</sup> You should not have to prove that you exhausted administrative remedies when bringing your claim. However, you should still always keep careful records of your ARP proceedings in case you need to prove that you have exhausted administrative remedies.

Under the LPLRA, any defendant has the option not to reply to your civil action.<sup>52</sup> If a defendant does not reply, it does not mean they are admitting wrongdoing. You cannot receive relief if the defendant has not answered. However, if the court thinks you have a reasonable chance of winning your suit, the court can force the defendant to reply.<sup>53</sup>

Finally, you should be prepared for the fact that you may not be able to physically be present at pretrial proceedings. The LPLRA requires the court to conduct these hearings by telephone, video conference, or other technology.<sup>54</sup> Hearings may also take place at the facility where you are being held.<sup>55</sup>

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5/12/2000); 762 So. 2d 144, 149, *writ denied*, 2000-1811 (La. 4/12/2001), 789 So. 2d 581 (holding that the LPLRA does not apply to a challenge to parole provisions because this is about the *length* of confinement, and so the plaintiff could not get a “strike” for his complaint being dismissed).

<sup>43</sup> LA. REV. STAT. ANN. § 15:1181 (2017).

<sup>44</sup> LA. REV. STAT. ANN. § 15:1181(5) (2017).

<sup>45</sup> LA. REV. STAT. ANN. § 15:1191 (2017).

<sup>46</sup> LA. REV. STAT. ANN. § 15:1181(6) (2017).

<sup>47</sup> LA. REV. STAT. ANN. § 15:1184(E) (2017).

<sup>48</sup> LA. REV. STAT. ANN. § 15:1184(B) (2017).

<sup>49</sup> LA. REV. STAT. ANN. § 15:1184(B) (2017).

<sup>50</sup> LA. REV. STAT. ANN. § 15:1190 (2017); *Rebaldo v. Jenkins*, 660 F. Supp. 2d 755, 762 (E.D. La. 2009) (A Plaintiff attached records to his complaint that were not enough to demonstrate exhaustion, but this was not enough to prove that exhaustion did not occur.).

<sup>51</sup> LA. REV. STAT. ANN. § 15:1184(B) (2017).

<sup>52</sup> LA. REV. STAT. ANN. § 15:1184(C) (2017).

<sup>53</sup> LA. REV. STAT. ANN. § 15:1184(C) (2017).

<sup>54</sup> LA. REV. STAT. ANN. § 15:1184(D) (2017).

<sup>55</sup> LA. REV. STAT. ANN. § 15:1184(D) (2017).

If an attorney represents you in your civil suit, the LPLRA also limits the amount of attorney fees that you may be awarded. Some of the attorney fees may be taken from any money damages that you win.<sup>56</sup>

### 3. *In Forma Pauperis*—Filing Your Suit as a Poor Person

Under the LPLRA, you are allowed to file your suit *in forma pauperis*. This means that you are filing your suit as a poor person, so there are changes to when you have to pay your fees. Instead of having to pay your entire fee before you can file the case, you will be able to pay your filing fee gradually.

If you want to file your suit *in forma pauperis*, you need to submit a certified copy of the trust fund account statement or equivalent (whatever paperwork your facility gives you documenting how much money you have) for the six-month period before you bring your action.<sup>57</sup> If you were at different facilities in the past six months, you have to try to get this paperwork from each facility.<sup>58</sup>

If you are successful in establishing your *in forma pauperis* status, the court will not require you to pay your entire filing fee before bringing your action. Instead, the court will take either 20 percent from the average monthly deposits to your account or the average monthly balance in your account for the six months before the filing—whichever is more.<sup>59</sup> Afterwards, you will have to pay 20 percent of each month's income towards fees. However, you will not have to pay more than the correct amount of fees in the statute.<sup>60</sup>

If you proceed *in forma pauperis*, all of your proceedings will be automatically “stayed” (stopped) until all of the money is collected for the fees.<sup>61</sup> You will not be allowed to take any official action about the claim until all of the money is collected.<sup>62</sup> This is true even if more money is added to your fee while you are saving up. If the full fees are not paid in three years, your suit will be dismissed “without prejudice.” This means that you will not lose any rights or privileges if you try to file your claim in the future, and it has no effect on what the court thinks about your claim.<sup>63</sup> If this happens and you believe that you *have* paid all your fees correctly and there was a mistake, you have 30 days to appeal this decision.<sup>64</sup>

There is one important exception to this rule about staying. If you believe that you are in immediate danger of serious physical injury and you are only seeking injunctive relief, then the automatic stay will not apply.<sup>65</sup> Injunctive relief means that you want the court to order that something be stopped to avoid this danger. If you are seeking any money, this exception will not apply. If you believe you are in immediate danger of serious physical injury, you should make this very clear so that the automatic stay will not apply. The court will likely look at whether this danger existed at the time you filed the complaint.<sup>66</sup>

### 4. The Three Strikes Rule

Another limitation that the LPLRA puts on your ability to file suits is the three strikes rule. Remember that the court will dismiss your action or appeal if it was “frivolous, was malicious, failed to state a cause of action, or failed to state a claim upon which relief may be granted.”<sup>67</sup> If you have three or

<sup>56</sup> LA. REV. STAT. ANN. § 15:1185(B) (2017).

<sup>57</sup> LA. REV. STAT. ANN. § 15:1186(A)(1) (2017); *Rhone v. Ward*, 45,008, p. 1 (La. App. 2 Cir. 2/3/10); 31 So. 3d 591, 593, *writ denied*, 2010-0474 (La. 4/30/10); 34 So. 3d 291. (rejecting claims that these “stays” violate the constitution).

<sup>58</sup> LA. REV. STAT. ANN. § 15:1186(A)(1) (2017).

<sup>59</sup> LA. REV. STAT. ANN. § 15:1186(A)(2) (2017).

<sup>60</sup> LA. REV. STAT. ANN. § 15:1186(A)(2) (2017).

<sup>61</sup> LA. REV. STAT. ANN. § 15:1186(B)(2)(a) (2017).

<sup>62</sup> LA. REV. STAT. ANN. § 15:1186(B)(2)(a) (2017).

<sup>63</sup> LA. REV. STAT. ANN. § 15:1186(B)(2)(c) (2017).

<sup>64</sup> LA. REV. STAT. ANN. § 15:1186(B)(2)(c) (2017).

<sup>65</sup> LA. REV. STAT. ANN. § 15:1186(B)(2)(d) (2017).

<sup>66</sup> *Baños v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

<sup>67</sup> *Baños v. O'Guin*, 144 F. 3d 883, n.6 (5th Cir. 1998).



more actions or appeals dismissed on one of these grounds, you will no longer be allowed to bring a civil action or appeal a judgment *in forma pauperis*.<sup>68</sup> At least one court has counted a “strike” when a prisoner failed to exhaust his administrative remedies.<sup>69</sup> Remember that this rule only applies if your case is dismissed for *these specific reasons*. If it is dismissed for another reason, such as withdrawing your complaint, you will not get a strike. If you have three dismissals but they are not final yet, the court may stop all of your proceedings and wait until the dismissals are final. Just like above, the court will make an exception to the three strikes rule if you are in immediate danger of serious physical injury. This is another reason why it is so important to make sure that your facts amount to a violation of law. Just your general feeling that you have been mistreated may get you strikes.

### 5. Relief Available Under The LPLRA

The LPLRA seriously limits any relief or remedy that you can receive in any case that the LPLRA applies to. The relief in any civil action cannot go further than necessary to correct the state right violation of the particular prisoners who are the plaintiffs in the case.<sup>70</sup> The relief must be “narrowly drawn” and be the “least intrusive means necessary.”<sup>71</sup> The LPLRA also orders the court to seriously weigh any public safety issues or negative impact on the operation of the criminal justice system that might result from the relief.<sup>72</sup> The relief can be a temporary restraining order or an injunction, and the injunction must expire after 90 days.<sup>73</sup> No prisoner release order can result from a civil action regarding conditions in prison unless a previous order for less intrusive relief failed to remedy (fix) the problem.<sup>74</sup> However, private settlement agreements between two parties do not have to comply with these limitations. This is true as long as these settlements are not subject to court enforcement, other than the reinstatement of the original civil proceeding.<sup>75</sup>

Finally, under the LPLRA, if you have any outstanding restitution orders, any damages that you win will be paid toward this restitution. You will get what is leftover. If you win damages, the court is supposed to make “reasonable efforts” to notify any victims of your crime.<sup>76</sup> This is an important thing to consider before filing a claim if you do have an outstanding restitution order.

## E. CONCLUSION

This Chapter has provided you with an introduction to how to protect your rights while in prison. It has explained the difference between an ARP claim and a tort claim, and how important it is to exhaust your internal grievance procedure before filing a claim in court. It has also given you an overview of the Louisiana Prison Litigation Reform Act and explained how this Act’s rules and restrictions may apply to your claim.

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<sup>68</sup> LA. REV. STAT. ANN. § 15:1187 (2017); *Lightfoot v. Stalder*, 2000-1120, p. 7 (La. App. 1 Cir. 6/22/01); 808 So. 2d 710, 716, *writ denied*, 2001-2295 (La. 8/30/02); 823 So. 2d 957. In this case, a prisoner brought a claim of cruel and unusual punishment because a corrections officer, who the plaintiff called “retarded,” was taking pills from a bottle and falling asleep. This placed the prisoners in “grave danger.” The court affirmed a strike for this claim because it said that the claim was “frivolous” and failed to state a claim.

<sup>69</sup> *Rochon v. Young*, 2008-1349, p. 4 (La. App. 1 Cir. 2/13/09); 6 So. 3d 890, 892, *writ denied sub nom.*, *Rochon v. Louisiana State Dep’t. of Corr.*, 2009-0745 (La. 1/29/10); 25 So. 3d 824, *and cert. dismissed*, 130 S. Ct. 3325 (2010).

<sup>70</sup> LA. REV. STAT. ANN. § 15:1182(A) (2017).

<sup>71</sup> LA. REV. STAT. ANN. § 15:1182(A) (2017).

<sup>72</sup> LA. REV. STAT. ANN. § 15:1182(A) (2017).

<sup>73</sup> LA. REV. STAT. ANN. § 15:1182(B) (2017).

<sup>74</sup> LA. REV. STAT. ANN. § 15:1182(C) (2017).

<sup>75</sup> LA. REV. STAT. ANN. § 15:1182(F) (2017).

<sup>76</sup> LA. REV. STAT. ANN. § 15:1189 (2017).