

Keeping Good Records, Staying Out of Court

If you work as a jail employee for any significant amount of time, you most likely will be sued by an inmate at some point in your career. Typically, these lawsuits are legally frivolous and are based on false or exaggerated factual allegations. However, these suits must be taken seriously, and, without proper record-keeping, an inmate lawsuit can cause massive headaches and waste the valuable time of jail staff. The purpose of this handout is to provide basic information about jail records that can be used as a quick reference guide for jail staff when responding to common jail situations. If proper records are maintained, most inmate lawsuits can be dismissed prior to trial, saving you time and money.

At least ninety percent (90%) of inmate lawsuits consist of one (1) or more of five (5) types of claims: 1) excessive force, 2) failure to protect, 3) due process violations, 4) denial of medical care, and 5) conditions of confinement. As to each type of claim, there are certain types of records that federal magistrate judges expect to be presented as evidence. With these types of records, the vast majority of these claims can be dismissed on summary judgment; without these types of records, you will most likely have to go to court.

Excessive Force Claims:

1) Incident Reports – After any situation in which any type of physical force is used against an inmate, an incident report must be prepared. It is preferable to have an incident report drafted by every officer who was involved in the incident or who witnessed the incident. The report should describe the incident in as much detail as possible. Additionally, it is important that the incident report: a) thoroughly explains why force was used during the incident and why that force was appropriate and b) describes any physical injuries (or lack of injuries) that the reporting officer observed following the incident.

2) Medical Reports – If feasible, try to have the inmate seen by a nurse within twenty-four (24) hours of the incident. Obviously, if the inmate has serious injuries, that inmate should be provided with appropriate medical care as soon as possible. However, even if the inmate was not injured and expresses no desire to be seen by medical staff, it is still important to have that inmate seen by a nurse and to make sure the nurse writes a report. In many types of excessive force claims, this evidence could be enough to have the claim dismissed.

3) Video Footage – If the incident is caught on video, please retain a copy of this video. This is the best evidence available to refute an inmate’s allegations of excessive force.

Failure to Protect Claims:

1) Grievances – The best evidence that an inmate can use against you in a failure to protect claim is a grievance that was filed before the fight occurs in which the inmate asks to be removed from the pod and which was not responded to properly. If an inmate writes a grievance asking to be removed from the pod and you decide to move the inmate, make sure to make a note of the move on the grievance. If, for some reason, you decide not to move the inmate, you need to provide an adequate explanation on the grievance of why you are declining to honor the inmate’s request. Ex: Inmate A files grievance saying: “Please move me to a different pod. Inmate B is threatening me.” Response: “I talked to Inmate B. He stated that there were no problems between him and Inmate A and that there past disagreement was just a misunderstanding. Considering there doesn’t appear to be an imminent threat to Inmate A’s safety, I am going to decline to remove him from the pod at this time.”

2) Incident Reports – Preferably, have every officer who observed or responded to the

fight draft a report stating what he or she observed, how he or she responded to the fight, and, as with a use of force report, make sure to note any injuries or lack of injuries to the inmates involved.

3) Medical Reports – same as a use of force incident. If feasible, have any inmate involved in a fight with another inmate checked out by a jail nurse after the fight, and make sure the nurse makes a report.

4) Video tape – If there is video footage of the incident, please retain it. This can be very good evidence for us, particularly if the video shows that the inmate who claims to be the victim actually was the aggressor in the fight.

Due Process Claims:

There are two (2) main types of due process claims that arise in a jail setting: 1) improper lockdown and 2) improper use of restraint chair.

Lockdown: An inmate cannot be locked down as a form of punishment without due process. If an officer wishes to recommend that an inmate be placed on lockdown, the officer should prepare a disciplinary report stating what infraction was committed by the inmate. There then has to be a disciplinary hearing in which the inmate is allowed to call witnesses. (It is ok to limit the number of witnesses the inmate can call). The officer presiding over the hearing can give whatever weight he or she wants to the testimony but still needs to allow this due process.

Restraint Chair: You cannot use a restraint chair as punishment. It can only be used to protect an inmate from himself, or to protect other inmates, officers, or jail property. If an inmate is placed in a restraint chair, there must be an incident report prepared stating why the inmate was placed in the chair. The report should also document what happened while the inmate was in the chair and should note that the inmate was placed somewhere where other

inmates did not have access to him and that the inmate was checked on at least every fifteen (15) minutes while in the chair. Also, if the inmate is placed in a position where he is on video tape, please save the video. This will protect you from allegations that the inmate was abused or assaulted by officers or other inmates while in the chair.

Denial of Medical Care Claims: This usually is the easiest type of claim to get dismissed as long as you keep accurate records. Keep accurate medication logs. Document every time an inmate goes to a doctor or is seen by a nurse, including noting the reason for the visit.

Conditions of Confinement Claims: These types of claims consist of inmates complaining about jail conditions such as plumbing issues or allegations about jail cleanliness. Keep good maintenance records. For example, if a plumber comes to the jail to check on a plumbing issue, make a note of this and keep some record of the visit, such as a receipt. If an inmate writes a grievance complaining of a conditions of confinement issue, respond to the grievance in a way that negates a finding of deliberate indifference. Ex: Inmate files a grievance saying, “My cell is filthy. Can someone come clean my cell?” Response: “Inmates are provided with cleaning supplies every morning.”