



Prisoner Advocacy Network

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This handout is not intended to give legal advice, and no attorney-client relationship is created with the Prisoner Advocacy Network (PAN) by using any information in this guide.

RETALIATION

CDCr Is Not Allowed To Retaliate

CDCr staff, aka correctional officers (COs) are required to be “courteous and professional” in their dealings with incarcerated people and their loved ones. For instance Section 3391 of Title 15 of the California Code of Regulations (CCR) states, “inmates and parolees shall be addressed by their proper names and never by derogatory” terms. “Employees shall not use indecent, abusive, profane, or otherwise improper language while on duty.” 15 CCR § 3391. “No reprisal shall be taken against an inmate or parolee for filing an appeal.” 15 CCR § 3084.1(d). CDCr “shall not in any way retaliate against or discipline any inmate for initiating or maintaining a lawsuit.” 15 CCR § 3160.

CDCr and COs are not allowed to terrorize, threaten, discipline, segregate, transfer, harass, or retaliate in any way against prisoners for speaking to lawyers, corresponding with outside advocacy organizations, or filing complaints against the prison. But COs often retaliate against incarcerated people anyway for filing complaints or for standing up for themselves. This is something we at PAN hear reports about very often.

COs retaliate against incarcerated people in all sorts of ways, including: harassment; retaliatory denial of or interference with medical care; retaliatory placement in segregated confinement; prohibiting visits; tampering of mail; termination or denial of jobs or programs; filing false disciplinary charges; denial of out-of-cell time; through violence/excessive use of force; and many other ways. “The First Amendment forbids prison officials from retaliating against prisoners for exercising the right of free speech” or the right to access to the courts. *Farrow v. West*, 320 F.3d 1235, 1248 (11th Cir. 2003). “Prisoners are entitled to utilize available grievance procedures without threat of recrimination. . . .” *Hoskins v. Lenear*, 395 F.3d 372, 275 (7th Cir. 2005) (per curiam). “. . . [A person’s] involvement in filing claims against prison officials and helping others do so [i]s protected activity, as it [i]s an exercise of [their] right to petition the government for redress of grievances under the First Amendment.” *Scott v. Coughlin*, 344 F.3d 282, 287-88 (2nd Cir. 2003).

Proving And Documenting Retaliation

An incarcerated person can show retaliation by explaining that the “adverse” or negative action taken against them by CDCr/COs was *motivated by the legally protected* actions that they took (such as filing a 602 administrative grievance). Unfortunately, retaliation is difficult to prove under the law.



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The first thing to do is to file paperwork documenting specific instances of threats or retaliation by filing an administrative grievance or CDC Form 602-1. You should say exactly what happened with dates and times, identify who was involved, and cite the law or policy that was violated by staff. Filing a Form 602-1 is a necessary first step for any future lawsuit.

The Form 602-1 must be filed within 30-days of the date of incident or harm you suffered. If you are interested in filing a lawsuit about retaliation, a helpful resource is the Jailhouse Lawyer's Handbook, available online and in print at jailhouselaw.org (if you reach out to them, they will mail you a copy).

If you have a network of loved ones, they can support you by making calls to the prison and/or writing letters on your behalf. Your loved one can also make calls to the Warden's office at your facility and ask to speak with the Public Information Officer (PIO) or file a citizens complaint form (2142). This person may tell your loved one that they are not authorized to provide any information to your loved one, but your loved one can always ask the Warden or PIO to receive the information that you are giving to them. The point of these calls is to show the prison that you have support and advocates on the outside, and that people on the outside are watching their (CDCr's) actions. This informal advocacy can be successful.

Your loved one can also write letters to the Warden, the Associate Warden, the Chief Medical Officer, and the Ombudsman for your facility to document your issue. If your loved one chooses to write a letter, make sure they explain clearly what they are asking CDCr to do in relation to your conditions of confinement.

PAN also suggests that your loved one take written notes of what they understand is going on with you. For instance, if you call your loved one and report an incident of retaliation, then your loved one should write down the date, the names of anyone involved, and what you reported to them right away so you have a clear record. That way, in the conversations, letters, and other advocacy, your loved one and you both have a record you can rely on of what happened when.

Medical: If your loved ones are concerned about retaliation relating to your medical care in any way, your loved ones can call the Family Medical Voicemail Line (each prison's number is available with an internet search) and leave a message. Someone is supposed to call back within five days. For your loved one to receive any medical information from CDCr about you, your loved one must have a signed authorization of health records (CDC Form 7385) on-hand or in your file authorizing them to speak with CDCr about your private medical information.

You must sign a CDC Form 7385 and turn it into your counselor in order to get it placed in your file, but if it's possible for your loved one to have a signed copy on hand as well at the time of making the advocacy call on your behalf, that can be helpful. Be sure to ask for and document the names of anyone your loved ones speak with.