FLORIDA PRISON LEGAL

Perspectives

VOLUME 14 ISSUE 6 ISSN# 1091-8094 NOV/DEC 2008

Economic Downturn Means More Business for Private Prisons

Private prison companies are getting ready to cash in as the current economic repression is making it harder for the federal government and states to afford to build and operate even more prisons and jails as the number of incarcerated continues to grow.

In recent months, the Federal Bureau of Prisons and several states have sent thousands of prisoners to detention centers and prisons run by Corrections Corporation of America (CCA), GEO Group, Inc. and other private corrections companies, as more people are detained for illegal immigration and mandatory sentences have been lengthened for certain crimes and other factors have led to overcrowding in many government facilities.

As of mid-2007, private prisons housed 7.4 percent of the country's 1.59 million incarcerated adults, up from 1.57 million in 2006, according to the Bureau of Justice Statistics, the statistical department of the U.S. Dept. of Justice. And prison-policy experts expect prisoner populations to increase by 25 percent or more, in 10 states that were surveyed, between 2006 and 2011, according to a report by the nonprofit Pew Charitable Trust.

CCA, the largest private prison company in the United States, with 64 facilities, built two prisons this past year and expanded nine existing facilities, and the company is scheduled to finish building two more prisons in 2009. During its third quarter of 2008 CCA put 1,680 new prison beds to use, helping to boost net income 14 percent to $37.9 million. "There is going to be a larger opportunity for us in the future," said Damon Hininger, CCA's president and chief operating officer.

California has shipped over 5,000 prisoners to private prisons run by CCA in Arizona, Mississippi and other states since late 2006, when Gov. Schwarzenegger ordered emergency measures. Prisons were so overcrowded that hundreds of prisoners were sleeping in gyms, according to one report. An additional 2,900 prisoners are scheduled to be transferred to private prisons outside the state by the end of 2009, according to the CA DOC.

GEO Group, based in Boca Raton, Florida, the second largest private prison company, built or expanded eight facilities in Georgia, Texas, Mississippi and other states during 2008. And it plans seven more expansions or new prisons by 2010. GEO was recently awarded a contract by Florida's Department of Management Services to design and build a special-needs prison in NW Florida (See this issue of *FPLP*, pg. 3). GEO had already opened a new private prison, Graceville Correctional Facility, near the same area in Florida in 2007.

Since 1997, the Federal Bureau of Prisons, has awarded 13 contracts to private prison companies to build prisons and detention centers that house low-security prisoners, primarily "low-security criminal aliens," said Felicia Ponce, a spokeswoman for the BOP.

Proponents of private prisons claim that outsourcing incarceration to private prisons can reduce government's

ON THE INSIDE

FLORIDA PRISON LEGAL PERSPECTIVES

P.O. Box 1069
Marion, North Carolina 28752

Publishing Division of:
FLORIDA PRISONERS' LEGAL AID ORGANIZATION, INC.

A 501 (c) (3) Non-profit Organization

E-mail: fplp@aol.com

Florida Prisoners' Legal Aid Organization, Inc., P.O. Box 1069, Marion, NC 28752, publishes FLORIDA PRISON LEGAL PERSPECTIVES (FPLP) up to six times a year. FPLP is a non-profit publication focusing on the Florida prison and criminal justice systems. FPLP provides a vehicle for news, information, and resources affecting prisoners, their families, friends, loved ones, and the general public of Florida. Reduction of crime and recidivism, maintenance of family ties, civil rights, improving conditions of confinement, promoting skilled court access for prisoners, and promoting accountability of prison officials are all issues FPLP is designed to address. FPLP's non-attorney volunteer staff cannot respond to requests for legal advice. Due to the volume of mail that is received and volunteer staff limitations, all correspondence that is received cannot be responded to, but all mail will receive individual attention. Permission is granted to reprint material appearing in FPLP that does not indicate it is copyrighted provided that FPLP and any indicated author are identified in the reprint and a copy of the publication in which their material is published is provided to the FPLP publisher. This publication is not meant to be a substitute for legal or other professional advice. The material in FPLP should not be relied upon as authoritative and may Not contain sufficient information to deal with a legal problem. FPLP is automatically sent to all members of FPLAO, Inc. as a membership benefit. Membership dues for FPLAO, Inc., operate yearly and are $10 for prisoners, $15 for family members and other private individuals, $30 for attorneys, and $60 for agencies, libraries, and institutions.

cost of housing those prisoners by as much as 15 percent. Private prison companies say they can build prisons more quickly and operate them less expensively than governments because their payroll costs are lower and they can consolidate prisoners from many jurisdictions into facilities located in areas where land and building costs are low.

Opponents and critics of private prisons accuse them of neglecting prisoners and putting them in bad conditions. "Profit is still a motive and it's structured into the way these prisons are operated," says Judy Greene, a justice-policy analyst for Justice Strategies, a nonprofit studying prison-sentencing issues and problems. "Just because the system has expanded doesn't mean there is evidence that conditions have improved," said Greene.

"We have serious concerns about for-profit prison companies because they are notorious for cutting essential costs that need to be provided to maintain a safe and constitutional environment for prisoners," says Jody Kent, a public-policy coordinator for the American Civil Liberties Union National Prison Project.

Private prison companies' optimism that their businesses will find a boom in these economic times of dire straits is probably not misplaced. Cash-strapped states are going to be looking at all ways to reduce costs, including those for incarceration. As incarceration continues to grow, and other sectors of business feel the crunch of the repression, private prison operators and their shareholders will be smiling all the way to the bank. They finally figured out how to make crime pay legally. Their business opportunities are Limitless as long as the U.S. continues to incarcerate more of its own citizens than any other country in the world. ■

Help Support FPLAO

If you haven't made a donation to Florida Prisoners' Legal Aid Org., Inc., recently, please do so now. Membership fees and ads in FPLP only cover the cost of publishing and mailing this valuable news journal. In order for FPLAO to take on additional projects to improve conditions for Florida Prisoners and their families additional donations are needed. Donations of money or postage stamps, in *any* amount, are greatly appreciated and helps FPLAO continue its mission of being the most effective and proven check-and-balance on the Florida prison system. Thank You, for your support.

New Private Prison for North Florida

A privately owned prison that will house Florida state prisoners is going to be built right near I-10 close to Milton, which is located in Santa Rosa County. The prison will be built by the Boca Raton-based GEO Group, a private prison profiteer company, and will cost $120 million.

Cloid Shuler, vice president of business development for GEO, said construction of the prison should begin by March '09 and will take about 18 months to complete. Touting the economic benefits to the local community, who might otherwise have objected to another prison being built in their county, Shuler announced at a news conference held in Milton in late October that the prison will be built and run almost exclusively by local people.

Shuler said the average salary for employees at the prison will be over $37,000 a year, about 1.5 percent above average Santa Rosa County salaries. It is projected that about 400 people will be employed at the prison, including doctors, teachers, counselors and about 200 prison guards, among others. "The only people we will bring in are people like myself who make their living running prisons," said Shuler.

The prison will house 2,000 medium- and close-custody male prisoners with chronic medical and mental-health problems. The new facility will be located just down the road from the state-run Santa Rosa Correctional Institution, which reportedly is one of the worst operated and most abusive prisons in the state.

Gretl Plessinger, public information officer for the FDOC, said that state agency will provide oversight of the new private prison once it is complete.

The new prison will help alleviate the pressure from the state's growing prison population, which now is at almost 99,000 prisoners, Plessinger said. "Our inmate population is growing. As the population continues to grow, we are looking at building more prisons."

[Source: *Pensacola News Journal*] ■

Public Defenders Crisis

Public defenders across the country say that budge cuts are forcing them to refuse cases because that may not be able to effectively handle the growing caseloads.

At present, Florida, Kentucky, and Missouri have taken the first stand, with a half dozen other states considering challenging their growing caseloads in court. "Many public defenders are feeling the squeeze at this point," said Maureen Dimino with the National Association of Criminal Defense Lawyers.

Bennett Brummer, Miami-Dade County Public Defender, filed a lawsuit against the State of Florida in June this year after the Legislature cut his budget 9%.

Brummer argued that his lawyers, who each handle around 436 cases a year, could not take any new felony cases without being in danger of committing malpractice.

A judge ruled that starting last September 15, Brummer can send his least serious felony cases to the state, which will have to provide attorneys or pay for private lawyers for insolvent defendants.

The Miami judge's ruling, which will impact thousands of felony cases, "will have state wide and some nationwide impact," said Brummer. He also added that "Many defenders would like to take meaningful steps to alleviate their caseload".

The state attorney's office is appealing the ruling claiming that Brummer is exaggerating the caseload. A spokesman for the Miami-Dade County state attorney's office, Ed Griffith, says that the public defenders are compromising victim's rights by withdrawing.

Griffith also stated that if defendants do not get trials within a set amount of time, judges are obligated to release them to the detriment of all the citizens.

Similarly, Kentucky's former public advocate, Ernie Lewis, has petitioned a judge to declare his office under funded in order to refuse misdemeanor cases.

Lewis states that budget cuts forced him to leave nearly 100 positions open and that his attorneys' caseloads could add up to 500 each this year. "It's very clear to me that our caseload would be unethical, said Lewis.

According to the American Bar Association, a pubic defender can competently handle 150 to 200 caseloads a year.

In a similar manner, last September Missouri public defender's office notified the courts in two jurisdictions that it will reject new cases there. The two jurisdictions were Ava and Jefferson City.

The state created a new rule that limits the number of cases that each attorney will handle and public defenders exceeded that limit.

Cathy Kelly, deputy director for the Missouri State Public Defender System said, "Our lawyers have an ethical responsibility to not take on more cases than they can handle." She added that, "We just feel like we have reached the point where we have to say no."

The growing caseloads could force states to either spend more money on public defenders, delay trials or cause many cases to be overturned on appeal due to the ineffective assistance of trial lawyers. ■

- Writ Writing 101 - FDOC Grievance Procedure

by Melvin Pérez

In the last decade or so writ writing has become a foreign concept for most prisoners in the FDOC. This may be in part because of the young generation flooding the prison system or the retaliation writ writers suffer by DOC. Prison officials in Florida call writ writers prisoners that file grievances against DOC. In other parts of the country a writ writer refers to a jailhouse lawyer.

In the past, DOC officials have retaliated against this distinguished class of prisoners in the form of placement in segregation units, on false misconduct charges, depriving them of proper food by either placing them on loaf (and unappetizing substance made by mixing various foods and baking the mixture) or not providing them any food and hygiene materials, transferring them to a more punitive prison, and interfering with their legal documents and mail.

Further, some have been beaten, placed on strip status (practice involving removal of all property including clothing, bedding and writing materials until the prisoner earns it back), forced to sleep on a steel bunk at cold temperatures, applied chemical agents for no reason, and even killed by DOC guards.

DOC has not hesitated in its effort to stop these prisoners to the point that writ writers have become an endangered species.

Many DOC officials believe that these prisoners file grievances because they have time on their hands and enjoy harassing the administration. However, DOC officials ignore the truth that these prisoners file a lot of grievances because they are subjected to a lot of abuse and unjust treatment. Moreover, that these prisoners have a constitutional right to file grievances.

Constitutional Right

The US Supreme Court has made clear that convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison. See: *Bell v. Wolfish*, 441 U.S. 520, 545 (1979).

Again, the high court reiterated its position when it held that prison walls do not separate prisoners form their constitutional rights in *Turner v. Safley*, 482 U.S. 78 (1987). See also, *Wolff v. McDonnell*, 418 U.S. 539, 555-56 (1974)("There is no iron curtain drawn between the Constitution and the prisons of this country.").

Further, prisoners clearly retain protections afforded by the First Amendment. See: *Pell v. Procunier*, 417 U.S. 817, 822 (1974) and *Giano v. Senkowski*, 54 F.3d 1050, 1053 (2nd Cir. 1995) ("A prison inmate... retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.") (citations omitted)

The First Amendment also prohibits jail and prison officials from retaliating against prisoners who report complaints, file grievances, or file lawsuits. See: *Allah v. Seiverling*, 229 F.3d 220, 224 (3rd Cir. 2000); *Babcock v. White*, 102 F.3d 267, 275 (7th Cir. 1996); and *Williams v. DOC*, 208 F.3d 681, 682 (8th Cir. 2000). See also, *Crawford-El v. Britton*, 523 U.S. 574, 588 n. 10 (1998) (stating that "[t]he reason why... retaliation offends the Constitution is that it threatens to inhibit exercise of the protected right").

In addition, retaliation against prisoner for pursuing grievance violates right to petition government for redress of grievances guaranteed by First and Fourteenth Amendments and is actionable under § 1983. See: *Gayle v. Lucas*, 133 F. Supp. 2d 266 (S.D. N.Y. 2001) and *Bridges v. Russell*, 757 F.2d 1155 (11th Cir. 1985).

Filing a grievance is protected activity. See: *Morales v. Mackalm*, 278 F.3d 126 (2nd Cir. 2002) and *Graham v. Henderson*, 89 F.3d 75, 80 (2nd Cir. 1996) ("[Plaintiff's] filing of a grievance and attempt to find inmates to represent the grievant is constitutionally protected...")

Similarly, a prisoner has a right not to be subjected to bogus disciplinary reports in retaliation for his exercise of a constitutional right. See: *Nunez v. Goord*, 172 F.Supp. 2d 417 (S.D.N.Y. 2001) and *Hines v. Gomez*, 108 F3d 265, 269 (9th Cir. 1997) (finding that filing false charges against a prisoner infringes on the prisoner's "First Amendment right to file prison grievances.")

Although the filing of a false disciplinary charge is not itself actionable under § 1983, the filing of a disciplinary charge becomes actionable if done in retaliation for the prisoner's filing of a grievance. See: *Dixon v. Brown*, 39 F.3d 379 (8th Cir. 1994).

Moreover, a prisoner can establish retaliation by demonstrating that the prison official's actions were the result of having filed a grievance concerning the conditions of his or her imprisonment. See: *Wilderger v. Bracknell*, 869 F.2d 1467, 1468 (11th Cir. 1989) and *Gill v. Mooney*, 824 F.2d 192, 194 (2nd Cir. 1987).

Likewise, the First Amendment insulates from retaliation a prisoner who engages in a protected activity on behalf of other prisoners. See: *Adams v. James*, 784 F.2d 1077, 1081 (11th Cir. 1986) and *Auleta v. LaFrance*, 233 F. Supp. 2d 396 (N.D.N.Y. 2002).

Grievance Procedure

The FDOC prisoner grievance procedure is found in Chapter 33-103 Florida Administrative Code (hereinafter F.A.C.) Rule 33-103.001(1) provides that the purpose of the grievance procedure is to provide a prisoner with a channel for the administrative settlement of a grievance.

In addition to providing the prisoner with the opportunity of having a grievance heard and considered, this procedure will assist the department by providing additional means for internal resolution of problems and improving lines of communication. This procedure will

also provide a written record in the event of subsequent judicial or administrative review. *Id.*

While many prisoners have used the grievance procedure and may consider it useless, a properly filed grievance can get DOC officials' attention and resolve an issue without any need for litigation.

Additionally, reviewing word usage and grammar before filing your grievance will help you write your grievance clearly, correctly, and interestingly.

Other tips that will help you properly file a grievance include: 1) rewriting your grievance; 2) using concise language; 3) reviewing it to refine the language and grammar; and, 4) reviewing the grievance procedure.

These factors will make your grievance look more professional and staff may want to review your grievance more carefully.

Not to say that DOC staff really cares about your grievance. However, your ability to properly present your grievance may make staff think again and properly review your claim. It is better for DOC staff to do this than find themselves defending a lawsuit later.

Also, knowing how to properly file a grievance is important since a prisoner is required to exhaust administrative remedies before seeking judicial review in most civil actions.

Each prisoner shall be entitled to invoke the grievance procedure regardless of any disciplinary, classification or other administrative action or legislative decision to which the prisoner may be subject. See Rule 33-103.001(2).

Each institution shall ensure that the grievance mechanism is accessible to prisoners who have disabilities. This may be accomplished by providing assistance through the institution library if requested. *Id.*

While many prison law clerks refuse to help other prisoners with grievances and litigation against DOC, assisting prisoners in this area is certainly part of their job. See: F.A.C., 33-501. 301(7)(c) and 33-501.301(2)(j).

The following is a list of issues that prisoners may grieve:

- The substance, interpretation, and application of rules and procedures of the department that affect them personally;
- The interpretation and application of state and federal laws and regulations that affect them personally;
- Reprisals against prisoners for filing a complaint or appeal under the prisoner grievance procedure, or for participating in a prisoner grievance proceeding;
- Incidents occurring within the institution that affect them personally; and,
- Conditions of care or supervision within the authority of the FDOC. See: 33-103.001(3)(a)-(e).

This section also provides a list of issues that prisoners cannot grieve. These are the following:

- The substance of state and federal court decisions;
- The substance of state and federal laws and regulations
- Parole decisions; and,
- Other matters beyond the control of the department. See: Rule 33-103.001(4)(a)-(d).

The Informal Grievance Step

Prisoners are required to use the informal grievance step before filing a formal grievance. The only exceptions to this rule are when the grievance falls under one of the following categories:

1) An emergency grievance;
2) A grievance of reprisal;
3) A grievance of a sensitive nature;
4) A grievance alleging violation of the Americans with Disabilities Act;
5) A medical grievance;
6) A grievance involving admissible reading material;
7) A grievance involving gain time governed by Rule 33-601.101;
8) A grievance challenging placement in close management and subsequent reviews;
9) Grievances regarding the return of incoming mail governed by subsection 33-210.101(14); and
10) A grievance involving disciplinary reports. See: Rule 33-103.005(1).

These grievances may be sent in a sealed envelope through routine institutional mail channels. See: 33-103.006(3). If the grievance does not fall within the above categories, the prisoner must file an informal grievance.

Filing The Informal Grievance

The first step in the grievance process is to file an informal grievance. An informal grievance shall be submitted to the designated staff by personally placing the informal grievance in a locked grievance box. Locked boxes shall be available to prisoners in open population and special housing units. See: 33-103.005(1)(a).

Informal grievances must be filed within a reasonable time of when the incident or action being grieved occurred. Reasonableness shall be determined on a case-by-case basis. Availability of witnesses and relevant documentary evidence are factors, among others, which should be looked at in determining reasonableness. See: Rule 33-103.011(1)(a).

When submitting the informal grievance, the prisoner shall use form DC6-236, Inmate Request.

The prisoner must check the appropriate box indicating to whom he or she is submitting the informal grievance. If the prisoner checks the box designated "other" he or she shall print the name or title of the person the form is going to in the space underneath the box, and complete the other sections of the heading. See: 33-103.005(2)(a).

In addition, on top of the page, on the first line of the word "Request," or on the first line of the request section, the prisoner shall print the words "Informal Grievance." Failure to do this will cause the request to be handled routinely and it will not be considered an informal grievance. See: 33-103.005(2)(b).

Likewise, this will also cause the form to be unacceptable as documentation of having met the informal step if it is attached to a formal grievance submitted at the next step. *Id.*

Prisoners cannot ask questions, seek information, guidance or assistance in their grievance or it will be considered a request and not an informal grievance. See: 33-103.005(2)(b)(1).

Further, section (2)(b)(2) states that "When completing the inmate request form for submission as an informal grievance, the inmate shall ensure that the form is legible, that included facts are accurately stated, and that only one issue or complaint is addressed. If additional space is needed, the inmate shall use attachments and not multiple copies of Form DC6-236>" Attachments that are a continuation of the grievance statement *do not* need to be submitted in triplicate. DOC eliminated this requirement on March 25, 2008.

However, a prisoner may want to include other attachments to support his or her claim. In that case the prisoner should make copies of such attachments by following the procedure set forth in 33-501.302(3)(a), F.A.C. and Procedure 501.302(15).

The prisoner shall sign and date the form and write in his or her DOC number and forward the informal grievance to the designated staff person. If the prisoner fails to sign the grievance, it shall result in a delay in addressing the grievance until it can be verified that it is that prisoner's grievance. See: 33-103.005(2)(b)(2).

Thereafter, 33-103.005(4) provides that "The recipient shall respond to the inmate following investigation and evaluation of the complaint within 10 days...".

Furthermore, "The recipient shall state that the grievance is approved, denied, or returned without action. The response shall also state the reason or reasons for the approval, denial or return." See: 33-103.005(4)(b).

The response to the informal grievance shall include the following statement, or one similar in content and intent if the grievance is denied: You may obtain further administrative review of your complaint by obtaining form DC1-303 Request for Administrative Remedy or Appeal, completing the form as required by Rule 33-103.006, F.A.C., attaching a copy of your informal grievance and response, and forwarding your complaint to the warden or assistant warden. See: 33-103.005(4)(d).

The Formal Grievance

A formal grievance being filed at the institution must be submitted no later than 15 calendar days from: 1) The date on which the informal grievance was responded to; or 2) the date on which the incident or action being grieved occurred if an informal grievance was not filed pursuant to the circumstances specified in sub-section 33-103.006(3). See: 33-103.011(1)(b).

The prisoner shall state his or her grievance in Part A. If additional space is needed, the prisoner shall use attachments and not multiple copies of Form DC1-303. If the prisoner writes his or her complaint anywhere other than within the boundaries of Part A or on attachments, the grievance shall be returned for non-compliance. See: 33-103.006(2)(c).

Sometimes these grievances are not returned because staff answering grievances do not know the rules. However, do not take the chance; follow the rules.

The same requirements of the informal grievance apply here as to being legible, the facts accurately stated, addressing only one issue, and attachments, except as noted hereunder. The prisoner shall sign, date, write his or her DC number, and address the grievance to the warden or Asst. warden.

When the formal grievance at the institution is a disciplinary report (hereinafter DR) appeal, the prisoner should be allowed to raise more than one issue. However, there is no rule that addresses this issue in 33-103, F.A.C. and different institutions have different policies when it comes to this issue. Some institutions allow you to raise more than one issue, others do not. But central office is more likely to agree that on a DR grievance more than one issue may be raised.

The prisoner shall also attach a copy of the informal grievance and the response to the informal grievance to the DC1-303 form, unless the grievance is a direct formal grievance, as previously discussed. A computer generated receipt or Part C, receipt section of the grievance, shall be completed and returned to the prisoner. See: 33-103.006(5)(b).

If the formal grievance is a direct grievance the prisoner shall clearly state the reasons for by-passing the informal grievance step and shall state at the beginning of Part A the subject of the grievance. Failure to do so and failure to justify filing directly

shall result in the formal grievance being returned without action to the prisoner with the reasons for the return specified. See: 33-103.006(4).

On the other hand, if the prisoner is filing an amendment to a previously filed grievance or appeal, the prisoner hall clearly state this at the beginning of Part A. Amendments are to be filed only regarding issues unknown or unavailable to the prisoner at the time of filing the original grievance and must be submitted within a reasonable time frame of knowledge of the new information. See: 33-103.006(2)(i).

Issues appealed should raise any counter arguments to the responses received and address any claim overlooked or sidestepped by the respondent.

Rule 33-103.011(3)(b) provides that following investigation and evaluation by the reviewing authority, a response shall be provided to the prisoner within 20 calendar days of receipt of the grievance.

If no response is received within that time, a prisoner may go to the next step of the grievance process. This applies to any grievance filed at any level. If this occurs, the prisoner must clearly indicate this fact when filing at the next step and also state that no extension was agreed to by the prisoner. See: Rule 33-103.011(4).

The response to the formal grievance shall include the following statement, or one similar in content and intent if the grievance is denied: You may obtain further administrative review of your complaint by obtaining form DC1-303, Request for Administrative Remedy or Appeal, completing the form, providing attachments as required by paragraphs 33-103.007(3)(a) and (b), F.A.C., and forwarding your complaint to the Bureau of Inmate Grievance Appeals, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. See: 33-103.006(7).

Seeking Appeal to The Secretary

In the event that a prisoner feels that the grievance has not been satisfactorily resolved during the formal grievance procedure, an appeal may be submitted according to the time limits set forth in Rule 33-103.011, F.A.C., using the Request for Administrative Remedy or Appeal, Form DC1-303, to the office of the secretary without interference from staff. See: 33-103.007(1).

The prisoner has 15 calendar days to file an appeal to the office of the secretary from the date of the denial. The appeal must include a copy of the informal grievance and response, also the copy and response of the denial of the institutional grievance to the DC1-303, Request for Administrative Remedy or Appeal (if such were filed). The same requirements as to being legible, the facts accurately stated and attachments apply at this level. Also, all the other information must be included as in the previous steps, and it must be signed.

The appeal should argue the response received from the warden, any factors not addressed by the respondent, and any other issues that may be present.

The secretary has 30 calendar days from the date of the receipt of the grievance to take action and respond to appeals. See: 33-103.011(3)(c).

If the prisoner does not agree to an extension of time at the central office level of review, he or she shall be entitled to proceed with judicial remedies as the prisoner would have exhausted his or her administrative remedies. See: 33-103.011(4) and *Lane v. Moore*, 765 So.2d 777 (Fla. 1st DCA 2000).

The response shall state whether the appeal or direct grievance is approved, denied, or being returned and shall also state the reasons for the approval, denial or return. See: 33-103.007(4)(f).

Direct Grievances to The Secretary

The following grievances can be filed directly with the secretary: 1) Emergency grievances; 2) grievances of reprisals; 3) grievances of a sensitive nature; and 4) grievances alleging a violation of the Health Insurance Portability and Accountability Act. See: 33-103.007(6)(a). Moreover, the prisoner can forward these four types of grievances in a sealed envelope by following the procedure in 33-103.006(8)(d).

Key Points

- If the 15th day falls on a weekend or holiday the due date shall be the next regular day. See: 33-103.011(5).
- The first DCA has ruled that the mailbox rule applies to grievances filed by prisoners. See: *Gonzalez v. State*, 604 So.2d 874 (Fla. 1st DCA 1992).
- If you do not argue any issue on your grievances, you may not try to raise them in any judicial proceedings. See: *Holland v. State*, 791 So.2d 1256 (Fla. 5th DCA 2001).
- Follow all the rules in the grievance procedure and make DOC staff follow them also.
- Exercise your right to file grievances; it makes a difference for every prisoner.
- Learn how to deal with retaliation.
- Staff found to be obstructing a prisoner's access to the grievance process shall be subject to disciplinary action ranging from oral reprimand up to dismissal in accordance with Rules 33-208.001-.003, F.A.C. See: 33-103.017.

End Note

In writing this article, I have tried to cover the areas that, in my humble opinion, will be very useful to the

Florida prisoner. However, for a full review of the FDOC prisoner grievance procedure, See Chapter 33-103, F.A.C.

I hope the information provided in this article will help the Florida prisoner balance the injustice and abusive treatment Florida prisoners are subjected to by some DOC staff members. ■

FDOC Wants More Money

The secretary of the Florida Department of Corrections (FDOC), Walter McNeil, says that some of the department's top priorities are restoring money cut from prison education programs and probation officer budgets.

To obtain those goals the FDOC will be asking the 2009 Legislature for an additional $286.8 million over and above its current budget of 2.2 billion.

McNeil says he understands there is a cash crunch, but maintains that the additional money is needed for successful prisoner re-entry efforts and to maintain adequate, effective offender supervision.

A large part of the FDOC's request, $81 million, would pay for the expected increase of prisoners next Fiscal Year. ■

Washington CI Becomes Reception Center

Washington Correctional Institution, located in the Florida Panhandle, was officially renamed Northwest Florida Reception Center in a ceremony held Nov. 4, 2008.

The all-male prison is part of the FDOC's Region I that covers sixteen counties in Northwest Florida with 22 prisons. The new reception center includes the main prison and the annex and will receive an average of 160 newly-sentenced prisoners a week.

Asst. Warden Richard Comerford said the plan to change the prison to a reception center took over a year's preparation.

Once received, nw prisoners will go through a five-day orientation process. Once processed, prisoners will then spend 3-4 weeks at the center before being transferred to other state prisons.

FDOC Secretary Walter NcNeil was the featured speaker at the changeover ceremony. He described the reception process as the beginning of the effort to slash Florida's high recidivism rate and reduce the need to spend hundreds of millions on new prisons.

McNeil noted that about one of every 145 Floridians is incarcerated, on probation or under some other form of supervision by law enforcement "We expect to handle about 125,000 inmates over the next three to five years, and that's a tremendous burden on the State of Florida," McNeil said. The expanding prison population could mean there will need to be 26 new prisons over the next several years at a cost of about $100 million each.

McNeil said about 88 percent of prisoners return to their communities, but Florida has a 32.8 percent recidivism rate. FDOC hopes to cut that rate in half over the coming years.

"We've got to do something different in prisons throughout the state," McNeil said. "The worst crime committed on society is someone who spends 10-15 years in prison and then reoffends, with results not only in that person's life but it also impacts that victim's life. We need to deal with those inmates getting them pushed in the right direction. Reception is the key."

"We are going to do great things in the Department of Corrections," said McNeil. ■

Mystery Involved in Prison Guard Killing

According to an investigation into the stabbing death of a female prison guard on June 25, 2008, at Tomoka Correctional Institution the guard wasn't wearing a mandatory body alarm or carrying a required radio when she was killed.

Enoch Hall, 39 who was a prisoner at Tomoka CI, is charged with first degree murder of Officer Donna Fitzgerald. Hall is already serving consecutive life sentences in the 1993 kidnapping, beating, and rape of a 66-year-old Pensacola woman.

Fitzgerald was reportedly supervising prisoners for PRIDE Enterprises, a non-profit, company that runs work programs in Florida's prisons, when she was attacked and stabbed to death by Hall.

Investigators claim to be baffled as to why Fitzgerald didn't have her body alarm or radio on her when she was killed.

"We regret that she wasn't wearing them," said Gretl Plessinger, an FDOC spokeswoman. "Could that have saved her? I don't know."

Plessinger said a team is reviewing the investigation report that was released in November and the team will make recommendations that could lead to policy changes.

So far the only visible change that the FDOC has made following Fitzgerald's murder is the mid-November posting of posters at various locations throughout Florida's prisons. The posters show a diverse group of prison guards huddled together along with a (rather ironic, and inaccurate) caption proclaiming, "We Never Walk Alone."

[Note: The initial reporting in *FPLP* on Officer Fitzgerald being killed raised questions about whether a body alarm and radio were present months before the FDOC finally admitted Fitzgerald had neither. See *FPLP*, Vol. 14, Iss. 3] ■

POST CONVICTION CORNER

by
Ryan J. Sydejko

A defendant may not be subjected to a criminal trial while possessing mental defects which prevent full understanding of the proceedings against her. Drope v. Missouri, 420 U.S. 162 (1975). To conduct a trial while a defendant may be incompetent violates her right to a fair trial, Hill v. State, 473 So.2d 1253, 1259 (Fla. 1985), as well her right to Due Process guaranteed by the federal constitution. Pate v. Robinson, 383 U.S. 375, 378 (1966).

The burden on the trial court to ensure a criminal defendant is competent is "a great one" and requires the judge to be "very diligent in ascertaining competency." Fuse v. State, 642 So.2d 1142, 1146 (Fla. 4th DCA 1994). Thus, in order to prevent trying incompetent defendants, Florida courts have developed a series of steps to follow. Initially, the issue regarding competency arises when "there is reasonable ground to believe the defendant may be incompetent, not whether he is incompetent." Petrena v. State, 914 So.2d 999 (Fla. 1st DCA 2005); *see also* Fla. R. Crim. P. 3.210(b). The distinction between actual incompetence and mere suspicion of incompetence is important. All that is required to trigger the protections afforded under the Rules, is a "reasonable ground to believe" that a particular defendant is incompetent. Fla. R. Crim. P. 3.210(b). The Rule states that this doubt can be expressed by defense counsel, the prosecutor, or even the judge. Id.

Once a reasonable ground to question the defendant's competence has been expressed, the trial court must conduct a hearing on the matter within twenty days. Id. Such a hearing is absolutely mandatory. Boggs v. State, 575 So.2d 1274, 1275 (Fla. 1991). Failure to conduct the hearing constitutes reversible error. Nowitzke v. State, 572 So.2d 1346 (Fla. 1990). Prior to the hearing, however, the defendant must be examined by two or three experts. Fla. R. Crim. P. 3.210(b) *and* Fla. Stat. § 916.115(1)(b). These expert evaluations are intended to assist the court, during the hearing, in determining whether the defendant is competent to proceed. When the trial court fails to appoint experts, or only appoints one expert, the Florida Supreme Court has held that "there is no doubt that the trial judge erred." D'Oleo-Valdez v. State, 531 So.2d 1347, 1348 (Fla. 1988).

At the competency hearing, the judge will consider the evaluations, as well as any testimony that may be heard. The trial court will then make a determination as to the defendant's competency. In the event the defendant is found competent, standard pre-trial proceedings will occur as usual. The trial court's ruling is difficult to overturn on appeal, as courts have held that it will remain undisturbed absent an abuse of discretion. Carter v. State, 576 So.2d 1291, 1292 (Fla. 1989).

Not all courts, however, abide by the clear dictates of Rule 3.210(b). An example is Pinellas County, Florida. There, Courts have adopted their own procedure which, arguably, averts the whole process outlined in Rule 3.210(b). When a reasonable ground to doubt a

defendant's competency arises in Pinellas County, the judge simply files a pre-filled form entitled "Order for Psychological Evaluation." The form states that

> "The Court finds that the issue of the Defendant's competency must be addressed. It is therefore necessary to appoint the Court Psychologist for the Criminal Division to evaluate the Defendant for the purpose of determining the need for a full competency evaluation and/or to conduct such evaluation."

First, by ordering that "competency must be addressed", the Court is acknowledging that a reasonable doubt as to the defendant's competence exists. And, as a result, the Court is ordering a competency evaluation. Thus, at first blush, it appears the Court is abiding by Rule 3.210(b).

Where the Court goes astray, however, is the reason the evaluation is needed. The evaluation is needed "for the purpose of determining the need for a full competency evaluation." In other words, the Court is ordering an evaluation to see if it needs to order an evaluation. Such a process effectively circumvents the entire purpose of Rule 3.210(b). The Rule clearly states that once a reasonable ground to doubt the defendant's competency arises, two competency evaluations must be conducted, followed by a hearing on the matter. Fla. R. Crim. P. 3.210(b). Pinellas County avoids that whole process by appointing the "Court Psychologist for the Criminal Division" to determine whether an actual evaluation is necessary. Of course, the Rule does not provide for such preliminary evaluations.

The remedy for violations of the Rule, as appear to be occurring in Pinellas County, is vacation of the judgment and sentence with directions that re-prosecution only occur after a full and adequate determination of the defendant's competency to stand trial. Hill v. State, 473 So.2d 1253, 1260 (Fla. 1985). A post conviction competency hearing is inadequate because it is impossible to retrospectively assess a person's competence. Id. at 1258-1259. Thus, the defendant must be placed in a pre-trial posture where a contemporaneous determination of competency can be made. Id. at 1259. Only a contemporaneous finding of competency will ensure a defendant's constitutional right to Due Process has been protected. Id. at 1259 *and* Drope v. Missouri, 420 U.S. 162, 182-183 (1975).

Ryan J. Sydejko is an associate attorney at the law office of Loren Rhoton, P.A. in Tampa, Florida, and is a member in good standing with the Florida Bar. Mr. Sydejko is a published author on terrorist investigations and how they have reshaped the Fourth Amendment. Mr. Sydejko focuses primarily on representation of incarcerated persons with post conviction matters in both State and Federal courts.

Loren D. Rhoton is a member in good standing with the Florida Bar and a member of the Florida Bar Appellate Practice Section. Mr. Rhoton practices almost exclusively in the postconviction/appellate area of the law, both at the state and federal levels. He has assisted hundreds of incarcerated persons with their cases and has numerous written appellate opinions. ☑

FPLP: I am an avid reader and subscriber to your newsletter "Florida Prison Legal Perspectives". I would like to say first and foremost that the prisoners of Florida greatly appreciate your information and advise that is offered in each edition, and I want to personally thank you for I deal in a lot of administrative remedies and try to educate other prisoners of the rights they can be afforded through education and other resources available. I wish there was some way to build more unity among prisoners on a humble level, instead of trying to gain the favor of staff who in the long run wind up screwing you over for your "Good Deeds". Snitching or telling is becoming such a common place on the most silliest and superfluities levels. When will we stop hurting ourselves and others who are in the same situation as us, and start becoming the men/women that society argues we will never be?

Dear FPLP: Greetings, as I'm very happy with my FPLP, I also become more aware of this prison environment that I am in. As you know I am residing in one of the worst know institution, Taylor C I, but I thank God that things are no longer the way they used to be, a tremendous change has taken place unexpectedly, well God only knows. Your legal magazine has helped me to have a quiet mind, and encouraged me to use some of cited cases to work out my own case. I am very grateful for your service. SN TCI

Dear FPLP: I see that the Legislature has cut the educational budget so that many public schools are closing up. While Governor Crist is demanding that more prisons be built (at tax payers expense). My Suggestion would be that our Governor simply order the DOC to put razor wire around the vacated public schools and use the abandoned buildings to house prisoner's. What do you think: I look forward to receiving the next issue of FPLP. Thank you. KR SCI

Dear FPLP: I am currently serving a natural life sentence for a RICO violation, which was based solely on forged checks that did not exceed $20,000 total. I am still at disbelief that I received such a sentence. I am no angel, but life imprisonment is simply unwarranted. I have one issue to inform the readers about and Loren Rhoton wrote an article in the post conviction corner upon me writing him. In a nutshell, I was charged in St. Lucie county, Fl. 19th circuit by the Asst. State Attorney. The state alleged 43 check crimes underlying the RICO charge. As I looked into the charging document I discovered at least 23 of the offenses occurred outside St. Lucie County. Actually from 6 counties and four judicial circuits all the way to Hillsbourgh County. I challenged the states jurisdiction to file charges when the offenses occurred in two or more judicial circuits which was denied. The 4th DCA affirmed with 2 page opinion, 965 So2d 350 (4 DCA 2007). According to the Florida const. there is only one person who can do that, called the statewide prosecutor under Art V sect. 4(c) Fla. const. Fla. Stat. 16.56(a) authorizes the OSP to prosecute crimes occurring in two or more judicial circuits as part of a related transaction. It does not apply to ASA's in one circuit. The DCA opinioned that in fact an ASA can charge defendants with crimes that are committed in any county in the state. This ruling enhances a prosecutor's jurisdiction tantamount to the OSP. They were created for that purpose *King v. State* 790 So2d 477. The legislature budgeted $7,182,399.00 for 08-09 operation for the OSP. Why fund the OSP if Asst. State Attorneys can prosecute cases involving crimes occurring in other judicial circuits? The DCA's decision done just that and renders the OSP superfluous. Unfortunately the Sup. Ct. denied review. Hopefully I can obtain an attorney to file back to the Sup. Ct.. The tax payers of Florida should not fund the OSP if the existing state attorneys can do what the OSP can do. Just goes to show how the courts twist and misinterpret clear language of a law in order to deny a person relief. LS APC

Florida Prison Legal Perspectives

Dear FPLP: Unlocking America- The JFA Institute. This report was done by a group of Law Professors in short it states: There is no end to the growth under current policies. The PEW charitable Trust Reports that under current sentencing policies the state and Federal prison populations will grow by another 192,000 prisoner's over the next five years. The incarceration rate will increase from 491 to 562 per 100,000 populations. And the nation will have to spend an additional $27.5 Billion in operational and construction costs over this five year period on top of the over $60 Billion now being spent on corrections each year. Assumptions about crime and punishment are in correct. In particular, we demonstrate that incarcerating large numbers of people has little impact on crime, and show the improper use of probation and parole increases incarceration rates while doing little to control crime. We set out an organizing principles for analyzing sentencing reform, embracing a retributive sentencing philosophy that is mainstream among contemporary prison policy analysts and sentencing scholars. Based on that analysis, we make a series of recommendations for changing current sentencing laws and correctional policies. Each Recommendation is practical and cost-effective. This recommendation would safely reduce the nation's prison and jail population to half their current size. This reduction would generate savings of an estimated $20 Billion a year. The result would be a system of justice and punishment that is far less costly, more effective, and more humane than what we have today. A statement by Justice Anthony M. Kennedy '08' "Our resources are misspent, our punishments too severe, our sentences too *long*." It's time brothers and sisters, this is a 32 page report giving recommendation on changing our system. BE GCI

Dear FPLP: well first of all I want to thank you all for the great job you have done over the years, not just for us behind the wire but for our families on the other side. I have been in prison in Florida for 11 years and I've been a subscriber for most of those years. The info in your magazine has been a great help to me. Now I wish to show my now adult daughter what FPLP is all about and how she can help make a difference by being a member of FPLAO. FPLAO thank you for all you do for us and our families. We are grateful. JM AP CI

I am a resident of Georgia, but I am trying to bring attention to what I feel is an unjust prison system. I have a relative in prison in Florida; therefore, I am concerned that he may never be released under the system now being used. Our local news comes from Jacksonville, so we hear often of the overcrowded conditions in the prisons, the indictments over corruption by officers in the prison system and other abuses of the system from inmates and those entrusted to uphold the law. There are about 5,000 prisoners in the system that have a sentence of life, with 25 years mandatory. These cases need to be looked at on an individual basis to determine if they need to be released. That is not being done under the system Florida is using. Many of these, after serving 25 to 35 or more years are simply being rubber stamped "denied or see you in five years for another hearing." Gov. Charlie Crist said when he signed the Civil Rights Restoration Bill for ex-inmates "it was time to show compassion for those who had paid their dues." Crist and the legislators should look at a parole system that is costing the state $15 million a year, a system that is broken and has not been functional in years. It is a parole system that is holding a bunch of old men hostage. These men are 55 to 80 years old or older, men who have already served 25 to 35 or more years in prison. In any other state in America, these men would be home living productive, crime-free lives. Statistics prove these "lifers" have the lowest recidivism rates. These old men are mostly sick, costing millions of dollars a year in medical expenses alone. Where is Crist's compassion for these men who have also paid their dues? These men are being overlooked every year. Most of these men will probably die in prison because no one cares enough to help fix the parole system. Where is the compassion? I know the average citizen of Florida isn't concerned with a problem that doesn't touch their lives, but it is touching them in the pocketbook, every year in the millions of dollars. I know that the present system isn't working, so try something different. Most of these lifers are sick and old and need to be home with their families. Allaine Ridenour Ga. **Note:** Taken from Letters from Readers *The Times-Union.*

Letters to the Editor from FPLAO members may be printed in this section. The identity of letter writers will be by abbreviation, unless otherwise specified by the writer, for protection against possible retaliation and to encourage freedom of speech. All letters printed are subject to editing for clarity and length. All letters cannot be printed but are invited. Address letters to: Editors, FPLP, P.O. Box 1069, Marion, NC 28752. If your letter also concerns membership, membership renewal, address change, etc., please address that matter at the beginning of the letter to assist staff in processing your mail.

NEWS IN BRIEF

AL- A judge ordered DOC on October 8, 2008, to release records into the death investigation to the prisoner's mother after she sued DOC. Farron Barksdale, 32, was found comatose in a cell three days after arriving at a state prison. Barksdale was convicted of killing two Athens police officers. DOC claims the prisoner died from anti-psychotic drugs and excessive heat.

AL- On Dec. 3, '08, the wife of Robert Doyle, who spent over two years in prison, was awarded $129,000 by a state panel. The money must still be appropriated by the Alabama Legislature. The monetary compensation was recompense for Doyle's unjust conviction and incarceration, and was awarded to Donna Doyle since Robert Doyle died last year. Robert Doyle had been wrongfully convicted of abusing daughters from a previous marriage but had been freed when it was learned that a state prosecutor had withheld evidence that showed Doyle's innocence. The prosecutor is immune from paying any penalty for trying to destroy Doyle's life.

AR- On July 23, 2008, Shawn Goodwin, the former police chief of Plainview was sentenced to six years in prison after a no contest plea to second-degree sexual assault. Goodwin was initially charged with raping a 13 year old girl. The charges were filed after his family's teenage baby sitter filed a report.

AR- Authorities found the body of a state prisoner on a weekend furlough about a half-mile from where a shooting occurred on September 21, 2008. The body of Craig Beavers Jr. was found the next day in a wooded area near Nashville. Beavers died of an apparent self-inflicted gunshot wound. Authorities say Beavers shot two people over domestic issues while on a weekend furlough. The two victims are expected to recover fully. The names were not released by authorities.

AR- Authorities on October 22, 2008 captured a prisoner who drove a tractor off prison land during the first week of October. Dina Tyler, 62, was captured trying to visit his daughter's house in Pope County. The incident took place at the Varner Unit.

AR- A prosecutor told the Miller County Sheriff, Linda Rambo, on October 29, 2008 to resign or face criminal prosecution. This came as part of an investigation that Rambo allowed a jail sergeant to use a county-owned truck and help from a jail inmate to assist in a move. Rambo claims that she did not realize she was breaking the law.

CA- In a 4-3 decision, the state Supreme Court on August 21, 2008, ruled that Gov. Schwarzenegger improperly denied parole to a rehabilitated murderer who spent 23 years in prison. The court further held that the governor must consider more than just the nature of the crime when he votes decisions during parole hearings.

CA- The city of Los Angeles settled a civil rights lawsuit filed by a former prisoner, Eric Robinson. The settlement took place on July 23, 2008, with the city agreeing to pay $1.75 million to Robinson who spent nearly 14 years in prison for murder before DNA evidence cleared him. Robinson argued in his suit that police framed him. He had been convicted of a 1993 gang killing in South Los Angeles.

CA- Danielle Jones, 27, the wife of a prisoner pleaded not guilty on September 16, 2008, to charges she tried to free her husband by forging documents and judges' signatures authorizing his release. Jones was charged with five counts facing up to five years in prison. Jason Jones, her husband, is serving two life sentences for murder, attempted murder and a shooting.

CA- A man sentenced to 53 years to life in prison for murder on September 18, 2008, told a superior court judge that the murder victim "deserved what he got." Angus MacIntyre, 48, shot and killed his attorney for "screwing up" his workers' compensation case. The attorney, Jay Bloom Becker, 61, was shot in the head in his office in Live Oak two years ago. Superior Court Judge Jeff Almquist in response to MacIntyre's comments said, it gave him "great pleasure" to sentence him to the maximum.

CT- A former Madison police officer was sentenced on September 16, 2008 to probation and ordered to repay more than $4,500. A judge sentenced Joseph Gambardella for stealing seafood from a restaurant and gasoline from town pumps. Gambardella pleaded no contest to burglary and larceny charges. He is one of eight Madison police officers arrested, fired or investigated for wrongdoing. The Madison police chief is also currently on leave pending an investigation.

FL- During early Nov. '08 a Bay County Jail correctional guard was arrested and charged with smuggling contraband into the jail. The guard, Angela Chiles was found to have prescription pills on her when starting a shift, according to the

sheriff's office. Further investigation discovered that she had been taking other *contraband* into the jail.

FL- The Florida Department of Law Enforcement and FDOC's Inspector General's Office arrested a prison guard Nov. 7, '98 on a charge of sexual battery. Geno Lewis Hawkins, 43, a prison guard at Gadsden Correctional Facility, a private prison run by Corrections Corporation of America, was arrested at his home and booked ito the Leon County Jail. He was being held without bail. Hawkins allegedly was involved in a sexual relationship with a prisoner at the female prison. He faces a maximum 30 year prison sentence.

FL- A 37-year-old corrections officer with the Collier County Sheriff's Office resigned Sept. 5, '08, following accusations that he raped a female prisoner in a jail stairwell, molested another female prisoner and made sexually explicit comments to a third. Cpl. Louis J. Aguinaga resigned days after he refused to provide testimony about the detailed accusations during an internal investigation. Two of the female prisoners passed polygraph tests on their allegations. Aguinaga was the second Collier corrections officer to resign in just over a year after allegations of sexual misconduct were leveled by female prisoners. The Collier state attorney has refused to press charges on either officer.

FL- On Nov. 11, '08, a woman who spent a night at the Volusia County Correctional Facility, filed a formal complaint alleging that she had been sexually assaulted by one or more female corrections officers. According to her complaint, the woman claims that after she was booked into the jail on Nov. 4 for misdemeanor retail theft she complained of diabetic low blood sugar she was ignored and taken to a cell. Once there she claims she felt dizzy and fell to the floor. Four officers then entered the cell and begin slapping her and pulling her hair. She was then taken to the infirmary where it was claimed she was faking. The officers then took her to an isolated cell and ordered to her to strip for a search. According to her complaint, once she disrobed one guard pinned her legs while another sexually battered her with her hand. While that was happening another guard groped her breasts to the point of pain, while the fourth guard stood and watched. The accused guards were not named in mainstream media reports. Sheriff officials said the investigation was turned over to the FDLE.

FL- A probation officer who has worked in Calhoun County for several years was arrested on charges of DUI along with possession of meth and less than 20 grams of marijuana. Arrested was Ryder Laramore, 44, of Marianna. According to the Bay County Sheriff's Office, several 911 calls had been received about a black car running vehicles off the road. The car was stopped and a deputy spoke with the driver, identified as Laramore, who was wearing women's clothing, black hose, and a blonde wig. A bottle of Vodka was in plain view. Laramore failed a test. A search of the car turned up meth, a glass pipe, and a small bag of marijuana.

FL- A correctional officer who had worked in the Calhoun County Jail was fired Sunday, a day after he was charged with DUI by a Florida Highway Patrol trooper. Arrested was 46-year-old Andy Ray Cook. This was his fourth DUI, according to FHP Sgt. Lonnie Baker. Cook attempted to follow the trooper's directions to conduct a roadside sobriety test before he stopped and said, "I can't do it". As he was handcuffed, Cook told the trooper that he was the work squad officer for the sheriff's office. Cook was taken to the jail and gave a breath sample on the intoxilyzer to determine his blood alcohol level (BAC). Florida's BAC is 0.08. Cook's samples, taken at 1:03 a.m., were .107 and .103.

FL- On September 11, 2008, a Tampa Judge Daniel Perrey ordered 61 jail inmates back to the jail so they could change into better-fitting orange pants. The judge said that he did not want to see people "with their rear ends hanging out." The Hillsborough County sheriff's office sent spare pants in various sizes to the courthouse for future offenders, said officials.

ID- On September 7, 2008, a judge rejected plans to build a new Bonner County juvenile jail and work release center. The judge ruled that the state constitution required public votes on debts that extend beyond one fiscal year and no public votes had been made. The county would pay more than $782,000 a year under the plan. After 30 years the county would own the buildings. The plan called for financing the buildings through fees charged to inmates.

ID- After a judge ruled that Keith Allen Brown was incompetent to face criminal trial proceedings for a murder, a jail chaplain resigned his ministry at a jail to speak publicly about Brown. Scott Herndon, resigned his ministry on September 22, 2008 at a northern Idaho jail to speak publicly about the mental competency of Brown. Herndon claims he spent time with Brown at the jail and insists that Brown is competent to face trial for first-degree murder.

KS- On October 22, 2008, two guards working at the maximum-security section of the Leavenworth Detention Center were stabbed. The attacks took place separately but simultaneously, said authorities. The names of the two inmates that allegedly stabbed the guards were not released. Neither were the names of the guards who were hospitalized.

Officials claim that the motive of the attacks is unknown.

NH- Carl Laurie, 58, surrendered to Concord police on October 30, 2008 after he walked away from a halfway house on October 29, 2008. Officials said that Laurie left his halfway house to look for a job and did not return. DOC records show that Laurie was serving time for a 1989 second-degree murder conviction.

NJ- On August 19, 2008, a prisoner serving a 30 month sentence in Camden admitted that he tried to have his estranged wife killed. Richard Kaplan asked another prisoner to find someone to kill his wife. In turn, this prisoner snitched on Kaplan. He now faces 10 years. The name of the snitch was not released by authorities.

NJ- Sgt. Christopher Stahl, 39, pleaded guilty on September 15, 2008 to theft. The Rockaway Township police walked out of a Quick Chek in Rockaway Borough with eight breakfast sandwiches worth almost $30. Stahl was fired and must pay $100. Robert Bianchi, the prosecutor, said that the plea "represents the fact that no one is above the law."

NV- A federal jury awarded damages to a former guard on August 20, 2008 in the amount of $350,000. Richard Cosgrove filed a lawsuit against the DOC head after being fired from the Nevada State Prison. Cosgrove was allegedly fired for bringing DVDs into a gun tower while on duty. The former guard argued in his suit, that he was fired for criticizing the warden's decision to cut prisoner programs at the prison.

NV- DOC officials responded on September 11, 2008 to a lawsuit filed on behalf of two prisoners who want to marry. DOC argues that allowing the two prisoners to marry would endanger the public. Becky Rivero and Terry Lewis were dating when they were sentenced in 2005.

NY- On Nov. 24 a former corrections officer, Everitt George, 38, was sentenced to life in prison for murdering his two children, one of whom was a toddler who was sitting in her highchair when shot. George reportedly killed the children to punish his wife for seeing another man.

NY- What a Thanksgiving. On Nov. 25, '08, Steven Barnes walked out of Oneida County Court a free man after DNA testing cleared him of raping and killing Kimberly Simon, 16, in 1985. Barnes spent more than 19 years in prison for the crimes, which prosecutors finally had to admit he didn't commit.

PR- A prisoner was released from a Puerto Rico prison after being wrongfully convicted of murder. Jonathan Roman Rivera served eight months in prison for killing a Canadian businessman in 2005. Rivera was sentenced to 105 years in prison. However, FBI investigators determined that Rivera was innocent and wrongfully sentenced. Another man has been arrested and charged with the murder, said a prosecutor. The courtroom announcement took place on September 15, 2008, three months after the FBI determined that Rivera was innocent.

SC- Prison officials announced on August 25, 2008 their plans to install better equipment, drilling new wells and using other conservation tools to save money. Officials say that by doing so they will save $1 million a year in energy and water costs. The project is being funded by the State Infrastructure Bank through a $14 million state loan.

SC- The Columbia newspaper reported during the last week of August 2008, that a DOC employee filed a lawsuit asserting the DOC retaliated against her for reporting corruption to state senators. The suit was filed by Linda Dunlap who named as defendants the prisons director Jon Ozmint and the director of health services, Russell Campbell.

TX- A state judge agreed on August 26, 2008, not to send a woman charged in the death of her 2-year-old nephew to jail provided she wear a tracking device *until* her trial. Mayra Rosales weighs nearly 1,000 pounds and the county jail lacks a large enough cell and the medical resources, said prosecutors.

TX- A Dallas appeals court dismissed the case against Michael Blair on September 18, 2008, after DNA evidence cleared him. Blair was convicted and sentenced to death for the 1993 molesting and strangling of 7-year-old Ashley Estell. DNA test show that another man, now deceased, is a plausible suspect, said prosecutors.

TX- A prisoner who escaped on September 9, 2008 from the String Fellow Unit in Rosharon was recaptured on September 28, 2008. Authorities say that Marlow Reynolds climbed a fence at the prison recreation yard in the path of Hurricane Ike days before the storm slammed the Texas coast. Reynolds was found in the woods near the Gulf Coast town Brazoria about 25 miles from the prison.

TX- A state wide prison shakedown which started on October 20, 2008 has yielded 13 cell phones. Prison officials say that all the prisoners were locked down after the disclosure that a death row prisoner, Richard Tabler, used a smuggled cell phone to threaten a state senator and shared the phone with nine prisoners. A phone and a charger were found in the ceiling of a shower area in the death row building at the Polunsky Unit, said officials. The Texas prison system has about 155,000 prisoners.

Florida Prison Legal Perspectives

CONFRONTING SUMMARY JUDGMENT IN EXCESSIVE FORCE CLAIMS UNDER 42 U. S. C. §1983 CIVIL RIGHTS ACTIONS AND ITS RELEVANCE IN RELATION TO QUALIFIED IMMUNITY

LEGAL STANDARD

In connection with a Rule 56 motion, Fed. R. Civ. P. "Summary Judgment is proper if, viewing all the facts of the record in a light most favorable to the non-moving party, no genuine issue of material fact remains for adjudication". Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-250, 106 S.Ct. 2505, 91 L. Ed. 2d 202 (1986).

The role of the court in ruling on such a motion "is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried, while resolving ambiguities and drawing reasonable inferences against the moving party".

The moving party bears the burden of proving that no genuine issue of material fact exists or that by reason of the paucity of evidence presented by the non-movant, no rational jury could find in favor of the non-moving party.

In the case of a pro se litigant a court is instructed to read the pleadings "liberally and interpret them to raise the strongest arguments that they suggest." Mc Pherson v. Coombe, 174 F.3d 276, 280 (2nd Cir. 1999). However "application of this different standard does no relieve the plaintiff (prisoner) of his duty to meet the requirements necessary to defeat a motion for summary judgment."

EXCESSIVE FORCE

A likely counter by Defendants in this type of claim is that any force, allegedly used was directly related to maintain order, discipline and security within the prison, and that the alleged acts do not raise to the level of a constitutional violation because they involve nothing more than de minimus use of force.

Such counter can however be overcome. "The core judicial inquiry" for claims of excessive force is "whether force was applied in a good-faith effort to maintain and restore discipline, or maliciously and sadistically applied to cause harm". Hudson v. Mc Milliam, 503 U.S. 1, 7-8, 112 S.Ct. 995, 117 L. Ed. 2d 156 (1992).

To establish a constitutional claim of excessive force, "two conditions", one subjective and the other objective, must be met. Hudson, 503 U. S. at 20. The subjective condition is satisfied if the defendant has a "sufficiently culpable state of mind... shown by action characterized by wantonness". In determining whether the use of force was wanton, a court evaluates " the need for application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response". Hudson 503 U. S. at 7.

A prisoner can satisfy the subjective condition by proffering sufficient evidence showing that a reasonable juror could conclude that the officials' conduct was wanton and malicious because there was no "need for the application of force used" and no "threat reasonably perceived by officials". Therefore, a rational jury could find that the physical abuse allegedly inflicted was designed, and not reasonably related to a security need, but to harass and intimidate. See Harris v. Chapman, 97 F.3d 499 (11th Cir. 1996).

The objective condition is satisfied if it is "shown that the deprivation alleged is objectively sufficiently serious or harmful enough". Hudson, 503 U.S. at 8. This condition is satisfied "even if the victim does not suffer serious or significant injury provided that the amount of force used is more than de minimis, or involves force that is repugnant to the conscience of mankind."

A prisoner can satisfy the objective condition when viewing all the facts of the record in a light most favorable to the Plaintiff (Prisoner) that a reasonable juror could conclude that being repeatedly struck by prison guards without provocation with such force to cause bruising, bleeding, broken bones or other significant injuries, that such actions were "sufficiently serious or harmful enough", to satisfy the objective condition. Hudson, 503 U. S. at 8.

Therefore, when there are genuine issues of material facts existing, regarding the amount of force used and the severity of injuries suffered, the granting of summary judgment is inappropriate.

FAILURE TO INTERVENE

Law enforcement officials can be held liable under Section 1983 for not intervening in a situation where excessive force is being used by another officer. See Velazques v. City of Hialeah, 480 F.3d 1232 (11th Cir. 2007). Liability may attach only when (1) the officer had a realistic opportunity to intervene and prevent the harm; (2) a reasonable person in

the officer's position would know that the victim's constitutional rights were being violated; (3) the officer does not take reasonable steps to intervene. McLaurin v. New Rochelle Police Officers, 373 F. Supp 2d 385, 395 (S .D. N. Y. 2005).

If there is no reasonable opportunity for a correctional officer to intervene because the episode of excessive force is not of sufficient duration a court may not impose liability under Section 1983. Therefore, the pleadings must adequately demonstrate that the duration was of sufficient duration that officers who are present had the opportunity to intervene.

QUALIFIED IMMUNITY

The doctrine of qualified immunity shields government officials performing discretionary functions from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Wilson v. Layne, 526 U. S. 603, 609, 119 S.Ct. 1692, 143 L. Ed. 2d 818 (1999).

"A right is clearly established if (1) the law is defined with reasonable clarity, (2) the Supreme Court has recognized the right, and (3) a reasonable defendant (prison official) would have understood from the existing law that his conduct was unlawful." Anderson v. Creighton, 483 U. S. 635, 640, 107 S.Ct. 3034, 97 L. Ed. 2d 523 (1987).

Summary judgment may be granted on this ground if the defendant (prison official) sufficiently shows that (1) the asserted right was not clearly established, or (2) it was nonetheless objectively reasonable for the official to believe the conduct did not violate it.

Qualified immunity is an affirmative defense, thus the "defendants bear the burden of showing that the challenged acts were objectively reasonable in light of the law existing at that time."

Since the right of the prisoner to be free from unreasonable use of excessive force is clearly established, Defendants must show that it was "objectively reasonable" for them to believe their conduct did not violate the prisoner's constitutional rights.

However, dismissal on the basis of a qualified immunity defense is not appropriate where there are facts in dispute that are material to a determination of reasonableness. Thomas v. Roach, 165 F.3d 137, 143 (2nd Cir. 1999).

F.D.O.C. Rule on Use of Force is contained in Chapter 33-602.210 Fla. Admin. Code. The foregoing is merely one small part to consider when filing a Civil Rights Action under Section 1983. There are many more principles of law a litigant must contemplate and research. ◆

Starting The Appeal Process And The Certificate of Appealability In Section 2254 Habeas Corpus Proceedings

by Dana Meranda

Timing Form and Content

A final order by a District Court Judge in a section 2254 Habeas Corpus proceeding is subject to review by the Circuit Court of Appeals.

The Circuit Court of Appeals has jurisdiction of all final decisions of the District Courts under 28 U.S.C. section 1291.

Since Habeas Corpus proceedings are characterized as civil in nature, *Fisher v. Baker*, 203 U.S. 174, 181 (1906), Habeas Corpus Rule 11 permits application of the Federal Rules of Civil Procedure in habeas corpus cases to the extent that the [civil rules] are not inconsistent with any statutory provisions or the habeas rules. See: 81(a)(4), Fed. R. Civ.P. (2008).

The Notice of Appeal is required to be filed with the District Court within 30 days after the final order being appealed is entered. In accordance with Rule 58 Fed. R. Civ. P. (2008), the 30-day period for filing Notice of Appeal begins on the date the District Court enters judgment, not the date the memorandum decision was signed. *Williams v. Borg*, 139 F.3d 737, 739 (9th Cir.) cert. denied 525 U.S. 937 (1998).

In *Bowles v. Russell*, 127 S.ct. 2360 (2007), the Court addressed the application of Fed. R. App. P. 4(a)(6) and 28 U.S.C. section 2107(c) concerning extensions of time to file Notice of Appeal. The Court held "that the taking of an appeal in a civil case within the time prescribed by statute is mandatory and jurisdictional and may not be extended by either the District Court or the Circuit Court of Appeals except in the limited circumstances permitted by Rule 4(a)(5), FRAP." The Court further explained that there is a significant difference between the time limitations set forth in a statute such as section 2107 which limit the court's jurisdiction, and those based on court rules which do not. *Bowles v. Russell*, 127 S.ct. id. ct 2366

There are five limited exceptions to Appellate Rule 4(a)'s strict 30-day time limit. See Hertz/Liebman FHLPP section 35.2(a) nn. 25_44 (5th ed. 2005).

The Running of time for filing a Notice of Appeal may be tolled according to the terms of Rule 4(a), FRAP, by a timely reconsideration motion pursuant to Civil Rules 52(b), 59, and 60. *Browder v. Director*, 434 U.S. 257, 264,-65, 98 S.ct. 556, 561 (1978); *Jackson v. Crosby*, 437 F.3d 1290, 1292 (11th Cir. 2006).

The proper title of a post-judgment motion is a *Motion* for a new trial, a Motion to Alter or Amend or a Motion to Amend (or make additional findings). Depending on the type and origin of the case (i.e. state or federal) and the circumstances involved up to this stage of the proceedings, this course of action may be preferred.

A notice of appeal filed by a prisoner confined at a correctional institution is timely filed when it is placed in the hands of the institution's mail officials for mailing on or before the last day it is due to be filed. Rule 4(c), FRAP (2008). Timely filing may be shown by a declaration in compliance with 28 U.S.C. section 1746 or by a notarized statement, either of which must set forth the date the prisoner delivered the notice of appeal to prison officials for mailing and state that first-class postage has been prepaid. *Houston v. Lack*, 487 U.S. 266, 108 s.ct. 2379 (1988).

The Petitioner should be particularly aware that a timely objection to the Magistrate's Report and Recommendation is generally required to avoid short and long term waiver consequences. 28 U.S.C. section 636(b)(1)(c). See: FHC PP section 18.2 (5th ed. 2005) (discussing the failure to file a timely objection to the Magistrates Report and Recommendation may preclude the District Judge and the Circuit Court of Appeals from reviewing certain issues and pointing out the difference between findings of fact and legal conclusions in this situation).

The Circuit Courts however, appear to be divided on the limits of this application of law. See: *Nara v. Frank*, 488 F.3d 187, 194-196 (3d Cir. 2007) citing *Henley v. Johnson*, 885 F.2d 790 (11th Cir. 1989).

On appeal when reviewing the decision of the District Court the Circuit Court reviews a District Court's Resolution of legal questions and mixed questions of law and fact de novo and the factual conclusions for clear error. *Arther v. Allen*, 452 F.3d 1234, 1243 (11th Cir. 2006).

The contents required in a Notice of Appeal are set forth in Rule 3(c), FRAP (2008). A form for Notice of Appeal may be available in your law library. If not, the proper format can be found in the "Appendix of Forms" of either the Federal Rules of Appellate Procedure (FRAP) or the 11th Circuit Rules.

An appeal must not be dismissed for informality of form or title of the Notice of Appeal, or for failure to name a party whose intent is otherwise clear from the notice. Rule 3)c)(4), FRAP (2008).

Prisoners who cannot afford to pay the filing and docket fees must secure leave to proceed in forma pauperis (ifp) from the District Court, and if denied then from the Circuit Court of Apeals. See FHL PP section 35.3 (5th ed. 2005), and Rule 24(a), FRAP (2008).

A party who was permitted to proceed in forma pauperis in the District Court may proceed on appeal in forma pauperis without further authorization unless the

District Court certifies the appeal is not taken in good faithor that the party is not otherwise entitled to proceed in forma pauperis. Rule 24(a)(3), FRAP (2008).

Certificate of Appealability

The AEDPA replaced the "Certificate of Probable Cause" with a new procedural device called "Certificate of Appealability".

A state prisoner seeking relief under 28 U.S.C. section 2254 has no absolute right to appeal a district court's denial or dismissal of the petition. Instead, a petitioner must first seek and obtain a (COA) Certificate of Appealability by making a substantial showing of a denial of a constitutional right. AEDPS's substantial showing of the denial of a constitutional right standard has been interpreted to codify the **Barefoot** standard. *Barefoot v. Estelle*, 463 U.S. 880, 103 S.ct. 3383 (1983). *Miller EL v. Cockrell* 123 s.ct. 1029, 1039 (2003).

A petitioner satisfies this standard by demonstrating that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.

A petitioner need not convince a judge, or, for that matter, three judges, that the appeal will prevail, but must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.

A state prisoner must obtain a COA to appeal the denial or dismissal of a habeas petition, whether such petition was filed pursuant to section 2254 or section 2241, whenever the detention complained of in the petition arises out of a process issued by a state court. *Medberry v. Crosby*, 351 F.3d 1049, 1063 (11th Cir. 2003).

A COA determination under section 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits. This inquiry does not require full consideration of the factual or legal bases supporting the claims. In other words, the examination into the underlying merits should be limited. *Miller-EL v. Cockrell*, 123 S.ct. id. at 1039.

In *Slack v. McDaniel*, 120 S.ct. 1595, 1604 (2000), the court decided whether a COA should issue where the petition was dismissed on procedural grounds. The Court determined that an assessment of two components were thus required, one directed at the underlying constitutional claims and one directed at the District Court's procedural holding, reasoning that section 2253 mandates that both showings be made before the Court of Appeals may entertain the appeal.

A Notice of Appeal is treated as an application for a COA. *Gamble v. Sec'y. FDOC*, 450 F.3d 1245, 1247(11th Cir. 2006), following *Edwards v. U.S.*, 114 F.3d 1083, 1084 (11th Cir. 1997).

Unlike the pre-AEDPA Certificate of Probable Cause to appeal a COA must specify each claim that meets the substantial showing standard.

If the applicant files a Notice of Appeal, the District Judge who Rendered the judgment must either issue a COA or state why a Certificate should not issue.

The District Court Clerk must transmit the Certificate or statement to the Circuit Court of Appeals along with the Notice of Appeal and the file of the District Court proceedings.

According to 11th Cir. Rule 27-2 (Motion For Reconsideration) "except as otherwise provided in 11th Cir. Rule 40-4, a motion to reconsider, vacate or modify an order must be filed within 21 days of the entry of the order subject to reconsideration."

Rule 22(b) of the Federal Rules of Appellate Procedure provides that the District Judge is required to rule on the certificate application in the first instance and in the event of a denial by the District Judge, and then the certificate application goes to the Circuit Judge for a ruling. *Hunter v. U.S.*, 101 F.3d 1565, 1575 (11th Cir. 1996) (en banc) (under the plain language of the rule, an applicant gets two bites of the appeal certificate apple, one before the District Judge and if that one is unsuccessful, then one before a Circuit Judge).

A Circuit Judge is also required to treat the Notice of Appeal as an application for COA. "If no express request for a Certificate of Appealability if filed, the Notice of Appeal constitutes a request addressed to the judges of the Court of Appeals." *Slack v. McDaniel*, 120 S.ct. id. at 1603.

Despite this standard treatment of the Notice of Appeal, and since the Circuit Judge is not as familiar with the case as the District Judge, an express application for a COA at this stage in the Circuit Court is an option that warrants due consideration.

If the Circuit Judge only issues a partial COA an Appellant can move for reconsideration asking the Court to expand the COA to include the grounds which have been denied. See: 11th Cir. Rule 22-1(d). Such motion will go before a three-judge panel. 11th Cir. Rule 27-1(d). *Hodges v. Attorney General, State of Florida*, 506 F.3d 1337, 1339 (11th Cir. 2007).

A denial of a COA, whether by a single circuit judge or by a panel, may be the subject of a Motion For Reconsideration but may not be the subject of a Motion for panel rehearing or rehearing en bank. See: 11th Cir. Rule 22-1.

As a threshold matter of whether to expand review beyond the issues certified for appeal by the District Court, the 11th Circuit in *Jones v. U.S.* 224 F.3d 1251, 1256 (11th Cir. 2000), clearly expressed that the motion panel's denial does not bind the panel hearing the case on the merits. 11th Cir. Rule 27-1(g) (a ruling on a motion or other interlocutory matter... is not binding upon the panel

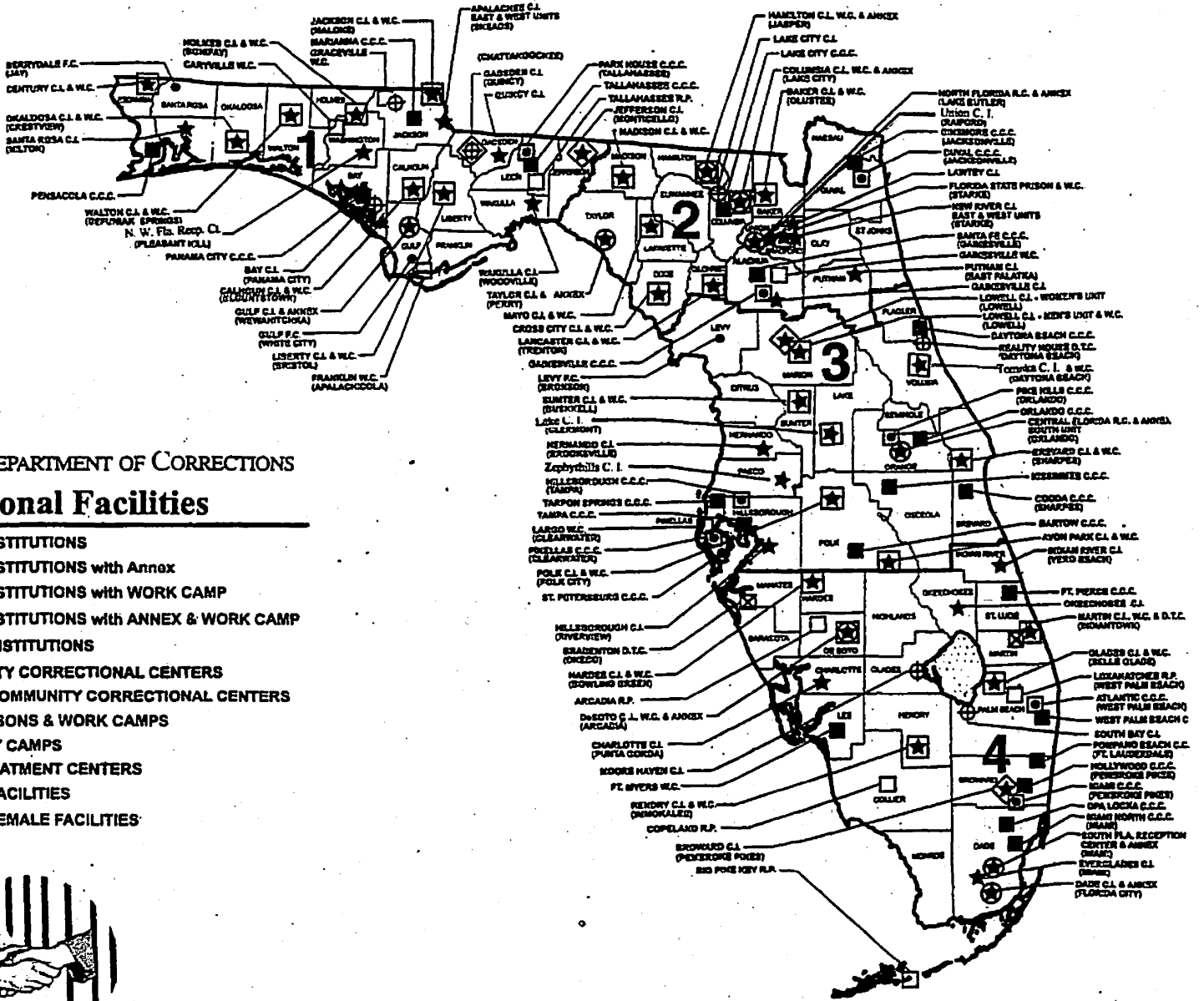
to which the appeal is assigned on the merits, and the merits panel may alter, amend, or vacate it).

And in *Hohn v. U.S.*, 524 U.S. 236, 238, 118 s.ct. 1996, 1971 (1998), consistent with the majority opinion, the Court overruled *House v. Mayo*, 324 U.S. 42 (1945), holding that it has jurisdiction under 28 U.S.C. section 1254(1) to review denials of an application for a COA by a circuit judge or panel.

An affirmative example generated by the Court's explicit holding is reflected in *Apker v. U.S.*, 524 U.S. 935, 118 s.ct. 2339 (1998) (mem) case below 101 F.3d 75 (8th Cir. 1996), where the Supreme Court issued a GVRILO Order (Grant, Vacate and Remand in Light of) *Hohn*. See: FHLPP section 39.2(d) n.42 (5th ed. 2005).

The above summary offers some of the basic, fundamental principles necessary to initiate the appeal process in section 2254 cases. Specific areas of interest beyond the scope of this article will require extended research on a case by case basis. ■

fyi



Florida Department of Corrections

Correctional Facilities

- MAJOR INSTITUTIONS
- MAJOR INSTITUTIONS with Annex
- MAJOR INSTITUTIONS with WORK CAMP
- MAJOR INSTITUTIONS with ANNEX & WORK CAMP
- FEMALE INSTITUTIONS
- COMMUNITY CORRECTIONAL CENTERS
- FEMALE COMMUNITY CORRECTIONAL CENTERS
- ROAD PRISONS & WORK CAMPS
- FORESTRY CAMPS
- DRUG TREATMENT CENTERS
- PRIVATE FACILITIES
- PRIVATE FEMALE FACILITIES

Florida Prisoners' Legal Aid Organization Inc.

BECOME A MEMBER

YES ! I wish to become a member of Florida Prisoners' Legal Aid Organization, Inc.

1. Please Check ✓ One:

- ☐ Membership Renewal
- ☐ New Membership

2. Select ✓ Category

- ☐ $15 Family/Advocate/Individual
- ☐ $10 Prisoner
- ☐ $30 Attorneys/Professionals
- ☐ $60 Gov't Agencies/Libraries/Orgs./etc.

3. Your Name and Address (PLEASE PRINT)

_____ DC#_____
Name

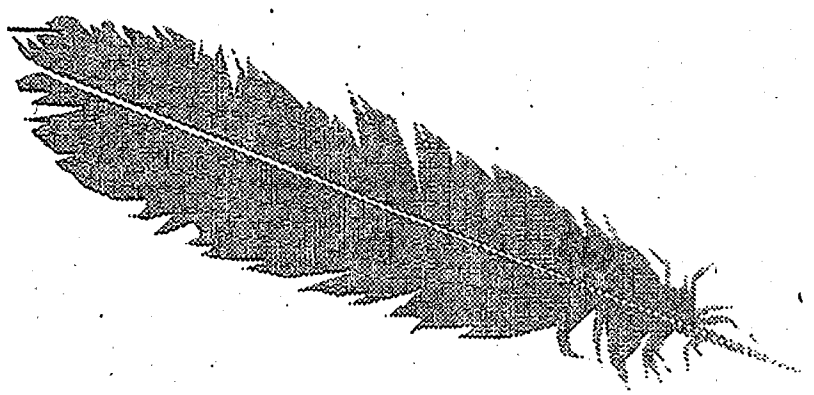
_____
Agency/Library/Institution /Org/

_____
Address

_____
City State Zip

_____
Email Address and /or Phone Number

☞ Please make all checks or money orders payable to Florida Prisoners' Legal Aid Org., Inc. Please complete the above form and send it along with the indicated membership dues to : FPLAO, Inc., P.O. Box 1069, Marion NC 28752. For family members or loved ones of Florida prisoners who are unable to afford the basic membership dues, any contribution is acceptable for membership. Memberships run one year. If you would like to make a donation to FPLAO, Inc., to help the organization continue its work for prisoners and their families, send donations in any amount to the same address. Thank You. All members receive *Florida Prison Legal Perspectives*.



Advertise in FPLP

Reach new clients or customers through advertising in *Florida Prison Legal Perspectives*. To obtain advertising and rate information write or email us at:

FPLP
Attn: Advertising
P.O. Box 1069
Marion, NC 28752

Or

fplp@aol.com

PRISON LEGAL NEWS

Prison Legal News is a 48 page monthly magazine which has been published since 1990. Each issue is packed with summaries and analysis of recent court decisions from around the country dealing with prisoner rights and written from a prisoner perspective. The magazine often carries articles from attorneys giving how-to litigation advice. Also included in each issue are news articles dealing with prison-related struggle and activism from the U.S. and around the world.

Annual subscription rates are $18 for prisoners. If you can't afford $18 at once, send at least $9 and *PLN* will prorate the issues at $1.50 each for a six month subscription. New and unused postage stamps or embossed envelopes may be used as payment.

For non-incarcerated individuals, the year subscription rate is $25. Institutional or professional (attorneys, libraries, government agencies, organizations) subscription rates are $60 a year. A sample copy of *PLN* is available for $1. To subscribe to *PLN* contact:

Prison Legal News
2400 NW 80th ST. #148
Seattle, WA 98117
(206)246-1022
http://www.prisonlegalnews.org
(Orders accepted by phone or online)

HAVE YOU MOVED OR BEEN TRANSFERRED?

If so, please complete the below information and mail it to FPLP so that the mailing list can be updated:

NEW ADDRESS (PLEASE PRINT CLEARLY)

Name

Inst.

Address

City State Zip

☐ Mail to: FPLP, PO Box 1069 Marion, NC 28752

VOLUME 14 ISSUE 6 NOV/DEC 2008

Florida Prison Legal Perspectives

PO Box 1069
Marion, NC 28752