

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JACK E. ALDERMAN

Plaintiff,

v.

JAMES E. DONALD, in his capacity
as Commissioner of the Georgia
Department of Corrections; HILTON
HALL, in his capacity as Warden,
Georgia Diagnostic and Classification
Prison; DOES 1-50, UNKNOWN
EXECUTIONERS, in their capacities
as employees and/or agents of the
Georgia Department of Corrections

Defendants.

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

CIVIL ACTION
FILE NO. 1:07-CV-896-BBM

**DEFENDANTS' BRIEF IN SUPPORT OF THEIR
PRE-ANSWER MOTION TO DISMISS**

COME NOW James E. Donald, Commissioner, Georgia Department of
Corrections, and Hilton Hall, Warden, Georgia Diagnostic and Classification
Prison,¹ by counsel, the Attorney General for the State of Georgia, and without

¹ Plaintiff has also specified numerous unknown, unnamed party Defendants in this lawsuit. (R1-1, ¶ 4). To the extent that any such individuals have been properly named and served, it is the intent of counsel to represent the individuals. To the extent that there has not been proper service, a "special appearance" is being made for the purpose of advocating this pre-answer motion on their behalf.

waiving such defenses as the applicability of the statute of limitations, submit the instant Brief in Support of their pre-answer Motion to Dismiss.

I. Statement of the Case

Plaintiff, Jack Alderman, GDC 385463, was convicted in Chatham County in 1974 for the murder of his wife and sentenced to death. The murder was effectuated by a combination of bashing her in the head, asphyxiating her, and drowning her in the bathtub. Plaintiff's conviction and sentence were upheld on direct appeal. Alderman v. State, 241 Ga. 496 (1978); cert.denied, 439 U.S. 991 (1978), r'hrq denied, 439 U.S. 1122 (1979). After the sentence was struck down in a federal habeas corpus action, Plaintiff was again sentenced to death in 1984. Alderman v. State, 254 Ga. 206 (1985); cert.denied, 474 U.S. 911 (1985), r'hrq denied, 474 U.S. 1000 (1985). Since 1985, Plaintiff has been involved in numerous unsuccessful state and federal habeas appeals, including petitions to the United States Supreme Court, challenging his conviction and sentence. Presently, Plaintiff has a petition for certiorari pending in the United States Supreme Court.

On April 20, 2007, Plaintiff filed the instant action challenging "the manner in which Defendants will execute him". (R1-1). Specifically, based on the Department's protocol and past procedures, Plaintiff contends that he is "likely" to

experience unintentional pain from the effects of the injections to be used in the procedure. *Id.* Speculating that he might experience unintentional pain, Plaintiff contends that the Department's procedures violate the Eighth Amendment.

Plaintiff requests injunctive relief in the form of a prohibition against the use of lethal injection to carry out his lawfully imposed sentence. (R1-1, ¶ 5, 43). In fact, Plaintiff objects to lethal injection under the Department's current protocol, "or any similar procedure". (R1-1, ¶ 43a).

Defendants now submit the instant motion to dismiss as the Plaintiff has failed to exhaust his administrative remedies prior to filing this action.

II. Statement of Relevant Facts

Plaintiff, as an inmate in custody of the Department of Corrections, has been provided a handbook explaining grievance procedures, and has been given an oral explanation of the grievance process. (Exhibit A, Affidavit of John Harper, hereinafter Harper, ¶ 5, 7).² In summary, the grievance process of the Georgia Department of Corrections involves filing an informal grievance; filing a formal grievance; and filing an appeal of the formal grievance. (Harper, ¶¶ 8-12). The

² Use of the affidavit does not convert the motion to dismiss to a motion for summary judgment. See *Colonial Pipeline Co. v. Collins*, 921 F.2d 1237, 1243 (11th Cir. 1991). In addition the court may look beyond the pleadings to decide this issue. See *Waters v. Arpaio*, 2007 U.S. Dist. LEXIS 10234, p. 4 (2007); *Chelette v. Harris*, 229 F.3d 684, 688 (8th Cir. 2000).

grievance process is not complete until a response to an appeal is issued by the Commissioner's Office. (Harper, ¶ 12).

In this case, Plaintiff filed an informal grievance on April 11, 2007. (R1-1, ¶ 11, Attachment A; Harper, ¶ 13, Attachment 2). Plaintiff then filed a formal grievance on April 26, 2007. (See R1-1, ¶ 11; Harper, ¶ 13, Attachment 3). In both the informal and formal grievances, the Plaintiff specifically challenges not only lethal injection as a method of execution but the details of the Department's protocol for the process which is similar to the claim which the Court in Hill v. McDonough, ___ U.S. ___, 126 S. Ct. 2096 (2006), construed as a proper complaint under 42 U.S.C. § 1983. (Harper, Attachments 2, 3).³

A response to the formal grievance is not due until May 26, 2007. (Harper, ¶ 16). Thereafter, if the grievance is unsuccessful at that stage, in order to exhaust administrative remedies, Plaintiff will have to appeal the results of the formal grievance to the Commissioner's office. (Harper, ¶¶ 12, 17).

³ Plaintiff also asks for relief in the form of not having to complete his lawfully imposed sentence. This relief requested by Plaintiff would have to be sought in a habeas petition challenging his conviction and sentence, not a 42 U.S.C. § 1983 complaint. See Preiser v. Rodriguez, 411 U.S. 475 (1973); Nelson v. Campbell, 541 U.S. 637 (1997); Hill v. Hopper, 112 F.3d 1088 (11th Cir. 1997).

III. Argument and Citation of Authority

On the face of the Complaint in this case, the Plaintiff concedes that he has failed to exhaust administrative remedies. (R1-1, ¶ 11). Plaintiff concedes failure to exhaust in that he admits that prior to filing this action no formal grievance was filed.

1.

Section 42 U.S.C. § 1997e(a) of the Prison Litigation Reform Act (PLRA) mandates the following:

No action shall be brought with respect to prison conditions under Section 1979 of the revised statutes of the United States, 42 U.S.C. § 1983, or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted. (emphasis added).

The exhaustion requirement has been denoted as a pre-condition to maintaining the lawsuit. Porter v. Nussle, 534 U.S. 516 (2002); Alexander v. Hawk, 159 F.3d 1321 (11th Cir. 1998). The Eleventh Circuit has held that the exhaustion of administrative remedies is mandated and may not be waived by the trial court; this holds true even when the administrative remedies are deemed to be futile or perhaps even inadequate. Id.; Dillard v. Jones, 89 F. Supp. 2d 1362, 1365 (N.D. GA 2000).

The Supreme Court has made clear that “where Congress specifically mandates, exhaustion is required”. [Cit.] . . . Since exhaustion is now a pre-condition to suit, the courts cannot simply waive those requirements where they determine they are futile or inadequate. Such an interpretation would impose an enormous loophole in the PLRA, which Congress clearly did not intend. Mandatory exhaustion is not satisfied by a judicial conclusion that the requirement need not apply. Weinberger v Salfi, 422 U.S. 749, 766, 95 S.Ct. 2457, 2467, 45 L.Ed.2d 522 (1975).

Alexander v. Hawk, 159 F.3d at 1321.

The requirement for exhaustion advances Congress’ desire “to wrest control of our prisons from the lawyers and the inmates, and return that control to competent administrators appointed to look out for society’s interests as well as the legitimate needs of prisoners.”” Alexander v. Hawk, 159 F.3d at 1327 n. 11. Furthermore, requiring exhaustion of remedies encourages the development of facts at an early time; it also conserves judicial resources as the complaining party may be successful in vindicating rights in the administrative process before Defendants are haled into court. Jones v. Bock, 127 S. Ct. 910 (2007); Alexander v. Hawk, 159 F.3d at 1327; Moore, 18 F. Supp. 2d at 1364. The complaining party may also discover, through the administrative process, that his position is wrong.

Therefore, an inmate incarcerated in a state prison must first comply with the grievance procedures established by the Department of Corrections before filing a

federal lawsuit under 42 U.S.C. § 1983. Jones v. Bock, 127 S. Ct. at 922-923.

Furthermore, the inmate *must* pursue all available levels of administrative remedies, including appeals, in order to satisfy the exhaustion requirement. Irwin v. Hawk, 40 F.3d 347, 349 n.2 (11th Cir. 1994); Moore v. CO2 Smith, 18 F.Supp.2d 1360, 1363 (N.D. Ga. 1998). In those cases where an inmate fails to pursue all administrative remedies, including appeals, the procedural requirements for filing has not been met and thus the Court should dismiss the action. See Alexander v. Hawk ; Moore v. CO2 Smith.

Exhaustion need not be pled or demonstrated in the complaint. Jones v. Bock, at 921. Rather, it is an affirmative defense to be raised by the defendant. Id. However, when, as here, an affirmative defense appears on the face of the complaint, the complaint is subject to dismissal for failure to state a claim. Jones v. Bock, at 921. See Also Bowling v. Haas, 2007 U.S. Dist. LEXIS 7556 (E.D. Ky. Jan. 31, 2007).

In the instant case, Plaintiff concedes failing to exhaust his administrative remedies. (R1-1, ¶ 11). Plaintiff admits that he filed an informal grievance, the first step in the process, on April 16, 2007, only four days before filing the instant action. (R1-1, ¶ 11, Exhibit A). Completing the Department's grievance process takes more than four days. (Harper, ¶¶ 8-12, Attachment 1). Simply stated, on the

date that the complaint was filed, Plaintiff had not exhausted administrative remedies, he had just began to pursue such remedies. As it is evident from the Complaint, and supported by the affidavit from the Department, that Plaintiff has not exhausted his administrative remedies, the instant action should be dismissed.

2.

To avoid congressionally mandated exhaustion, Plaintiff simply contends that exhaustion is not required. (R1-1, ¶ 10). Plaintiff contends that the alleged injury will take place in the future. However, Plaintiff is challenging a condition of his confinement, the manner in which the Department will carry out his lawfully imposed sentence.⁴ See Nelson v. Campbell, 541 U.S. 637, 643-644, 647 (1997) (§ 1983 challenge to the procedure used in an execution is a conditions of confinement claim). Plaintiff's challenge and his contention regarding exhaustion are similar to the issues raised in Bowling v. Haas, 2007 U.S. Dist. LEXIS 7556 (E.D. Ky. Jan. 31, 2007).

In Bowling v. Haas, the plaintiffs challenged the use of lethal injection to carry out their sentences. Like the instant case, the plaintiffs in Bowling v. Haas failed to timely file a grievance and exhaust administrative remedies. Also, like

⁴ Plaintiff is simply attempting to avoid well established jurisprudence. He may either challenge his conviction and sentence in a habeas case pursuant to 28 U.S.C § 2254, subject to the rules regarding successive habeas petitions; or Plaintiff may challenge the conditions of his confinement in a civil rights case pursuant to 42 U.S.C § 1983, subject to the rules of exhaustion.

the instant case, the plaintiffs in Bowling v. Haas claimed that they need not exhaust as the injury complained of would only take place in the future. The district court rejected the plaintiffs' contentions holding that (1) exhaustion applies as the plaintiffs were challenging a condition of confinement; (2) the fact that an injury may occur in the future does not change the fact that a condition of confinement is being challenged or that exhaustion is required; and (3) exhaustion was required even though the plaintiffs may believe that the process will be futile.

In the instant case, just as in Bowling v. Haas, Plaintiff contends that the exhaustion required by statute should be ignored. Defendants submit that as Plaintiff is challenging a condition of confinement, and as he has not exhausted his administrative remedies, this action should be dismissed.

IV. CONCLUSION

Based upon the foregoing, Defendants respectfully request that their Motion to Dismiss be granted.

Respectfully submitted this 21st day of May, 2007.

THURBERT E. BAKER
Georgia Bar No. 033887
Attorney General

(Signatures continue on next page)

MARY BETH WESTMORELAND
Georgia Bar No. 750150
Deputy Attorney General

KATHLEEN M. PACIOUS
Georgia Bar No. 558555
Deputy Attorney General

/s/ Joseph Drolet
Georgia Bar No. 231000
Senior Assistant Attorney General

/s/ Eddie Snelling, Jr.
Georgia Bar No. 665725
Senior Assistant Attorney General

Please Serve:

EDDIE SNELLING, JR.
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
Telephone: (404) 463-8850
Facsimile: (404) 651-5304
E-mail: esnelling@law.ga.gov

CERTIFICATION AS TO FONT

Pursuant to N.D. Ga. Local Rule 7.1 D, I hereby certify that this document is submitted in Times New Roman 14 point type as required by N.D. Ga. Local Rule 5.1(b).

/s/ Eddie Snelling, Jr.
Georgia Bar No. 665725
Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed this **DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS** for Defendants with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

William E. Hoffman, Jr.
Jason R. Edgecombe
King & Spalding, LLP
1180 Peachtree Street
Atlanta, Georgia 30309

Thomas H. Dunn
Georgia Resource Center
303 Elizabeth Street
Atlanta, Georgia 30309

And, prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed upon:

James Ringer
Michael A. Siem
Elizabeth K. Quinn
Clifford Chance US LLP
31 west 52nd Street
New York, NY 10019-6131

This 21st day of May, 2007.

/s/ Eddie Snelling, Jr.
Georgia Bar No. 665725
Senior Assistant Attorney General

Please Serve:

EDDIE SNELLING, JR.
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
Telephone: (404) 463-8850
Facsimile: (404) 651-5304
E-mail: esnelling@law.ga.gov

EXHIBIT “A”

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JACK E. ALDERMAN

Plaintiff,

v.

JAMES E. DONALD, ET AL.

Defendants.

*
*
*
*
*
*
*
*
*

CIVIL ACTION NO.
1:07-CV-0896-BBM

AFFIDAVIT OF JOHN T. HARPER

Personally appears before me, the undersigned officer duly authorized to administer oaths in and for the State of Georgia, JOHN T. HARPER, who, after being duly sworn, deposes and states under oath as following:

1.

My name is John T. Harper. I am *sui juris*, over the age of 18, under no civil or legal disability, and competent to testify in this matter. I give this Affidavit as evidence in the above-styled action and for any lawful purpose.

2.

I make this Affidavit based on my personal knowledge of its contents, and based upon standard operating procedures and computer records maintained in the regular course of business at the Department of Corrections.

3.

Presently, I am the Executive Assistant at Georgia Diagnostic and Classification Prison for the Georgia Department of Corrections and in connection with my position I am familiar with the grievance process.

4.

As part of my duties I am responsible for ensuring proper compliance with the grievance appeal procedure; ensuring that all appeals are investigated and responded to in a timely fashion; and ensuring that all records and documentation relevant to grievance appeals are maintained in the ordinary course of business.

5.

All Georgia Department of Corrections' prisons have a grievance process that is available to all offenders. Through the use of clear guidelines and specific timetables, the grievance process provides an open and meaningful forum for inmate complaints and informal resolution of the complaints. No inmate is denied access to this procedure.

6.

The grievance procedure is revised from time to time. The grievance procedure in effect for 2007 is explained in the Georgia Department of Corrections Standard Operating Procedures,

hereafter, "S.O.P.". (See Attachment 1, Georgia Department of Corrections Standard Operating Procedures, IIB05-0001).

7.

Upon entering the Department of Corrections, each inmate receives an oral explanation of the grievance process as well as a copy of the Orientation Handbook for Offenders, which includes the instructions about the procedure.

8.

The grievance process starts with an **informal grievance** wherein inmate complaints can be resolved without filling out, and going through the formal grievance process.

9.

An informal grievance form must be completed before filing an official formal grievance form. The informal grievance form is available in the control rooms of all living units. Inmates in isolation and segregated areas are provided an informal grievance form upon request. Inmates can get an informal grievance form from their counselor or the officer on duty (Inmate's have access to the housing counselor on a regular basis and see the officer on duty on a daily basis). Once the informal grievance is submitted, the inmate receives a receipt noting the date the informal grievance was submitted. The informal grievance form must be filed no later than ten (10) calendar days from the date the offender knew, or should have

known, of the facts giving rise to the grievance. A written response is given within ten (10) calendar days of receipt of the informal grievance by the inmate's counselor.

10.

At the completion of the informal grievance procedure the inmate may decide to pursue his complaint through the **formal grievance** procedure. The inmate then requests a formal grievance form from his counselor. The inmate must complete and return the formal grievance form within five (5) business days of the inmate's receipt of the written resolution of the informal grievance.

11.

The formal grievance form is filed with the inmate's counselor. If necessary, the counselor reviews documents, gathers statements, and then prepares a report summarizing the facts of the complaint, the investigative findings, and a recommendation to the Warden. The entire formal grievance process must be completed within 30 calendar days from the date the formal grievance was filed with the counselor. The Warden's response is given to the inmate in writing stating the reasons for the decision reached. If the decision is adverse to the inmate, he is advised of the appeal procedure and, if requested, a grievance appeal form is given to the inmate at this time.

12.

The inmate may appeal the Warden's decision within four (4) calendar days. His appeal is then forwarded to the Commissioner's Office (or his designee), where it is reviewed, and a decision is rendered within 90 calendar days. The formal grievance process is complete after a response is rendered by the Commissioner's Office.

13.

Plaintiff, inmate Jack E. Alderman, GDC #385463, filed informal grievance No. 55-07-IF-143 on April 11, 2007. (Attachment 2). The counselor referred the informal grievance to administrative officials for a response. However, prior to a response being provided and contravening the established grievance procedures, inmate Alderman filed formal grievance No. 552-07-0046 on April 26, 2007. (Attachment 3).

14.

In both the informal and formal grievances, inmate Alderman contends that the use of lethal injection will cause undue pain and suffering. Alderman requests that he not be executed by lethal injection or that the execution be done in a manner that does not violate the constitution. (See Attachments 2 and 3).

15.

Although inmate Alderman did not proceed in accordance with the grievance policy, in this instance, the Department elected to merge the actions. Accordingly, the informal grievance was simply closed; inmate Alderman was informed that a response to the formal grievance will be provided in accordance with SOP's. (Attachment 4).

16.

As of this date, the Warden has not yet responded to Alderman's formal grievance. Accordingly to the grievance procedure, the Warden has until May 26, 2007 to respond.

17.

Prior to a response from the Warden's Office, an appeal, and then a response from the Commissioner's Office, the Department's grievance process has not been completed.

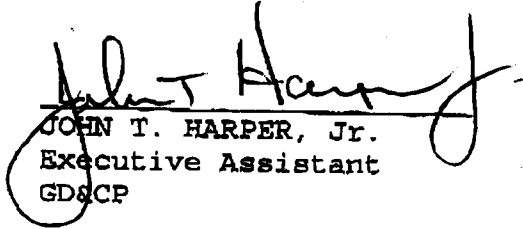
18.

Further review of inmate Alderman's entire grievance history reflects that Alderman has filed five (5) other grievances while incarcerated in the Georgia prison system. The only grievance for which Alderman has fully completed the grievance process was No. 522-96-033, filed in May of 1996.

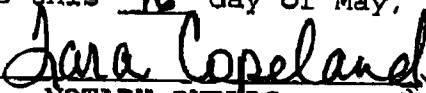
19.

Further, Affiant saith not.

This 16th day of May, 2007.


JOHN T. HARPER, Jr.
Executive Assistant
GD&CP

Sworn to and prescribed before
me this 16 day of May, 2007.


NOTARY PUBLIC

My commission expires:



ATTACHMENT 1

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Functional Area: Facilities Division	Reference Number: IIB05-0001	Revises Previous Effective Date: 5/ 01/ 03
Subject: Statewide Grievance Procedure		
Authority: Donald / Adams	Effective Date: 06/01/04	Page 1 of 11

I. POLICY:

It is the policy of the Georgia Department of Corrections to maintain a grievance process available to all offenders, which provides an open and meaningful forum for their complaints, the resolution of these complaints, and is subject to clear guidelines.

II. APPLICABILITY:

All inmates committed to the Department of Corrections in state facilities, private prisons, county prisons, and transitional centers. This policy specifically excludes detainees housed at state prisons.

III. RELATED DIRECTIVES:

- A. GDC Rules: 125-2-4-.23
- B. GDC SOP's: IIC04-0010; IIE06-0001; VH03-0003
- C. ACA Standard 3-4271

IV. DEFINITIONS:

- A. Calendar Week: A calendar week begins at 12:00AM Sunday and ends at 11:59PM the following Saturday.
- B. Emergency Grievance: An unexpected situation involving the health, safety or welfare of an inmate that requires prompt action.

V. ATTACHMENTS:

Functional Area: Facilities Division	Prev. Eff. Date: 5/01/03	Page 2 of 12
	Effective Date: 6/01/04	Reference Number: IIB05-0001

Attachment 1 - Inmate Grievance Form (Facsimile) (GCI Form PI-2001)

Attachment 2 - Counselor's Report Form

Attachment 3 - Witness Statement Form

Attachment 4 - Grievance Appeal Form

Attachment 5 - County CI Inmate Grievance Log

Attachment 6 - County CI Grievance Activity Report

Attachment 7 - Informal Grievance Form

Attachment 8 - Codes for Rejected Grievances

Attachment 9 - Grievance Processing Manual

Attachment 10 - Informal Grievance Memo

VI. PROCEDURE:

A. General Grievance Information:

1. Upon entering the Department of Corrections, each offender shall receive an oral explanation of the grievance procedure. The inmate shall also receive a copy of the Orientation Handbook for Offenders which includes instructions about the procedure. The inmate's receipt of an oral explanation of the grievance procedure and Orientation Handbook will be noted in the inmate's institutional file. Additionally, inmates may access a copy of this policy in its entirety at the facility or center library.
2. Department employees at all state facilities, county facilities, private prisons and transitional centers will be required to attend training and read the grievance procedure. This will be documented by the training officer annually. Employees may access this procedure in the institution / center administrative office.

Functional Area: Facilities Division	Prev. Eff. Date: 5/01/03	Page 3 of 12
	Effective Date: 6/01/04	Reference Number: IIB05-0001

3. Inmates who need special assistance filling out the grievance form (i.e. language barrier, illiteracy, physical or mental handicap) will be given special assistance as needed by the institutional staff upon request.
4. Non - grievable Issues:
 - a. Matters over which the Department has no control, parole decisions, sentences, and any matters established by the laws of the state.
 - b. Disciplinary action cannot be grieved using this procedure. The disciplinary appeal procedure is located in GDC SOP IIB02-0001
 - c. Transfers of inmates between institutions.
 - d. Routine housing assignment changes, unless there is an alleged threat to the health or safety of the inmate.
 - e. Involuntary assignments to administrative segregation cannot be grieved using this procedure. The procedure to appeal such assignment is located in GDC SOP IIB09-0001, "Administrative Segregation."
 - f. Co-pay charges assessed for health care cannot be grieved using this procedure. The procedure to appeal such charges is located in GDC SOP VH03-0003, "Inmate/ Probationer Health Concerns or Complaints."
 - g. Notwithstanding the above, any grievance alleging retaliation, misconduct or harassment is grievable regardless of the form.
5. Grievable Issues: Any condition, policy, procedure, action or lack thereof that affects inmates and is in the control of the Department of Corrections, other than those listed above, may be grieved. The computation of sentences is specifically included in issues that may be grieved.

Functional Area: Facilities Division	Prev. Eff. Date: 5/01/03	Page 4 of 12
	Effective Date: 6/01/04	Reference Number: IIB05-0001

6. 6. Range of Remedies: All reasonable and effective resolutions which may include corrective action by the Warden/Superintendent up to statewide policy changes by the Director of the Corrections Division. Monetary awards are not allowed.
7. 7. No inmate shall be denied access to this procedure.
8. Inmates are not prohibited from assisting other inmates from filling out any forms attached to this SOP. However, one inmate may not file a grievance on behalf of another inmate.
9. Grievances must be filled out using blue or black ink.
10. When an inmate attempts to grieve an item that is not grievable according to this policy, is out of time, includes threats, profanity, insults or racial slurs that are not a part of the inmate's complaint, or otherwise does not comply with the requirements of this procedure, it will be rejected, noting the specific reason for this action. (See Attachment 8 for a list).
11. Where the Warden / Superintendent's response time is exceeded, the inmate may appeal his grievance to the Commissioner's Office, unless a one time ten day extension has been authorized and the inmate is notified of such extension by the Grievance Coordinator.
12. Limit on Number of Grievances Filed:
 - a. Each inmate is permitted to file one informal grievance each calendar week.
 - b. Each inmate is limited to two pending non-emergency grievances at the institutional level. An inmate may dismiss a pending grievance(s) to allow the resolution of another grievance. A grievance which is deemed by the inmate to be an emergency will be reviewed by the Grievance Coordinator to determine whether it qualifies as an emergency grievance. If the

Functional Area: Facilities Division	Prev. Eff. Date: 5/01/03	Page 5 of 12
	Effective Date: 6/01/04	Reference Number: IIB05-0001

inmate has an emergency grievance it does not count towards the two grievance limit.

13. Retaliation against an inmate for filing an informal grievance or formal grievance is strictly prohibited. The prohibited retaliation includes, but is not limited to, disciplinary action against the inmate for filing a grievance.

B. **Informal Complaint Procedure:** The Department encourages that inmate complaints be resolved on an informal basis without the filing of a formal grievance. The informal grievance process is not intended to circumvent routine administrative processes (i.e. clothing request).

1. An inmate with a complaint that cannot be resolved through discussion with the staff involved shall first attempt to resolve the complaint with a written informal grievance before filing a formal grievance.
2. The complaint and requested relief shall be stated in writing in the space provided on the informal Grievance Form. (Attachment 7). It shall be signed by the inmate and addressed to the Deputy Warden of Care and Treatment.
3. The complaint on the Informal Grievance Form must be a single issue/ incident and the entire complaint must fit on the Informal Grievance Form. Informal Grievances with additional pages will be rejected. (See Attachment 8).
4. The Informal Grievance Form shall be available in the control rooms of all living units. Inmates in isolation and segregation areas will be provided Informal Grievance Forms upon request by staff assigned to those areas.
5. The Informal Grievance Form must be filed no later than 10 calendar days from the date the offender knew, or should have known, of the facts giving rise to the grievance.

Functional Area: Facilities Division	Prev. Eff. Date:	Page 6 of
	5/01/03	12
	Effective Date:	Reference Number:
	6/01/04	IIB05-0001

6. The inmate shall receive a receipt from the Counselor when he turns in his Informal Grievance Form. (See Attachment 9).
7. The Deputy Warden of Care and Treatment will forward a copy of the informal grievance to the area supervisor with directives.
8. The area supervisor will follow the directive of the Deputy Warden of Care and Treatment, and respond accordingly within 5 calendar days per attachment #10 of this procedure.
9. The Counselor shall meet with the inmate to discuss the complaint set forth in the Informal Grievance.
10. The Counselor shall take all necessary steps to facilitate a reasonable solution to the Informal Grievance.
11. The steps taken and the reasonable solution reached, if any shall be documented as the written response to the Informal Grievance.
12. The inmate shall receive a written response within 10 calendar days of receipt of the informal grievance by the inmate's counselor.
13. The inmate must complete the informal grievance procedure before being issued a formal grievance by his/ her counselor.

C. Formal Grievance Procedure:

1. After completing the Informal Grievance Procedure the inmate may decide that he wishes to pursue his complaint through the formal grievance procedure. At the completion of his Informal Grievance, the inmate may request from his/ her counselor a Formal Grievance Form (See Attachment 1), which shall be provided at the time of the request.
2. The inmate must fill out and sign his Formal Grievance Form and return it to his counselor within 5 business days of the inmate's receipt of the

Functional Area: Facilities Division	Prev. Eff. Date: 5/01/03	Page 7 of 12
	Effective Date: 6/01/04	Reference Number: IIB05-0001

written resolution of his Informal Grievance. The Grievance Coordinator may waive this time limit for good cause.

3. The inmate's counselor shall attach a copy of the completed Informal Grievance form to the inmate's Formal Grievance. If no Informal Grievance exists, the Formal Grievance will be rejected.
4. Only one issue may be addressed per Formal Grievance. Any grievance which attempts to address more than one issue or which addresses an issue not identified on the Informal Grievance will be rejected. (See Attachment 8).
5. Only one additional page will be attached by the inmate to the Formal Grievance Form. Formal Grievances with additional pages will be rejected. (See Attachment 8).
6. Upon receipt of the Formal Grievance Form from the inmate, the Counselor will complete the receipt portion of the form and return the top copy of the receipt to the inmate.
7. The Counselor will then meet with the inmate and thoroughly investigate the complaint, including interviewing witnesses and taking statements as necessary.
8. The Counselor will write a complete report, attaching all relevant documentation, and submit it to the Grievance Coordinator. The report will summarize the facts of the complaint, the counselor's findings and recommendation for resolution.
9. The Grievance Coordinator then reviews the counselor's report and indicates his concurrence or disagreement. The Grievance Coordinator will then submit a recommended response to the Warden/Superintendent.
10. The Warden/ Superintendent or his designee will review the grievance and make his official response to the inmate. The Warden/ Superintendent may

Functional Area: Facilities Division	Prev. Eff. Date: 5/01/03	Page 8 of 12
	Effective Date: 6/01/04	Reference Number: IIB05-0001

request further investigation either at the institutional level or by the Internal Investigation Division.

11. The Warden/ Superintendent's response is provided to the inmate in writing, stating the reason for the particular decision.
12. The Grievance Coordinator will retain the last copy of the original grievance and any witness statements, and/ or copies of attachments submitted by the inmate. The white and canary copies of the Grievance Form are returned to the inmate along with any documents submitted by the inmate. The inmate will sign and date the Grievance Form, acknowledging receipt.
13. Upon the return of these documents the inmate shall be advised of his or her further grievance appeal rights. If the inmate wishes to appeal the Warden/ Superintendents Response, a Grievance Appeal Form shall be provided to him. (See Attachment 8).
14. Steps 1 -12 shall be completed within 30 calendar days from the date the Formal Grievance was filed with the counselor.
15. All formal grievances may be appealed.

D. Appeal of Formal Grievance

1. After completing the Formal Grievance Procedure the inmate may decide that he wishes to appeal the Warden/ Superintendents response. The Grievance Appeal Form shall be available in the control rooms of all living units. Inmates in isolation and segregation areas will be provided Appeal Forms upon request by staff assigned to those areas.
2. The inmate has 5 business days from the date he receives the Warden/ Superintendent's response to his Formal Grievance to file an appeal to this response. If the inmate's appeal is not timely, it will not be forwarded to the Office of the

Functional Area: Facilities Division	Prev. Eff. Date: 5/01/03	Page 9 of 12
	Effective Date: 6/01/04	Reference Number: IIB05-0001

Commissioner for appeal. This time limit may be waived by the Grievance Coordinator for good cause.

3. The inmate must fill out and sign the Grievance Appeal Form and turn it in to his counselor. The counselor shall attach both the completed Formal Grievance Form and the Informal Grievance Form to the Grievance Appeal Form. The inmate must also attach any supporting documentation. If no completed Informal Grievance Form or Formal Grievance Form exists the appeal will be rejected without review, unless the grievance is appealed pursuant to section VI.A.11. of this SOP.
4. The second page of the Formal Grievance Form will be retained by the inmate for his records. The counselor shall sign and date this paper to indicate that the inmate's appeal was received. This will serve as a receipt for the inmate's appeal.
5. The Commissioner's Office or his designee will have 90 calendar days after receipt of the grievance to respond.
6. The Commissioner's Office response is returned to the Grievance Coordinator who will give the inmate the original page of his grievance. A copy of this information will be kept in the grievance file. All attachments, statements and related documents will be retained in the Central Office file.

E. Emergency Grievances Procedure:

1. Emergency grievances shall be immediately referred to the Grievance Coordinator (or Duty Officer if after hours). The Grievance Coordinator/ Duty Officer determines if the grievance fits the definition of Emergency Grievance. If so, the Grievance Coordinator/ Duty Officer will immediately take whatever action necessary to protect the health, safety, or welfare of the inmate. This information will be documented and the inmate shall receive a written response to his emergency grievance within 5 calendar days.

Functional Area: Facilities Division	Prev. Eff. Date:	Page 10 of
	5/01/03	12
	Effective Date:	Reference Number:
	6/01/04	IIB05-0001

2. If the grievance is not determined to be an emergency, it will be returned to the inmate to file as an Informal Grievance.
3. The inmate may grieve the determination that his grievance is not an emergency by filing a grievance. This grievance will be handled through the normal process set forth in this SOP.

F. Administration and Record keeping for Grievance Procedure:

1. Confidentiality of Grievances:
 - a. All grievances and related documents kept at the institution will be kept in the office of the Grievance Coordinator in a locked file. Grievances kept in the Central Office shall be kept in a separate file.
 - b. Grievances are not to be placed in the inmate file.
 - c. Grievances are made available to staff members involved only to the extent necessary for processing the grievance or for an audit.
 - d. Copies of grievances will not be provided to staff members named in the grievance.
2. Grievance Coordinator: the Warden/ Superintendent of each facility/ center shall appoint a Grievance Coordinator. An Alternate Grievance Coordinator should be named to serve as a back up to the Grievance Coordinator. A list of statewide Grievance Coordinators will be maintained by the Corrections Division Office and a copy will be provided to Inmate Affairs and Appeals.
3. Grievance Coordinator Duties:
 - a. Ensure compliance with the Grievance SOP;
 - b. Maintain the Inmate Grievance Management System Database;

Functional Area: Facilities Division	Prev. Eff. Date: 5/01/03	Page 11 of 12
	Effective Date: 6/01/04	Reference Number: IIB05-0001

- c. Retain all records and documentation relevant to grievances as provided by this policy;
 - d. Coordinate the timely investigation of grievances.
4. Within 2 business days the counselor will report to the Grievance Coordinator the information necessary to initiate the grievance in the Inmate Grievance Management System in order to assign a grievance number.
 5. Where a grievance is filed in reference to a different facility, the three digit prefix for the named facility will be entered into IMGS in order to initiate the grievance and assign the grievance number. A copy of the grievance will be retained by the Grievance Coordinator at the inmate's current facility, the original grievance will be forwarded to the Grievance Coordinator at the named facility for processing.
 6. County facilities that do not have on-line access to IGMS must maintain a manual log. (See Attachment 5). Grievances at the county correctional facilities will be reported to the Corrections Division using the County CI Grievance Activity Report.

G. Evaluation of the Grievance Procedure:

1. The Department will conduct an annual evaluation of the grievance procedure. This evaluation will take in account all comments and suggestions made by inmates and staff regarding the procedure.
2. The processing of grievances will be audited no less than once per twelve months by the Office of Professional Standards.
3. Statistical data regarding the number and type of grievances filed will be run semi-annually and presented to the Commissioner, Director of the Corrections Division and the General Counsel of the Department.

Functional Area: Facilities Division	Prev. Eff. Date: 5/01/03	Page 12 of 12
	Effective Date: 6/01/04	Reference Number: IIB05-0001

VII. RETENTION SCHEDULE:

Attachment 1 - Inmate Grievance Form: Attachment 1 of this SOP will be retained in the Grievance Coordinator's file for three years after the final disposition of the grievance and then destroyed.

Attachment 2 - Counselor's Report Form: Attachment 2 of this SOP will be retained in the Grievance Coordinator's file for three years after the final disposition of the grievance and then destroyed.

Attachment 3 - Witness Statement Form: Attachment 3 of this SOP will be retained in the Grievance Coordinator's file for three years after the final disposition of the grievance and then destroyed.

Attachment 4 - Grievance Appeal Form: Attachment 4 of this SOP will be retained in the Grievance Coordinator's file for three years after the final disposition of the grievance and then destroyed.

Attachment 5 - County CI Inmate Grievance Log: Attachment 5 of this SOP will be retained in the Grievance Coordinator's file for three years after the final disposition of the grievance and then destroyed.

Attachment 6 - County CI Grievance Activity Report: Attachment 6 of this SOP will be retained in the Grievance Coordinator's file for three years after the final disposition of the grievance and then destroyed.

ATTACHMENT 2

SOP IIB05-0001
Attachment 7
6/01/04

522-07-IF-143
Informal Grievance Form

Alderman, Jack
385463
G3-87

To: Deputy Warden of Care & Treatment Ms. Betty Lance

Date: 04-11-07

RE: I am requesting to resolve the following Informal Grievance, prior to filing a Formal Grievance. The issue is as follows:

Date of Incident: To be determined at date of execution
I believe the use of chemical poisons - lethal
injection - will cause undue pain and suffering as
prohibited by 8th & 14th amendments, which adds
to the torture to which I am subjected.

Resolution Requested:

To not be executed or the method used to
kill me not violate my constitutional rights,
in particular the 8th & 14th amendments

Jack C. Alderman
Inmate Signature

385463
GDC ID Number

11 April 2007
Date

Informal Grievance forwarded to Area Supervisor _____

Response due back by: _____

Counselor's Response/ Resolution:

Issue returned to admin. for answer. *unfiled*

Complaint Resolved: Yes _____ No ☒

Note: By my signature below, I acknowledge the receipt of and hereby indicate my agreement with the aforementioned resolution as related to this Informal Grievance.

Inmate Signature *[Signature]*

If not resolved, was a Formal Grievance requested: Yes ☒ No _____

Counselor Signature _____

Date _____

Bottom Portion will serve as receipt of Informal Grievance. To be given to Inmate by Counselor.
(Cut on dotted line)

ATTACHMENT 3

-541308

CONFIDENTIAL
INMATE GRIEVANCE FORM
Georgia Department of Corrections

Attachment
SOP 11805-0001
(Rev. 5/01/03)

GRIEVANCE NUMBER Gr-0544-01-0046
INMATE'S SIGNATURE [Signature]
WARDEN'S / SUPERINTENDENT'S SIGNATURE [Signature]

THIS FORM MUST BE COMPLETED IN BLUE OR BLACK INK. YOU MUST INCLUDE SPECIFIC INFORMATION CONCERNING YOUR GRIEVANCE TO INCLUDE DATES, NAMES OF PERSONS INVOLVED, AND WITNESSES.

DESCRIPTION OF INCIDENT:

I believe the use of chemical poisons - lethal injection - will cause undue pain and suffering which is prohibited by the 8th and 14th Amendments, thereby compounding the torture to which I am currently subjected.

RESOLUTION REQUESTED: To not be executed or the method be constitutional

[Signature]
INMATE'S SIGNATURE

04/26/07
DATE

Is this grievance being filed within the 5 day time limit? Please answer Yes or No. If the answer is No, please explain why.

WARDEN'S / SUPERINTENDENT'S RESPONSE

____/____/____
WARDEN RECEIVED DATE

____/____/____
WARDEN'S / SUPERINTENDENT'S SIGNATURE

____/____/____
DATE FORWARDED TO INMATE

I ACKNOWLEDGE RECEIPT OF THE ABOVE RESPONSE ON THIS DATE.

INMATE'S SIGNATURE

____/____/____
DATE

IF YOU APPEAL, RETURN THIS FORM AND THE APPEAL FORM TO YOUR COUNSELOR OR GRIEVANCE COORDINATOR WITHIN FOUR (4) CALENDAR DAYS OF RECEIPT OF THE WARDEN'S / SUPERINTENDENT'S RESPONSE.

COMMISSIONER'S OFFICE, EXECUTIVE ASSISTANT'S RESPONSE

____/____/____
EXECUTIVE ASSISTANT RECEIVED DATE

EXECUTIVE ASSISTANT'S SIGNATURE

____/____/____
DATE FORWARDED TO INMATE

WHITE COPY - RETAINED BY INMATE AT COMPLETION OF PROCESS CANARY COPY - RETURNED TO INMATE AT TIME OF APPEAL
PINK COPY - RETAINED BY WARDEN / SUPERINTENDENT AFTER RESPONSE

INMATE'S NAME _____ LD.# _____

I ACKNOWLEDGE RECEIPT OF GRIEVANCE FORM FROM THE ABOVE INMATE. FORM NUMBER _____

DATE ____/____/____

COUNSELOR'S SIGNATURE _____

RETENTION SCHEDULE: - Upon completion of this form, it will be placed in a file in the Grievance Coordinator's office.

PI-2001 (REV. 5/01/07)

ATTACHMENT 4

(2/15/96)

ATTACHMENT 3
SOP IIB05-0001

WITNESS STATEMENT

PLACE Georgia Diagnostic and Classification Prison	DATE 05/08/07	TIME 4:35 p.m.	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME HARPER, John T. Jr.	SOCIAL SECURITY ACCOUNT NO. On File		STATE SERIAL NO. 267517
INSTITUTION OR ADDRESS P.O. Box 3877 Jackson, GA 30233			

SWORN STATEMENT

I, John T. Harper Jr., WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On April 11, 2007 you submitted an informal grievance (522-07-IF-143) claiming that legal injection as your manner of execution would cause undue pain and suffering. For resolution of the informal grievance you requested (1) not to be executed, or (2) that the execution be done in a manner that does not violate the constitution. Initially, the counselor responded by referring the matter to administration for a response; in the meantime, you were provided a formal grievance. Records show that the formal grievance (552-07-0046) was filed April 26, 2007. Department SOP's provide that an informal grievance must be pursued completely before a formal grievance is initiated. We have chosen, just for this grievance, to combine the two grievances. Accordingly, the informal grievance will be closed, and a response to the formal grievance will be provided in accordance with SOP's.

END OF STATEMENT

EXHIBIT

INITIALS OF PERSON MAKING STATEMENT

PAGE 1 OF 2 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF TAKEN AT DATED CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE OF PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

ATTACHMENT 3
SOP IIB05-0001
(1/1/86)

STATEMENT (Continued)

AFFIDAVIT

I, John T. Harber Jr., HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 1. I FULLY UNDERSTAND THE CONDITIONS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

WITNESS

INSTITUTION OR ADDRESS

INSTITUTION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

John T. Harber Jr.
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law
to administer oaths, this ____ day of _____, 20____
at _____

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

(Authority To Administer Oath)

PAGE 2 OF 2 PAGES