



Prisoners Legal Advocacy Network (PLAN)
National Lawyers Guild – Delaware-New Jersey Chapter
132 Nassau Street, Room 922
New York, NY 10038

LEGAL OBSERVER AFFIDAVITS AFFORD PRISONERS A WAY TO DOCUMENT RIGHTS VIOLATIONS AND SEEK PROFESSIONAL SUPPORT

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Prisoners face unique challenges when trying to prove the verity of their claims in civil rights cases, disciplinary proceedings, and other grievance procedures. Prisoners don't have the ability to photograph or video record incidents themselves. Although prisons are supposed to preserve video evidence when an incident occurs, in practice, they regularly record over it before prisoners can take steps to prevent it. Prisoners are often segregated or transferred after an incident, which separates them from witnesses and complicates the exhaustion of remedies. Prisoners frequently report the confiscation of their legal property by correctional officers, or its disappearance, when they are moved to segregation or transferred. People inside commonly report their inability to exhaust remedies as required by the Prison Litigation Reform Act (PLRA), because staff refuse to give them the necessary forms, or because the prison rejects completed forms on policy-unsupported grounds. These examples establish what most prisoners know all too well: It is especially difficult to secure evidence and report rights violations from within prison. The Prisoner's Legal Advocacy Network (PLAN) administered by the National Lawyers Guild's (NLG) Delaware-New Jersey chapter has developed a Legal Observer Affidavit Form for Prisoners and Jailhouse Lawyers to help people inside document and report rights violations, corroborate their allegations through witness statements, and seek professional support.

What it is: A copy of this Affidavit form is enclosed here. Any prisoner can complete this form to document and report incidents of staff misconduct and rights violations they have personally witnessed, whether it happened to them or to another prisoner.

How to use it: The completed and signed affidavit can be sent to my attention, using legal mail, to protect privilege and lessen the risk of interception and/or retaliation that prisoners sometimes experience when reporting issues through monitored mail.

What it accomplishes: Logs that describe the details of an incident may constitute admissible evidence. As a signed affidavit, this form also preserves witness testimony. While courts and departments of correction might consider a prison official's testimony more credible than a prisoner's account, when multiple prisoners witness an event, their corroboration can lend credence to a prisoner's allegations. DE-NJ NLG PLAN will store these affidavits as evidence to protect them from loss or confiscation. The postmark on the mailing envelope will establish a foundation for this evidence, by proving when it was completed. If permission is granted on the form, DE-NJ NLG PLAN will inform legal teams, who may want to help, of the situation. DE-NJ NLG PLAN will also use information from these forms to determine where civil right violations are most often alleged by prisoners, and the kinds of violations that prisoners are most often reported. This data may help establish patterns and practices of rights violations for prisoners and legal teams alike.

Please note that PLAN teams most often focus on documenting concerns and filing administrative complaints, not court actions, but affidavits like this one could support litigation you might choose to advance separately. As resources are limited, we cannot guarantee that all requests for support will be matched with a legal response team.

Things to avoid:

- If you believe that your rights have been violated, it is critical that you "exhaust remedies" (file a grievance and all available appeals in accordance with prison policy). The PLRA states that prisoners must exhaust internal prison grievance procedures before a court can consider their concerns in most cases.
- This affidavit should be used to document only incidents you have personally witnessed or experienced, not events you have heard about from others.
- This tool can only serve its intended purpose if it is completed in ways that comply with prison policy. Blank forms can be photocopied and shared freely. It is permissible for jailhouse lawyers (JHLs) to inform prisoners of this legal resource and to help prisoners complete the form. However, the legal precedent that protects jailhouse lawyering does not expressly permit JHLs to store other prisoners' legal documents. Therefore, completed forms should be mailed to PLAN or kept by the person who signs the form. Holding affidavit forms completed by others, or actively encouraging prisoners to complete an affidavit about a particular incident (as opposed to simply assisting someone who needs help completing the form), could violate prison policy. In addition to leading to disciplinary action, this could also prevent a court from considering completed affidavit forms about an incident as admissible evidence in any future proceeding. ***Please note that sending these forms to PLAN does not initiate or imply an attorney-client relationship.***
- Please do not send PLAN documents that you need to have returned to you. Please only mail photocopies of original documents that can be retained by PLAN.

DE-NJ NLG PLAN looks forward to widening support for prisoners and protecting prisoners' rights through this program.



**NATIONAL LAWYERS GUILD – DELAWARE-NEW JERSEY CHAPTER
PRISONERS LEGAL ADVOCACY NETWORK (PLAN)
LEGAL OBSERVER AFFIDAVIT
FOR PRISONERS & JAILHOUSE LAWYERS**

Please complete this form to document and report prison staff misconduct that violated the rights of one or more prisoners. Attach additional pages & copies of directly relevant prison documents (disciplinary reports, etc.) if necessary.
THIS FORM MAY BE PHOTOCOPIED AND SHARED FREELY.

NAME OF PERSON COMPLETING THIS AFFIDAVIT: _____

CURRENT MAILING ADDRESS (INCLUDING ID #): _____

PRISON FACILITY WHERE THE INCIDENT OCCURRED (PRISON NAME & STATE): _____

NAME(S) OF PRISONER(S) AFFECTED: _____

ON WHAT DATE(S) (OR DURING WHAT TIME PERIOD) DID THIS INCIDENT OCCUR? _____

DESCRIBE WHAT HAPPENED, AS YOU DIRECTLY OBSERVED OR EXPERIENCED IT (ATTACH ADDITIONAL PAGES IF NECESSARY):

DESCRIBE WHERE SPECIFICALLY IN THE FACILITY THE INCIDENT OCCURRED. WOULD SECURITY CAMERAS HAVE RECORDED THE EVENT(S)?

DID ANYONE ELSE WITNESS THIS INCIDENT? IF SO, WHO? (PLEASE NOTE IF OTHER WITNESSES ARE PRISONERS OR STAFF.)

PLEASE LIST THE NAME(S) AND JOB TITLE(S) OF PRISON OFFICIAL(S) WHO YOU WITNESSED PLAYING AN ACTIVE ROLE IN THE INCIDENT:

PLEASE ALSO LIST THE NAME(S) AND JOB TITLE(S) OF PRISON OFFICIAL(S) WHO YOU BELIEVE TO BE INDIRECTLY RESPONSIBLE FOR THE INCIDENT (IF ANY), AND WHY THIS IS YOUR BELIEF (ATTACH ADDITIONAL PAGES IF NECESSARY):

WHAT HARM OCCURRED AS A DIRECT RESULT OF THIS INCIDENT? (For example, injuries sustained; wrongful loss of job; removal from general population; loss of good time; facility transfer; prejudicial effect(s)/unfavorable court case outcome because of inability to access attorney or the court; etc.)

HOW DID OBSERVING/EXPERIENCING THIS INCIDENT MAKE YOU FEEL? (For example: Powerless? Traumatized? Fearful for your safety?)

WHAT PRISONERS RIGHTS VIOLATIONS OCCURRED AS DIRECT RESULTS OF THIS INCIDENT? (PLEASE CHECK ALL THAT APPLY.)

- | | |
|---|--|
| <input type="checkbox"/> Discrimination (Please specify whether based on race, religion, gender identity, etc.): | <input type="checkbox"/> Environmental problems (such as food, drinking water, or mold issues)
Please specify: _____ |
| <input type="checkbox"/> Deprivation of due process in disciplinary proceedings/wrongful loss of good time | <input type="checkbox"/> Excessive use of force/physical abuse |
| <input type="checkbox"/> Grievance procedure problems (such as obstructed access to forms or remedies) | <input type="checkbox"/> Hygiene/sanitation problems |
| <input type="checkbox"/> Interference with community relations including (non-disciplinary) disruptions to social mail, telephone, and visitation | <input type="checkbox"/> Poor living conditions (including arbitrary security classification changes and ADA accommodation issues) |
| <input type="checkbox"/> Obstructed/lack of access to courts, lawyer, law library, legal mail, legal property, etc. | <input type="checkbox"/> Inadequate medical or surgical care (including medication) |
| <input type="checkbox"/> Inadequate mental health care (including medication) | <input type="checkbox"/> Property loss (including theft or destruction of non-legal property by prison staff) |
| <input type="checkbox"/> Lack of religious freedom | <input type="checkbox"/> Sexual assault/abuse/harassment |
| <input type="checkbox"/> Retaliation/oppression for jailhouse lawyering | <input type="checkbox"/> Other retaliation (Please specify: _____) |
| <input type="checkbox"/> Unjustified segregation from the general population and/or prolonged solitary confinement | <input type="checkbox"/> Inhumane working Conditions (unfair job loss, slave labor/involuntary servitude, unsafe conditions, etc.) |
| <input type="checkbox"/> Other inhumane treatment or rights violations (Please specify: _____) | |

PLEASE CHECK THE ONE BOX BELOW THAT DESCRIBES YOUR CONFIDENTIALITY PREFERENCES & CONSENT FOR DISCLOSURE OF THIS LEGAL DOCUMENT:

- I am submitting this affidavit ONLY to PLAN Attorney Paul Holdorf for safekeeping as evidence for possible future proceedings. It may not be disclosed further.
- I grant the Prisoners Legal Advocacy Network permission to share this form with NLG legal response teams who might want to provide support.

PLEASE NOTE THAT INFORMATION FROM THIS AFFIDAVIT MAY BE USED FOR DATA COLLECTION PURPOSES, SO THAT PLAN CAN KEEP TRACK OF TRENDS IN PRISONER RIGHTS VIOLATIONS. HOWEVER, ANY DATA COLLECTED WILL BE SEPARATED FROM YOUR IDENTIFYING INFORMATION TO PROTECT YOUR PRIVACY AND ONLY PLAN ATTORNEYS, OR INDIVIDUALS WORKING UNDER THEIR DIRECT SUPERVISION, WILL HAVE ACCESS TO THIS AFFIDAVIT.

PURSUANT TO 28 U.S.C. § 1746, I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNATURE OF PERSON WHO COMPLETED THIS AFFIDAVIT: _____

EXECUTED ON (DATE THIS AFFIDAVIT WAS SIGNED): _____

Send completed affidavit with attachments (if any) by way of **LEGAL MAIL** to: Mr. Paul S. Holdorf, Esq., Prisoners Legal Advocacy Network (PLAN), National Lawyers Guild – Delaware-New Jersey Chapter, 132 Nassau Street, Room 922, New York, NY 10038

PLAN is unable to store any legal materials not directly related to alleged prison incidents. Such materials will be destroyed.

PLAN cannot return document originals. This form does not replace prison grievance procedures, which must be exhausted for a complaint to be court actionable.