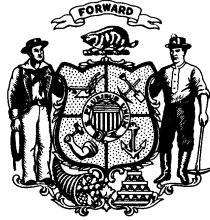


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CLEARINGHOUSE RULE 96-104

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

- a. In the introductory clause to the rule, “repeal and recreate” should replace “repeal and create”.
- b. Since the fifth sentence in s. DOC 309.17 (2) is written in the passive voice, it is unclear who has the duty to inform an inmate at the Wisconsin Resource Center about how to obtain legal materials. [See s. 1.01 (1), Manual.] The sentence should begin “_____ shall inform inmates....” This comment also applies to s. DOC 309.19 (3) (c).
- c. In s. DOC 309.17 (4), “shall be based” should replace “will depend”. As drafted, the sentence does not state a substantive requirement. In the last sentence, “This subsection” should replace “This rule”.
- d. In s. DOC 309.17 (5) (a) 2. and 3. and (b) 2. and 3., the subdivision paragraphs should begin with lowercase letters followed by a period, rather than a lowercase letter in parentheses. [See s. 1.03 (6), Manual.]
- e. The department should consult s. 1.04 (1), Manual, regarding placement of rules in SECTIONS. For example, SECTION 4 should precede SECTIONS 1 to 3 since s. DOC 309.17 numerically precedes s. DOC 309.25.

3. Conflict With or Duplication of Existing Rules

Clearinghouse Rule 96-104 renumbers several existing rules to be ss. DOC 309.15, 309.16, 309.17, 309.18 and 309.19. However, the first four numbers are already taken by existing rules that are not affected by Clearinghouse Rule 96-104.

4. Adequacy of References to Related Statutes, Rules and Forms

Section DOC 309.18 (2) refers to “rules regulating student practice promulgated by the Wisconsin supreme court.” Is it possible to cite these rules with more specificity?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Defining “law library” in s. DOC 309.17 (2) for the purposes of “this subsection” is too limiting because the term is used in s. DOC 309.17 (3), (4) and (5), as affected in SECTIONS 6, 7 and 8. The term should be defined for the purposes of “this section”. Also, in the definition, “sub. (3)” should replace “s. DOC 309.17 (3)”. [See s. 1.07 (2), Manual.]

b. After defining “law library”, s. DOC 309.17 (2) specifies that each institution shall maintain an “adequate” law library. Since the term “law library” is defined, the modifier “adequate” adds ambiguity and should be deleted.

c. The third sentence of s. DOC 309.17 (2) specifies that “[t]his rule” does not apply to the Wisconsin correctional center system or the Wisconsin resource center.” The next two sentences set forth the library requirements for these institutions. Clearly, the exception, “[t]his rule does not apply...” is too broad, in light of the subsequent sentences. The obvious intent of the exception is to exempt two institutions from the general requirement to maintain a “law library”, as that term is defined and not to exempt those institutions from all requirements of sub. (2) and other provisions of ch. DOC 309 that may be applicable. One way to address this ambiguity is to create pars. (a) and (b). The general institution law library requirements could then be addressed in par. (a) and the particular requirements of the Wisconsin Correctional Center and Wisconsin Resource Center could be addressed in par. (b). If this approach is taken, par. (a) would read: “(a) Except as provided in par. (b), each institution shall maintain a law library.”

d. Although the term “institution” is used throughout this rule revision and throughout current ch. DOC 309, it is not defined in s. DOC 309.02. Because certain institutions, such as the Wisconsin Correctional Center and Wisconsin Resource Center, are treated differently, it is advisable to create a definition of “institution” or “correctional institution” in s. DOC 309.02.

e. In s. DOC 309.17 (3) (b) 3., “Biennial” should replace “Biannual”. Also, it is suggested that “for the last 30 years” be added after “*Wisconsin Statutes*” and that the final sentence be deleted.

f. Section DOC 309.17 (3) (d) allows an institution to substitute computerized legal materials for books in establishing an adequate law library. However, s. DOC 309.17 (5) (d) does not give an institution this option for a law library starter set. Is this intended?

g. Section DOC 309.19 (3) (d) is unclear and does not follow from sub. (3) (intro.). Is the intent that an inmate who provides legal services to another inmate and also has pending legal matters himself or herself must follow pars. (a) and (b) with respect to his or her own legal matters? If so, a phrase should be added to pars. (a) and (b) to indicate this and par. (d) should be deleted. For example, “, including any active cases involving the inmate providing legal services himself or herself” could be added to par. (a).

- h. In the Note to s. DOC 309.19, “rule” should replace “rules”.