

CR 84-68

CERTIFICATE

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STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

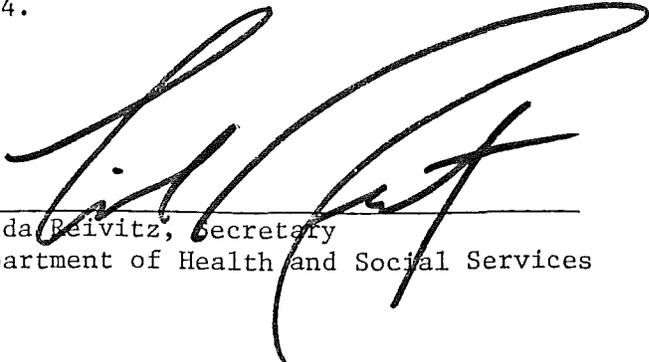
SEP 10 1984  
11:30a  
Revisor of Statutes  
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Reivitz, Secretary of the Department of Health and Social Services and custodian of the official records of said Department, do hereby certify that the annexed rules relating to the use of advocates for inmates in disciplinary hearings at adult correctional institutions were duly approved and adopted by this Department on September 7, 1984.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 7th day of September 1984.

  
\_\_\_\_\_  
Linda Reivitz, Secretary  
Department of Health and Social Services

SEAL:

11-1-84

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
REPEALING AND RECREATING RULES

To repeal and recreate HSS 303.79(1) and Note, relating to the use of advocates for inmates in disciplinary hearings at adult correctional institutions.

Analysis by the Department of Health and Social Services

Two recent court decisions from the Dodge County Circuit Court state that the Court will reverse and vacate all disciplinary decisions where the inmate shows that he or she was not permitted to choose an advocate from a list of 3 as mandated by s. HSS 303.79, Wis. Adm. Code. While getting assistance from a staff member is a constitutional right, being permitted to choose an advocate from a list of 3 is not. However, this is the Department's rule. Waupun Correctional Institution is currently in violation of that rule, but not of the U.S. Constitution. It is in violation of the present rule because that rule does not address the circumstances at Waupun. The present rule was developed in contemplation of a system of voluntary staff advocates. The superintendent is to compile a list of 3 staff advocates each week who will represent inmates at disciplinary hearings, in addition to handling their own staff duties. The inmate can choose which of the 3 advocates he or she wants. But Waupun Correctional Institution in 1979 hired 2 full-time permanent advocates in response to a decision by the Department Secretary on a staff grievance. It therefore no longer uses voluntary advocates. This system has worked well and has not been challenged until now. The Department must either bring its rule into conformity with current practice or risk reversal of all disciplinary decisions at Waupun Correctional Institution because Waupun is technically in violation of the rule.

Pursuant to the authority vested in the Department of Health and Social Services by s. 227.014(2), Stats., the Department of Health and Social Services hereby repeals and recreates rules interpreting s. 46.03(6)(b), Stats., as follows:

Section 1. HSS 303.79(1) and Note are repealed and recreated to read:

HSS 303.79 DUE PROCESS: HEARING ADVOCATES: (1) (a) At each institution, the superintendent may designate or hire staff members to serve as advocates for inmates in disciplinary hearings at the institution, or staff members may volunteer to serve as advocates.

(b) At institutions that do not employ permanent full-time advocates, the superintendent shall place the names of 3 staff members who are available to serve as advocates in a particular week on a list and shall give the list to the hearing officers. The inmate shall be permitted to choose an advocate from the list of 3, except that the caseloads of advocates may be regulated by the superintendent.

(c) At institutions that employ permanent full-time advocates, the superintendent shall assign advocates to inmates. If an inmate objects to the assignment of a particular advocate because the advocate has a known and demonstrated conflict of interest in the case, the superintendent shall assign a different staff member to serve as the inmate's advocate.

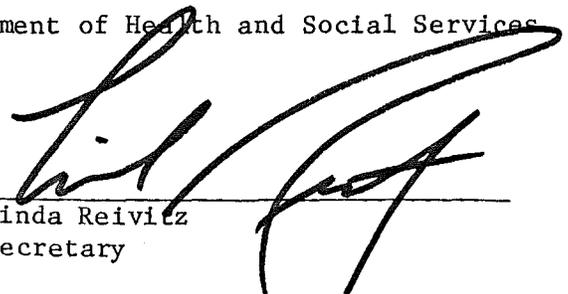
Note: HSS 303.79. Subsection (1) provides the inmate in a disciplinary hearing with a limited choice of advocates to permit avoidance of conflict-of-interest problems. The choice of an advocate, however, is not the inmate's constitutional right. Paragraph (b) provides a procedure for giving inmates a choice of advocates in institutions that use volunteer or assigned advocates who are regular staff members. Paragraph (c) provides for a different procedure in institutions that employ permanent advocates. This rule allows the institution to assign advocates and to regulate their caseloads. If an inmate objects to the assignment of a particular advocate because that advocate has a known and demonstrable conflict of interest in the case, the institution should assign a different advocate to the inmate. An inmate has no due process or other right to know the procedure by which a particular advocate is selected in a particular case.

The repeal and rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s. 227.026(1), Stats.

Department of Health and Social Services

Date: 9-7-84

By:

  
Linda Reivitz  
Secretary

Seal:



State of Wisconsin

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

1 West Wilson Street, Madison, Wisconsin 53702

Anthony S. Earl  
Governor

Linda Reivitz  
Secretary

September 7, 1984

RECEIVED

Mailing Address:  
Post Office Box 7850  
Madison, WI 53707

Mr. Orlan Prestegard  
Revisor of Statutes  
411 West, State Capitol  
Madison, Wisconsin 53702

SEP 10 1984  
11:30  
Revisor of Statutes  
Bureau

Dear Mr. Prestegard:

As provided in s. 227.023, Stats., there is hereby submitted a certified copy of HSS 303.79(1), administrative rules relating to the use of advocates for inmates in disciplinary hearings at adult correctional institutions.

These rules are also being submitted to the Secretary of State as required by s. 227.023, Stats.

Sincerely,

  
Linda Reivitz  
SECRETARY

Enclosure