

Chapter DOC 310

APPENDIX

Note: DOC 310.01. DOC 310.01 states the purpose of the inmate complaint review system and the commitment of the department to the system.

Subsection (2) lists the objectives of the inmate complaint review system. This structured avenue of communication and involvement will benefit inmates, staff, and the correctional process. Issues and policies that need to be reexamined periodically will be brought to the attention of the administration, and a forum is provided for resolution of issues without prolonged debate. Paragraph (a) allows inmates to raise issues which are significant. Although the department encourages the use of the complaint system, the system can not function efficiently when large numbers of insignificant and frivolous complaints are filed.

The right to a lawsuit to resolve legitimate grievances is not as meaningful if they could be resolved administratively. A fair system encourages one to respect and willingly live within norms, even if one would prefer that rules be different.

Furthermore, a system encouraging involvement is likely to eliminate the use of unacceptable and destructive methods for raising grievances.

Note: Doc 310.07. Because timeliness is important in handling complaints, the warden is authorized under s. DOC 310.07 (2) to designate an acting ICE in the absence of the appointed examiner.

Note: Doc 310.08. This section establishes the scope and limits of the inmate complaint review system, including both individual and group complaints.

The scope of the grievance system is wide. It can be used to seek change of any institutional policy or practice not listed in sub. (2). Of course, some complaints may lead to a recommendation for change in administrative rules. The problem is whether the issue can be resolved in the ICRS or must result in a recommendation that a rule be changed and in many cases will result in a change in current practice. Of course, the application of a rule may be challenged in the ICRS.

There are 2 principal reasons for the exceptions provided in sub. (2). First, procedures for review of some decisions are provided in other sections of the administrative rules. This is true of disciplinary, program review, and furlough decisions. Second, the nature of the issue may make investigation difficult or may require expertise that is beyond the ICE and the CCE.

The processes by which these decisions are made, except parole, are within the scope of the system.

Note: DOC 310.09. DOC 310.09 sets out the procedure by which a complaint can be filed. It is intended to make filing as easy as possible. No one should be excluded from legitimate use of the system because he or she does not have complaint forms or is unable to write.

An informal resolution of the complaint would meet all the objectives of s. DOC 310.01.

Subsection (3) underscores the importance of filing a complaint as soon as it is apparent that no other acceptable method of resolution is possible. The ICE is given discretion, however, to accept old complaints if the ICE believes it is still possible to adequately determine the facts needed to make a recommendation. Promptness in filing a complaint is required for a thorough investigation of the facts. This is especially true of complaints involving lost or damaged personal property. Recollections can dim or property can be altered or destroyed, making investigation difficult or impossible.

The number of complaints one person can file may be limited because distractions take away time from valid complaints. The ICE may assign individual complaint numbers or batch complaints of similar content filed by one inmate. All complaints should be resolved promptly, however.

Note: DOC 310.10. Complaints arising from living and working conditions or the application of a rule may be shared by a number of persons. Accordingly, this section allows a group of inmates to join in a common complaint.

The department encourages the use of the complaint system to deal with frustrations and irritations of institution life, so prohibiting group complaints would be inappropriate. Subsection (5) makes this clear.

Note: DOC 310.11. DOC 310.11 establishes the procedure for processing complaints and authorizes priority handling of complaints dealing with health or personal safety. This reflects the importance attached to these matters. Experience has shown some inmate complaints to be frivolous. For example, a complaint which alleges that an inmate had creamy peanut butter rather than chunky peanut butter, which the inmate preferred. These complaints serve to distract attention away from the more important issues. DOC 310.11 (4) requires the ICE to reject frivolous complaints as defined in this section.

Informal resolution of a complaint is not only authorized, but also encouraged when possible. This practice can do much to remove misunderstandings and relieve the tensions from which the complaint developed. Experience with the complaint procedure in Wisconsin has shown that many of the complaints filed are resolved informally. The resolutions are in writing to ensure both that the complainant agrees and that, if a similar complaint arises, the past resolution can be examined as a basis for settlement.

The complainant must have the option to waive time limits for a decision if doing so will result in resolution of the complaint. Because of the time required to investigate some complex complaints, unwaivable time limits would force denial of some complaints. This would not serve the system's purpose.

Because inmates are frequently transferred within the Wisconsin correctional system, subs. (8) and (9) provide a method for dealing with complaints arising just before or at the time of the transfer. A frequent subject of complaint has to do with personal property lost or damaged at transfer, and these complaints must be processed.

Note: DOC 310.12 This section requires the appropriate reviewing authority's written decision to be rendered within 23 working days of the date the complaint is filed. If the complaint system is to have any value as a method of resolving conflict, decisions must be rendered quickly. Experience in the ICRS has shown that timeliness is one of the most important factors in the process.

The importance of fixed time limits and a written response was further recognized by *National Advisory Commission*, standard 2.14 (4); *ACA*, standard 4301; and *ABA*, standard 8.6 (c).

Note: DOC 310.13. DOC 310.13 defines the procedure for appealing an adverse decision to the CCE. This section requires that appeals be filed within 5 calendar days, although the CCE may accept an appeal filed later.

Appeal to the CCE provides another element deemed essential to a credible complaint system; namely, a review by someone outside the division of adult institutions chain of command. Appeals dealing with health or personal safety are to be given priority over other complaints.

The necessity of outside review is a feature of most prison grievance systems having any degree of inmate acceptance. This position is well stated in Krantz et al., *Model Rules and Regulations on Prisoner Rights and Responsibilities* (1973) p. 203.

Moreover, the uniqueness of the correctional system would seem to require the availability of external mechanisms to review complaints. It is believed that internal grievance procedures "are part of the system," and that where "recommended action" comes from prison officials, directly or indirectly connected with reviewing a complaint, peer group pressure or command influence may adversely affect a fair decision.

Note: DOC 310.15 Since the purpose of the complaint system is to air grievances and seek resolutions, decisions resulting in changes in program, policy, or rule interpretation that affect more than a few inmates, must be promptly implemented.

Throughout these rules the principle has been repeatedly set out that, to be enforceable or effective, rules and notices must be posted in places readily available to inmates and in a form the inmates can be reasonably expected to see. This principle is restated with respect to rules or policies altered by a complaint decision.

Subsection (4) states that the complainant may notify the secretary of failure to implement a decision. The appointing authority is in a position to ensure that a decision is implemented promptly. This is even more appropriate if the change results from the secretary's decision.

Note: DOC 310.16 If the ICRS is to maintain integrity and the confidence of the inmates, complaints entered must be treated confidentially and, with certain limited exceptions, no sanctions can result from use of the system. Because of the unique and complex relations existing between prison inmates and staff, friction and irritation almost inevitably will arise from time to time. The source of some of these feelings will be the application or misapplication of rules and discretion. The ICRS is an appropriate forum for resolving these issues, but because complaints often identify a staff member as the perceived perpetrator of some injustice, the complainant must be protected from retribution or penalty for legitimate use of the system. If use of the system routinely resulted in penalties or sanctions, the system would quickly be abandoned.

The nature of some complaints is such that a meaningful investigation cannot be made without revealing the identity of the complainant, but this should be done only when reasonable and appropriate. Confidentiality can be waived if it can be shown that the security or the orderly administration of the institution, or the security, safety, or health of staff, or inmates is involved.

This is not to say that inmates are free to make threatening or false statements about staff, knowing they are false and with the intent to harm the staff, especially if those false statements are made public. There have been malicious lies about staff corruption and sexual behavior made in the ICRS. This rule does not prohibit disciplinary action for the illegitimate use, or rather abuse, of the ICRS.

The ICE must use discretion in revealing only enough information about the nature of the complaint to allow for a thorough investigation.

The complainant is free to reveal any information about a complaint that he or she has filed. However, if an inmate makes a false accusation pursuant to s. DOC 303.271, revealing that false accusation to persons outside the complaint system may subject the inmate to disciplinary action.

Note: DOC 310.19 Experience has shown that there are rare situations when it is necessary to suspend these rules. DOC 310.19 permits the secretary to suspend these rules in an emergency. The rule defines an emergency in s. DOC 310.03 (10).