

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND**

ADMINISTRATIVE LAW DIVISION

Form #5

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2007 JUL 17 AM 11:01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Division of Corrections TITLE NUMBER: 90

CITE AUTHORITY: W.Va. Code §25-1A-2

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W.Va. Code §25-1A-2 requires the grievance procedure to be filed as a procedural rule.

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

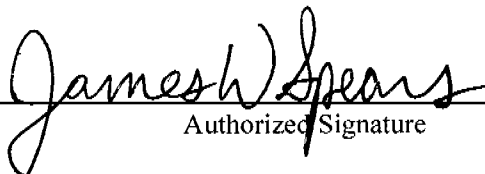
TITLE OF RULE BEING AMENDED: Inmate Grievance Procedures

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS August 16, 2007


Authorized Signature

\$3.60

FILED

**TITLE 90
PROCEDURAL RULE
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
DIVISION OF CORRECTIONS**

2007 JUL 17 AM 11:01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 9
INMATE GRIEVANCE PROCEDURES**

§90-9-1. General.

1.1. Scope. -- It is the policy of the West Virginia Division of Corrections to maintain a mechanism that ensures the promulgation of uniform procedures concerning the formal review of issues relating to any aspect of confinement for inmates confined in its institutions/facilities/centers.

1.2. Authority. -- W. Va. Code §25-1A-2.

1.3. Filing Date. -- July 17, 2007

1.4. Effective Date. -- August 16, 2007

1.5 This rule repeals and replaces Title 90 Series 9, titled Inmate Grievance Procedures, filed December 5, 2000 and effective January 5, 2001.

§90-9-2. Definitions.

2.1 "Warden/Administrator" Shall refer to the Chief Executive Officers of the institutions/ facilities/centers in which the inmate is confined.

2.2. "Grievance" Shall mean the formal process by which an inmate seeks redress over any matter concerning prison life, whether it involves general circumstances or particular episodes. The term "grievance" shall be considered the administrative remedy for prisoners unless this policy specifically sets forth another administrative procedure.

2.3 "Unit Manager" Shall refer to the Unit Manager of the Housing Unit to which the inmate is assigned. In any Housing Unit that does not have a Unit Manager, the person occupying the position of Unit Manager for purposes of this policy shall be the commanding officer of such unit.

2.4. "Investigate" Refers to a process, whether formal or informal, by which information necessary to compile a response is provided. It can be as simply as a verbal inquiry or can involve a more detailed investigation.

2.5. "Inmate" Shall mean an inmate either presently at the institution/facility/center or having previously been incarcerated at the institution/facility/center.

2.6. "Days" Shall mean working days exclusive of weekends or state holidays.

2.7 "Grievance Number" Shall be a number affixed to the grievance form (Attachment #1) at the inmate's place of incarceration or point of receiving the grievance which shall be set by a two (2) digit number for the year in which the grievance is filed (ex. 07) separated by a hyphen; the second part of the number shall be the institution/facility/center designation which are the following:

ACC - Anthony Correctional Center
BCC - Beckley Correctional Center
CWRC - Charleston Work Release Center

DCC - Denmar Correctional Center
 HCC - Huttonsville Correctional Center
 HWRC- Huntington Work Release Center
 LCC - Lakin Correctional Center
 MCC - Martinsburg Correctional Center
 MDC - McDowell/Stevens Correctional Center
 MOCC - Mount Olive Correctional Complex
 NCC - Northern Correctional Center
 OCC - Ohio County Correctional Center
 PCC - Pruntytown Correctional Center
 SMCC - St. Marys Correctional Center

After the institution/facility/center designation and a hyphen, the institution/facility/center shall assign a distinct sequential number which shall be utilized for tracking the grievance and for reference. The number shall be set forth by the inmate's unit designation and a sequential number separated by a hyphen. In order to provide for necessary and appropriate grievance tracking, the Unit Manager of each unit shall maintain a log of grievances. The log shall conform to Attachment #2 and sequential numbers shall be assigned from the beginning of each calendar year.

2.8 Applicability: All units within the Division of Corrections for all matters except classification, which shall follow administrative remedies set forth in Policy Directives 401.01 and Policy Directive 326.01 and inmate discipline which shall follow administrative remedies set forth in Policy Directive 325.00.

§90-9-3. General Provisions.

3.1. Nothing in this rule shall be construed to provide an inmate with any additional liberty interest that would not otherwise exist if this rule did not exist.

3.2 Copies of all inmate grievances, appeals, and responses at unit and Warden/Administrator levels shall be maintained in the inmate's file at the

institution/facility/center. Once appealed to the Commissioner, the grievance shall be filed within the inmate's Central Office file.

3.3 An inmate may not use the Inmate Grievance Procedure to submit a grievance or appeal on behalf of another inmate or for any matter that does not directly affect the inmate filing the grievance.

3.4 Any inmate who fails to fully comply with the provisions set forth in this Policy Directive shall not be considered to have taken full advantage of administrative remedies afforded him/her.

3.5 The Warden/Administrator shall maintain a searchable record of all grievances. The record shall be searchable in the following manners: name or DOC number of inmate; grievance number; type of grievance and date of filing.

3.6 The timeliness of the grievance shall not be grounds for rejection of a grievance. It may be a basis for a denial of the relief sought within the grievance depending upon the circumstances set forth in the grievance.

3.7 This Policy Directive represents the general administrative remedy procedures for the Division of Corrections. Employees are instructed that this Policy Directive will apply to any issue advanced by an inmate that does not have a specific administrative remedy identified by this policy. Inmates should not be told that an issue is not "grievable." If an issue is not properly presented under this Policy Directive, the inmate should be instructed as to the proper policy and procedure for seeking an administrative remedy. However, being able to grieve an issue does not equate to being entitled to relief sought.

§ 90-9-4 Initial Filing of Grievance

4.1 Any inmate may file a grievance utilizing a grievance form (Attachment #1) within fifteen (15) days of any occurrence that would cause him/her to file a grievance. These forms shall be made available to members of the inmate population at all institutions/facilities/centers. At a minimum, grievance forms shall be available in all inmate Housing Units and Law Libraries.

4.2 An inmate may grieve only one (1) issue or complaint per form and which directly pertains to the inmate filing the grievance.

4.3 The grievance form shall initially be submitted by the inmate to his/her Unit Manager. Upon receipt of the grievance form, the Unit Manager shall log the grievance and assign it a number in conformity with the procedure set forth above. The Unit Manager shall also log the date of the response and retain a copy of the response.

4.4 It shall be the responsibility of the Unit Manager to answer the grievance within five (5) days. The response should be clear, concise, complete, and professional. Each Warden/Administrator may establish appropriate Operational Procedures through which Unit Managers may designate the responsibility for investigating and responding to such grievances.

4.5 The inmate shall be provided a copy of his/her grievance form prior to submission at each level for the inmate's records in order to encourage conciseness and adhering to the rule that only one issue per grievance is to be submitted. The inmate may attach to the grievance only one (1) 8.5 x 11 inch page.

4.6 If the Unit Manager fails to answer the grievance within the time frame noted in Section V-B-4 of this Policy Directive, the inmate may treat the non-response as a denial of his/her grievance and submit the grievance form to the Warden/Administrator. The

inmate shall indicate on the form that the grievance that was filed without a response from the Unit Manager. The Warden/Administrator shall investigate such an allegation, and if it is determined that the inmate had submitted a grievance without response, the Warden/Administrator should require an immediate response from the Unit Manager. The Warden/Administrator may also provide a response without requiring a response from the Unit Manager. If it is determined by the Warden/Administrator that the inmate had either not filed the form with the Unit Manager or had been given a timely response, the Warden/Administrator should initiate appropriate disciplinary action under Policy Directive 325.00.

§ 90-9-5 Appeal to Warden

5.1 Should the initial grievance response not resolve the issue, the inmate may appeal to the Warden/Administrator within five (5) days from delivery of the response to his/her grievance. The inmate shall use the same form as was submitted to the Unit Manager by signing in the appropriate location. Only the grievance form and Unit Manager response shall be submitted.

5.2 As with the initial level, the inmate shall be provided a copy of his/her grievance form prior to submission to the Warden/Administrator for his/her records. Only the grievance form [including the one (1) page attachment submitted to the Unit Manager, if any] and Unit Manager response is to be copied.

5.3 The Warden/Administrator shall respond to the appeal, using the grievance form, within five (5) days. The Warden/Administrator shall consider the statement of the grievance, as presented at the initial level, together with the Unit Manager's response to determine whether the response is appropriate and in furtherance with the mission of the Division of Corrections and consistent with the orderly

operation of the facility.

5.3.a If the Warden/Administrator finds the response satisfactory, he/she may:

- (1) affirm the Unit Manager's response and deny the grievance;
- (2) deny the grievance for reasons other than that which is addressed by the Unit Manager;
- (3) grant the grievance; or
- (4) remand the grievance back to the Unit Manager for further action.

5.3.b In reviewing the grievance, the Warden/Administrator should place the expectation upon unit management that the grievance will be fully addressed at their level such that additional investigation should rarely be necessary.

5.3.c A decision can be rendered from a review of the grievance document.

5.3.d If a grievance has not been properly submitted through any level by an inmate, it shall be rejected.

5.3.e A rejected grievance does not exhaust the grievance process or that step of the process.

§ 90-9-6 Appeal to Commissioner

6.1 Should the inmate believe that the Warden/Administrator's response does not resolve his/her grievance or the Warden/Administrator fails to respond in the time frames set forth in Section V-C-3 of this Policy Directive, the inmate may submit an appeal to the Commissioner of the Division of Corrections within five (5) days after he/she receives the Warden/ Administrator's response or the time for the response has passed. The appeal shall be submitted using

the same form as was submitted to the Unit Manager and signing in the appropriate location. Only the grievance form together with the Unit Manager and Warden/Administrator's responses shall be submitted.

6.2 As with the initial level and the Warden/Administrator's level, the inmate shall be provided a copy of his/her grievance form prior to submission to the Commissioner for his/her records. Only the grievance form [including the one (1) page attachment submitted to the Unit Manager, if any] and responses are to be copied.

6.3 The Commissioner shall respond to the appeal, in writing, within ten (10) days. The Commissioner shall consider the statement of the grievance, as presented at the initial level, together with the Warden/Administrator and Unit Manager's response to determine whether the response is appropriate and in furtherance with the mission of the Division of Corrections and with the orderly operation of the facility.

6.3.a If the Commissioner finds the responses satisfactory, he/she may:

- (1) affirm the Warden/Administrator and deny the grievance;
- (2) deny the grievance for reasons other than that which is addressed by the Warden/Administrator and Unit Manager;
- (3) grant the grievance; or
- (4) remand the grievance back to the Warden/Administrator or Unit Manager for further action.

6.3.b In reviewing the grievance, an expectation is placed upon the Warden/Administrator and the Unit Manager

that the grievance will be fully addressed at their levels and additional investigation should rarely be necessary.

6.3.c A decision should be able to be rendered from a review of the grievance document.

6.3.d If a grievance has not been properly submitted through any level by an inmate, it shall be rejected.

6.3.e A rejected grievance does not exhaust the grievance process or that step of the process.

W.Va. Division of Corrections Inmate Grievance Form

Grievance No. _____ - _____ - _____

Inmate Name _____

DOC # _____

Date of Grievance _____

Grievance is Initiated by tendering this document to Unit Manager _____

State Nature of Grievance / Issue to be addressed (Note 1 issue per grievance be concise):

(The inmate may attach 1 8.5 x 11 sheet if necessary at this level only)

Inmate's Signature _____

Unit Manager's Response (attach additional sheet if needed)

Signature _____

Resolved: _____ (if so initial and give copy to unit manger) Appealed to Warden _____ (initial)

If no response at initial level is included the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00

Inmate's Signature _____

Date _____

Action by Warden: ☐ Remand to Unit for further action☐ Affirm unit and deny grievance☐ Grant the Grievance as specified☐ Reject for failure to follow grievance procedure☐ Deny for reasons other than specified at unit levelComments _____

(Attach additional sheet if necessary)

Warden's Signature _____

Date _____

Resolved: _____ (if so initial and give copy to unit manger) Appealed to Warden _____ (initial)

If no response at warden's level is included, the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00

Inmate's Signature _____

Date _____

Action by Comm.: ☐ Remand to Warden/Unit for further action☐ Affirm warden and deny grievance☐ Grant the Grievance as specified☐ Reject for failure to follow procedure☐ Deny for reasons other than specified at unit level

Date of Action: _____

(Attach additional sheet if necessary)

Unit: _____

Calendar Year: _____

[illegible]