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*Your Responsibility When Using the Information Provided Below:*

When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you want legal advice backed by a guarantee, try to hire a lawyer to address your specific problem. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your institution's law library.

**THE RIGHTS OF PRISONERS REGARDING SERIOUS DISCIPLINARY CHARGES**  
(updated 03/2010)

We have received your request for assistance in defending against disciplinary charges or in appealing a disciplinary finding of guilt. Because this office has limited staff and resources, we cannot provide you with direct assistance. We hope that this letter, which summarizes your rights in the disciplinary process, will give you guidance in preparing your defense or administrative appeal.

The rights of prisoners to fair disciplinary proceedings are rooted in the due process clauses of the U.S. and California Constitutions; however, those rights are not as broad as the rights of defendants facing criminal charges.<sup>1</sup> Most of the specific rights of prisoners regarding disciplinary charges are now set forth in a state statute (Penal Code § 2932) and CDCR regulations (15 CCR §§ 3310 through 3326). If you are charged with a “serious” rule violation,<sup>2</sup> you have the following rights:

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<sup>1</sup> U.S. Const., Amend. XIV; California Const, art. I, § 7; Wolff v. McDonnell (1974) 418 U.S. 539 [94 S.Ct. 2963; 41 L.Ed.2d 935]; Baxter v. Palmigiano (1976) 425 U.S. 308 [96 S.Ct. 1551; 47 L.Ed. 2d 810]; Ponte v. Real (1985) 471 U.S. 491 [105 S.Ct. 2192; 85 L.Ed.2d 553].

<sup>2</sup> The CDCR differentiates between “serious” and “administrative” rule violations. See 15 CCR §§ 3314-3315. Administrative violations involve less serious types of misconduct and cannot be punished by a loss of credits. 15 CCR 3314. Some, but not all, of the same procedural rights apply. See 15 CCR §§ 3314-3321.

- (1) Written notice of the charge. The notice must include the specific charge, the date, time, and place of the alleged violation, and a statement of the evidence relied upon.<sup>3</sup> CDCR Forms 115 Rules Violation Report and 115-A Serious Rules Violation Report are used to notify prisoners of rule violation charges. Generally, you must be given the CDCR Form 115 within 15 days after prison staff discover the information leading to the charge. If the CDCR fails to provide notice in this time period, then no time credits may be lost as punishment for the offense.<sup>4</sup> However, notice may be delayed beyond 15 days, but no more than 30 days, and credits may still be lost, if (1) the misconduct could be prosecuted as murder, attempted murder, or battery on staff; (2) an investigation is continuing to identify people involved in the misconduct; and (3) a request to delay notification is approved by the Chief Disciplinary Officer.<sup>5</sup> Also, notice may be delayed for up to 45 days on request of the District Attorney (DA) when a criminal investigation is in process.<sup>6</sup>
- (2) Notice of referral to criminal authorities if the rule violation is forwarded to the District Attorney (DA) for possible criminal prosecution.<sup>7</sup> If your case is referred to the DA, you can request postponement of the disciplinary hearing pending the outcome of the DA referral. One reason for postponing would be if you are concerned that what you say at the disciplinary hearing might be used against you in a criminal trial. You can revoke the request for postponement at any time up until any formal criminal proceedings begin.<sup>8</sup>
- (3) Assignment of an Investigative Employee (IE) to investigate the facts when the issues are complex and require further investigation or your housing status makes it unlikely that you can collect and present the evidence necessary for a fair hearing.<sup>9</sup> Although you may not choose the IE, you can object to the first person assigned in writing; if your objections are found to be reasonable, then a different IE will be assigned.<sup>10</sup> The IE gathers information and interviews witnesses, then prepares a written report for the disciplinary hearing officer; you must be provided with a copy of the IE;s report at least 24 hours before the hearing.<sup>11</sup>

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<sup>3</sup> Penal Code § 2932(c)(1).

<sup>4</sup> 15 CCR § 3320(a) and (f)(1).

<sup>5</sup> Penal Code § 2932(c)(1)(B); 15 CCR § 3320(a)(1).

<sup>6</sup> Penal Code § 2932(f).

<sup>7</sup> 15 CCR § 3316(a)(3).

<sup>8</sup> Penal Code § 2932(f); 15 CCR § 3316(c)(1)(A).

<sup>9</sup> 15 CCR §§ 3315(d)(1) and 3318(a).

<sup>10</sup> 15 CCR § 3315(d)(1)(D). You must object before the IE begins the investigation. 15 CCR § 3315(d)(1)(D).

<sup>11</sup> 15 Board of Directors  
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- (4) Assignment of a Staff Assistant (SA), instead of or in addition to an IE, if you need to have a confidential relationship with the person who is helping you, if you are illiterate or non-English-speaking, or if you need assistance understanding the charges or the disciplinary process.<sup>12</sup> An SA must be assigned if you are in Levels DD1-DD3 of the Developmentally Disabled Program (DDP) or in the Enhanced Outpatient Program (EOP) level of mental health care.<sup>13</sup> An SA should keep the information that the prisoner discloses confidential if the prisoner requests confidentiality; however, confidentiality is not required if the information concerns possible future criminal conduct.<sup>14</sup>
- (5) Effective communication, if you are disabled, of the CDCR Form 115 and other disciplinary documents, the hearing proceedings, and all other communications involving the disciplinary process. Depending on your disability, this may be done through assignment of a Staff Assistant (SA), a qualified interpreter or reader, or accommodations such as large print materials, sound amplification devices, or a TDD phone.<sup>15</sup>
- (6) To request witnesses, both friendly and hostile, to be interviewed by the IE (if one is assigned) and to attend the hearing.<sup>16</sup> You should always make a written request for your witnesses; there is a place on the CDCR Form 115 where you can do this. The employee who reported the disciplinary violation must attend the hearing and testify if requested. Witnesses who cannot attend the hearing may be made available by telephone. You may ask questions of the witnesses under the direction of the hearing officer. Your requested witnesses may be disallowed only for specific reasons, such as endangerment of the witness, a finding that the witness has no relevant information, or when the witness is unavailable. Prison staff should document any reasons for denying witnesses on the CDCR Form 115.<sup>17</sup>

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<sup>12</sup> 15 CCR §§ 3315(d)(2) and 3318(b).

<sup>13</sup> Clark v. California (N.D. Cal. Mar. 1, 2002) No. C96-1486 FMS, Remedial Plan, § VI.L.2; see also 15 CCR § 3315(2)(E)(1).

<sup>14</sup> 15 CCR § 3318(b)(2)(A).

<sup>15</sup> Armstrong v. Davis (N.D. Cal. Jan. 3, 2001) C94-2037 CW, Remedial Plan, § II.E.

<sup>16</sup> 15 CCR § 3315(e); see Edwards v. Balisok (1997) 520 U.S. 641 [117 S.Ct. 1584; 137 L.Ed.2d 906] (opining that complete denial of prisoner's witnesses was an "obvious procedural defect").

<sup>17</sup> 15 CCR § 3315(e); Serrano v. Francis (9th Cir. 2003) 345 F.3d 1071 (violation of due process to deny witnesses without documenting reasons).

- (7) To present documentary evidence in defense or mitigation of the charge.<sup>18</sup>
- (8) To receive copies of all non-confidential information relating to the charges at least 24 hours before the hearing.<sup>19</sup> This includes the CDCR Form 115, the Investigative Employee's (IE's) report, and any incident reports to be relied upon at the hearing. You should not waive this right even if prison staff ask you to do so; it is important to exercise this right in order to fully prepare a defense.
- (9) Notification of the existence of confidential information and disclosure of as much of the information as possible without identifying the source.<sup>20</sup> CDCR Form 1030 Confidential Information Disclosure is used to notify prisoners of confidential information.
- (10) A hearing within 30 days after you receive written notice of the charge. The hearing can be postponed if you have been transferred out of CDCR custody or if there are "exceptional circumstances," about which the prison officials must notify you in writing.<sup>21</sup> Except in these circumstances, failure to hold a hearing within 30 days bars the CDCR from taking away time credits as punishment for the offense.<sup>22</sup>
- (11) To request postponement of the hearing pending the outcome of a referral to the District Attorney (DA) or due to some other reasonable need. A request for postponement based on a reasonable need must be made in writing and the request may be denied if the disciplinary officer believes it is not credible. Postponement based on reasonable need may be for a period of up to 30 days.<sup>23</sup> If you request postponement pending the outcome of a referral to the DA, then the hearing will not be held until after the criminal case is resolved. However, you can revoke a request for postponement pending a DA referral at any time prior to filing of formal criminal charges; the disciplinary hearing then must be held within 30 days after you revoke your request for postponement.<sup>24</sup>

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<sup>18</sup> 15 CCR § 3320(l).

<sup>19</sup> 15 CCR § 3320(c).

<sup>20</sup> 15 CCR § 3321(b)(3). The rights of prisoners regarding the use of confidential information in disciplinary hearings are discussed in greater detail in a separate information letter that can be requested from the Prison Law Office.

<sup>21</sup> 15 CCR § 3320(b). "Exceptional circumstances" are defined in 15 CCR § 3000.

<sup>22</sup> 15 CCR § 3320 (f)(3), (4), and (5).

<sup>23</sup> 15 CCR § 3320(d).

<sup>24</sup> Penal Code § 2932(f); 15 CCR § 3316(c)(1).

- (12) An impartial decision-maker, meaning that the hearing officer may not be someone who reported, observed, classified or investigated the alleged violation, assisted you in preparing for the hearing, or has a predetermined belief in your guilt or innocence.<sup>25</sup>
- (13) To be present at the hearing, unless you waive the right to be present.<sup>26</sup> There are other very limited circumstances in which the hearing may be conducted in the absence of the prisoner.<sup>27</sup>
- (14) A preponderance of the evidence standard to determine guilt at the hearing.<sup>28</sup> “Preponderance of the evidence” means the evidence as a whole must show that it is “more likely than not” that you are guilty of the charge. If confidential information is used to find you guilty, the hearing officer also must determine whether that information is reliable.<sup>29</sup>
- (15) To receive a completed copy of the CDCR Form 115 containing the disposition, findings, and specific evidence relied upon within 5 working days after the decision is reviewed by the Chief Disciplinary Officer (CDO).<sup>30</sup>
- (16) To appeal a finding of guilt through the CDCR’s administrative appeal process.<sup>31</sup> You should submit your CDCR Form 602 administrative appeal within 15 business days after receiving the completed CDCR Form 115.<sup>32</sup> You should attach a copy of the CDCR Form 115 to your appeal. It very important to file a timely administrative appeal if you might want to file any type of court action challenge the disciplinary finding of guilt.
- (17) Removal of disciplinary records from your Central File if you are found not guilty or if the charges are dismissed.<sup>33</sup>

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<sup>25</sup> 15 CCR § 3320(h); see also People v. Superior Court (Hamilton) (1991) 230 Cal App.3d 1592 [281 Cal.Rptr. 900].

<sup>26</sup> 15 CCR § 3320(g)(3).

<sup>27</sup> A hearing may be held without the prisoner if (2) the prisoner has been convicted of escape and has not been returned to the facility, or (2) a psychiatrist decides that the prisoner has a serious mental disorder and cannot understand or participate in the hearing. 15 CCR § 3320(g) (1) and (2).

<sup>28</sup> 15 CCR § 3320(l).

<sup>29</sup> 15 CCR § 3321(b) and (c); Zimmerlee v. Keeney (9th Cir. 1987) 831 F.2d 183; In re Jackson (1987) 43 Cal.3d 501 [233 Cal.Rptr. 911].

<sup>30</sup> Penal Code § 2932(d); 15 CCR § 3320(l).

<sup>31</sup> Penal Code § 2932(d); 15 CCR § 3084.7(b).

<sup>32</sup> 15 CCR § 3084.6(c).

<sup>33</sup> 15 CCR § 3326(a)(2).

If you want to challenge the disciplinary proceedings or the finding of guilt in your case, you should file a CDCR Form 602 administrative appeal. You will need to file and get responses at all three levels if you want to challenge the disciplinary charge in court; it is very important that you meet the time limits for filing your 602 appeal to each level of review.

Once you “exhaust administrative remedies” by filing your administrative appeal through the Third Level of Review, you can file a state petition for writ of habeas corpus in the Superior Court in the county in which the prison is located. In your petition you can ask the court to order prison officials to hold a new hearing with fair procedures. You can also ask the court to overturn the finding of guilt. Keep courts will uphold the prison officials’ factual findings if there is “some evidence” in the record from which the hearing officer logically could find you guilty.<sup>34</sup>

This letter sets forth only an outline of your rights at disciplinary hearings. A more complete explanation of prisoners’ rights regarding disciplinary violations, plus tips regarding defending against disciplinary charges and appealing findings of guilt, can be found in Chapter 6 of The California State Prisoners Handbook, Fourth Edition (2008 and periodically supplemented). This book may be available in your prison’s law library, or you can get information on ordering the book from the Prison Law Office. In addition, the Prison Law Office can provide free information letters regarding administrative appeals and state petitions for writ of habeas corpus. Feel free to write the Prison Law Office to request these materials if they are not already enclosed with this letter.

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<sup>34</sup> See Superintendent v. Hill (1985) 472 U.S. 445 [105 S.Ct. 2768; 86 L.Ed.2d 356]; In re Spence (1974) 36 Cal.App.3d 636 [111 Cal.Rptr.782].