

Your Responsibility When Using the Information Provided Below:

When we wrote this Informational Material we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. The laws change frequently and are subject to differing interpretations. 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 is applicable to your situation. Most of the materials you need should be available in your institution law library.

Re: Disciplinary Charges
Updated April 2003

Dear Sir or Madam:

We 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. However, we hope that this letter, which summarizes your rights in the disciplinary process, will give you some guidance in preparing your defense or appeal.

The following is a list of prisoners' rights regarding disciplinary charges. Most of these are set forth in state statutes (Penal Code § 2932) and CDC regulations (15 CCR §§ 3310 through 3326). If you are charged with a "serious" rule violation, you have the right to:

- (1) Written notice of the charge. The CDC Form 115 Rule Violation Report must include the specific charge, the date, time, and place of the alleged violation, and a statement of the evidence relied upon. (Penal Code § 2932(c)(1).) Generally, you must be given the CDC Form 115 form within 15 days after prison staff discover the information leading to the charge. If the CDC fails to provide notice in this time period, then no time credits may be lost as punishment for the offense. (15 CCR §§ 3313(f)(1) and 3320(a).) However, notice may be delayed up to 30 days, where (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. (Penal Code § 2932(c)(1)(B); 15 CCR § 3320(a)(1).)
- (2) Assignment of an Investigative Employee (IE) to investigate the facts when the issues regarding are complex and require further investigation or your housing status makes it unlikely that you can collect and present the necessary evidence. (15 CCR §§ 3315(d)(1) and 3318(a).) While you may not choose the IE, you can object to the first person assigned, and another IE will be assigned. (15 CCR § 3315(d)(1)(C).)
- (3) Assignment of a Staff Assistant (SA) 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 to understand the charges or the disciplinary process. (15 CCR §§ 3315(d)(2) and 3318(b).)
- (4) Effective communication, if you are disabled, of the CDC 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, a qualified interpreter or a reader, or accommodations such as large print materials, sound amplification devices or a TDD phone. (Armstrong v. Wilson (N.D. Cal.) C94-2037 CW, Remedial Plan, § II.E. (January 3, 2001).)
 - (5) Request witnesses, both friendly and hostile, to be interviewed by the IE (if one is assigned) and to attend the hearing. Your requested witnesses may be disallowed only for specific, documented reasons, such as endangerment of the witness, a finding that the witness has no relevant information or when the witness is unavailable. The reporting employee must attend and testify if requested. A witness may be made available by telephone. You may ask questions of the witnesses under the direction of the hearing officer. (15 CCR § 3315(e).) You should always make a written request for your witnesses; there is a place on the CDC Form 115 where you can do this.
 - (6) Present documentary evidence in defense or mitigation of the charge. (15 CCR § 3320(l).)
 - (7) Copies of all non-confidential information relating to the charges at least 24 hours before the hearing. (15 CCR § 3320(c).) This information would include the CDC Form 115, the investigative employee's report, and all non-confidential reports (such as incident reports) to be relied upon at the hearing.
 - (8) Notification of the existence of confidential information and disclosure of as much of the information as possible without identifying the source. (15 CCR § 3321(b).) CDC Form 1030 is used to notify prisoners of confidential information.
 - (9) A hearing within 30 days after you receive written notice of the charge, unless you have requested postponement of the hearing pending the outcome of referral of the case to the district attorney for possible criminal prosecution, have requested postponement of the hearing based on a reasonable need, or have been transferred out of CDC custody. (15 CCR § 3320(b) and (d).) Except in these circumstances, failure to hold a hearing within 30 days bars the CDC from taking away time credits as punishment for the offense. (15 CCR § 3320(f)(3), (4) and (5).) Also, if you have requested postponement pending a disciplinary hearing, you can revoke that request at any time; the hearing must then be held within 30 days of the date you revoke your request for postponement. (15 CCR 33216(c).)
 - (10) 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. (15 CCR § 3320(h); see also People v. Superior Court (Hamilton) (1991) 230 Cal App.3d 1592 [281 Cal.Rptr. 900].)
 - (11) To be present at the hearing, unless you waive the right to be present. There are other very limited circumstances in which an exception may be made. (15 CCR § 3320(g).)

- (12) A preponderance of the evidence standard to determine guilt at the hearing. (15 CCR § 3320(l).) “Preponderance of the evidence” means the evidence 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 must also determine whether that information is reliable. (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].)
- (13) A completed copy of the 115 containing the disposition, findings, and specific evidence relied upon within 5 working days after the decision is reviewed by the Chief Disciplinary Officer. (15 CCR § 3320(l); Penal Code § 2932(d).)
- (14) To appeal a finding of guilt through the CDC’s administrative appeal process and to have disciplinary credit losses reviewed by the Board of Prison Terms. (Penal Code § 2932(d); 15 CCR § 3084.7(b).) You should submit your appeal within 15 working days of receiving the completed CDC Form 115. (15 CCR § 3084.6(c).) You should attach a copy of the CDC Form 115 to your appeal.

If you want to challenge the outcome or procedure involved in a disciplinary hearing you should file a CDC Form 602 to all three levels of review. You will need to file and get responses at all three levels if you want to challenge the disciplinary charge in court. 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. Keep in mind that although the courts will review disciplinary matters to ensure that the proper procedures were followed, the courts will uphold the prison officials’ factual findings if there is “some evidence” in the record from which the hearing officer could logically find you guilty. (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].)

This letter sets forth only an outline of your rights. A more complete explanation of prisoners’ rights regarding disciplinary violations can be found in Chapter 6 of the California State Prisoners Handbook, Third Edition (2001). 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. The Handbook also gives tips regarding defending against disciplinary charges and appealing findings of guilt. 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.