Policy

A. Each institution shall establish a Disciplinary Committee and/or Hearing Officers and follow the disciplinary procedures under 22 AAC 05.400-.480 to adjudicate prisoners' rule violations.

B. An accused prisoner is entitled to the assistance of a Hearing Advisor at a disciplinary hearing unless the prisoner is charged with only a minor infraction.

Procedures

A. Disciplinary Committee/Hearing Officer. The Superintendent may use either a Hearing Officer or a Disciplinary Committee. Major infractions shall require a Disciplinary Committee. If a Disciplinary Committee is used, it shall include three members appointed by the Superintendent.

1. Disqualified Persons. A person may not serve as a Hearing Officer or on the committee if he or she:

   a. wrote the disciplinary report concerning the alleged rule violation; 22 AAC 05.450(b)(1)

   b. is responsible for or assisted in the investigation of the infraction; 22 AAC 05.450(b)(2)

   c. knows of any facts that form the basis for the disciplinary report, unless the facts have become common knowledge in the institution. In that case, the person may serve on the committee or as a Hearing Officer if he or she was not directly involved in the incident and can decide the adjudicative phase of the hearing solely on the facts presented at the hearing; 22 AAC 05.450(b)(3)

   d. is responsible for reviewing the disciplinary decision; 22 AAC 05.450(b)(4)

   e. witnessed the alleged infraction; or 22 AAC 05.450(b)(5)

   f. cannot, for any reason, remain impartial toward the prisoner. 22 AAC 05.450(b)(6)

B. Advance Notice to Prisoner of Hearing Before Disciplinary Committee/Hearing Officer

1. Advanced Notice. The institution shall give a prisoner at least 48 hours prior written notice (form 809.04A) of a scheduled appearance at a disciplinary hearing. 22 AAC

05.415(a) A prisoner may waive this notice requirement by requesting an earlier appearance and signing a Disciplinary Hearing Notice (form 809.04A). 22 AAC 05.415(a). The hearing may then be held as soon as possible.

2. Disciplinary Hearing Notice. The Disciplinary Hearing Notice (form 809.04A) must include:

   a. a brief description of the agenda of the hearing under 22 AAC 05.420; 22 AAC 05.415(b)(1)

   b. procedural opportunities under 22 AAC 05.430-22 AAC 05.445; and 22 AAC 05.415(b)(2)

   c. a notice that the prisoner must inform the Disciplinary Committee/Hearing Officer in writing, at least 24 hours before the scheduled hearing of any witnesses or evidence that the prisoner might call or introduce at the hearing. 22 AAC 05.415(b)(3)

3. Advisor's Notice. At the prisoner's request, the prisoner's advisor shall inform the committee in writing of the witnesses or evidence that the prisoner may use at the hearing. 22 AAC 05.415(c)

C. Time Limits Within Which a Disciplinary Hearing Must Occur. The Disciplinary Committee/Hearing Officer must grant the prisoner a hearing not more than seven *working* days after the prisoner receives a copy of the disciplinary report. 22 AAC 05.425(a)

1. Postponing the Hearing. The Committee Chairperson/Hearing Officer may postpone the hearing if:

   a. the accused prisoner requests a postponement. The Chairperson[/Hearing Officer] shall automatically postpone the hearing for two *working* days if the prisoner requests it in writing 24 hours before the scheduled hearing. 22 AAC 05.425(b). At the hearing, the Chairperson may postpone the hearing for the prisoner for two *working* days if the prisoner shows good cause; 22 AAC 05.425(b)

   b. the prisoner, prisoner's attorney, or hearing advisor asks to review the case record before the hearing. The institution must give the prisoner access to the authorized material at least 24 hours before the hearing if it receives the request at least three *working* days before the scheduled hearing. See policy #602.01, Prisoner Case Record Management;

   c. witnesses are unavailable. If the prisoner or the Committee/Hearing Officer requests a staff member to appear as a witness and the person is temporarily unavailable, the Chairperson[/Hearing Officer] may postpone the hearing until the person is available to appear. The prisoner may be required to indicate what information is anticipated from the unavailable witness. The Chairperson/Hearing Officer shall also postpone the hearing until the staff member who wrote the

disciplinary report is available to appear as a witness if the prisoner or hearing advisor requests the staff member's appearance; or 22 AAC 05.425(a); 22 AAC 05.435(a)

d. the institution requires further investigation of the alleged rule infraction. The Chairperson/Hearing Officer may grant staff a continuance of up to 30 days upon a showing of good cause. The Chairperson/Hearing Officer may grant additional continuances of up to 30 days if extraordinary circumstances necessitate further investigation [22 AAC 05.425(a)]; or

e. the institution is awaiting the District Attorney's decision of whether the State will file a criminal complaint against the prisoner referred for prosecution under policy #809.02, Prohibited Acts and Penalties. 22 AAC 05.425(b); 22 AAC 05.460(b). If the District Attorney files a criminal complaint, the Committee/Hearing Officer may postpone the disciplinary hearing until the conclusion of the criminal prosecution. 22 AAC 05.425(a)

2. No more than six months may elapse between the date of the alleged infraction and the hearing except as provided under section C(1)(e) above. 22 AAC 05.425(a)

3. The Committee Chairperson/Hearing Officer shall advise the prisoner in writing of the continuance status every 30 days until the hearing is held or otherwise concluded.

D. Hearing Advisor at Disciplinary Hearing. The accused prisoner is entitled to the assistance of a Hearing Advisor to investigate the facts, and prepare and present a defense at the disciplinary hearing, unless the prisoner is accused solely of a minor infraction. 22 AAC 05.440(a). The prisoner may waive the right to a Hearing Advisor's assistance and present his or her own defense. 22 AAC 05.440(d)

1. Selecting a Hearing Advisor. The prisoner may request a Hearing Advisor from a pool of three or four correctional officers or probation officers designated by the Superintendent. 22 AAC 05.440(b)

a. The prisoner has the right to select from at least two of the advisors identified on the Disciplinary Hearing Notice (form 809.04A). 22 AAC 05.440(b)

b. The Superintendent may deny a request if a staff member would have to be paid overtime to appear at a disciplinary hearing. 22 AAC 05.440(b)

2. Hearing Advisor's Duties. The Hearing Advisor shall meet with the prisoner at least 36 hours before the hearing to actively assist the prisoner and help coordinate the prisoner's presentation at the hearing. 22 AAC 05.440(c). The Hearing Advisor shall clearly explain that if the prisoner does not call as a witness the staff member who wrote the disciplinary report at the hearing, the Committee/Hearing Officer may find the prisoner guilty on the basis of the report alone even if the prisoner denies any wrongdoing. 22 AAC 05.440(c) The Hearing Advisor shall also, at the prisoner's request:

a. advise the prisoner how best to proceed; 22 AAC 05.440(c)

b. prepare questions for and interview witnesses; 22 AAC 05.440(c)

c. file the prisoner's witness list 24 hours before the hearing; and

d. arrange for the assistance of an interpreter, if necessary. 22 AAC 05.440(c)

3. Committee-Appointed Staff Advisor. The Committee/Hearing Officer may hold the hearing even if the prisoner refuses to appear or participate. 22 AAC 05.420(a) If the accused is not present at the hearing for reasons other than refusing to appear, the Committee Chairperson/Hearing Officer shall appoint a Hearing Advisor to present evidence and witnesses or to confront and cross-examine witnesses on behalf of the prisoner. 22 AAC 05.440(d)

4. Right to Counsel. An accused prisoner has a right to counsel in hearings that might result in felony prosecution or if the institution referred the infraction to the District Attorney for prosecution. 22 AAC 05.440(e). No possibility of felony prosecution exists if the District Attorney informs the Superintendent that the State will not file a felony complaint. 22 AAC 05.440(e)

E. Agenda at Disciplinary Hearing. A disciplinary hearing is divided into an adjudicative and a dispositive phase. 22 AAC 05.420(a)

1. Adjudication. In this phase, the Committee/Hearing Officer focuses on determining whether or not the prisoner committed the alleged infractions. 22 AAC 05.420(a). The Committee/Hearing Officer may consider only the facts and evidence presented at the hearing specific to the alleged infractions.

a. The Committee Chairperson/Hearing Officer shall call the meeting to order and ensure that the meeting is tape recorded, unless the only alleged violation is a minor infraction. 22 AAC 05.420(b)(1). The Chairperson/Hearing Officer shall have all participants identify themselves on the record by name, title, and role in the hearing.

b. The Chairperson/Hearing Officer shall read the disciplinary report to the prisoner on the record and request that the prisoner admit or deny each of the alleged infractions. 22 AAC 05.420(b)(2) and (3)

c. If the prisoner admits the infractions, the Committee/Hearing Officer may begin the dispositive phase of the hearing under section 2 below. 22 AAC 05.420(b)(4)

d. If the prisoner denies the infractions, the Committee/Hearing Officer shall call those witnesses requested to appear at the hearing and introduce evidence in the following order:

(1) the Committee/Hearing Officer and prisoner or Hearing Advisor shall question the staff member who wrote the disciplinary report. See section F and H below; 22 AAC 05.420(b)(5)(A)

(2) the Committee/Hearing Officer shall question other witnesses and introduce relevant evidence noted on the disciplinary report; and 22 AAC 05.420(b)(5)(B)

(3) the prisoner or prisoner's Hearing Advisor shall present the prisoner's version of events, call witnesses, and introduce evidence. See sections F, G, and H below; 22 AAC 05.420(b)(5)(C)

e. The Committee/Hearing Officer shall excuse the prisoner and prisoner's Hearing Advisor from the room when they finish presenting their evidence. The Committee/Hearing Officer shall then determine the prisoner's guilt by a preponderance of the evidence (The Committee/Hearing Officer need not tape these deliberations.) 22 AAC 05.420(b)(5)(D)

f. The Committee/Hearing Officer shall request that the prisoner return to the room and inform him or her, on the record, of the decision. 22 AAC 05.420(b)(5)(E)

2. Disposition. The Committee/Hearing Officer shall begin the dispositive phase of the hearing if the prisoner admits guilt or the prisoner is found guilty. 22 AAC 05.420(c)(1). The Committee/Hearing Officer may consider case record information and program assessments when determining sanctions.

a. The prisoner or prisoner's Hearing Advisor may present evidence or other information to mitigate punishment. 22 AAC 05.420(c)(2) The Committee/Hearing Officer must consider this evidence or information when imposing a penalty. 22 AAC 05.420(c)(2)

b. The Committee/Hearing Officer may excuse the prisoner from the room while it decides the proper penalty. (The Committee/Hearing Officer need not tape record these deliberations.) 22 AAC 05.420(c)(3)

c. The Committee/Hearing Officer shall inform the prisoner of its decision on the record. 22 AAC 05.420(c)(3). At the conclusion of the hearing, the Committee/Hearing Officer shall inform the prisoner, on the record, of the opportunity to appeal and the obligation to give notice of an intention to appeal. 22 AAC 05.420(c)(3). The Committee/Hearing Officer shall also give the prisoner a Summary Finding form (809.04B). See policy #809.06, Disciplinary Appeal. The Committee Chairperson/Hearing Officer shall inform the prisoner of the appeal procedures under sections A(1) and B(1) of policy #809.06, Disciplinary Appeal. Staff shall give the prisoner a Disciplinary Appeal form (809.06) upon request. 22 AAC 05.420(c)(3)

F. Defense Witnesses, Examination of Witnesses, and Evidence at Disciplinary Hearing

1. The accused prisoner may present witnesses and other evidence at the hearing, subject to section F(4) below, if the prisoner or Hearing Advisor notifies the Committee/Hearing Officer in writing of the witnesses and evidence no later than 24

hours before the hearing (unless the prisoner shows good cause why this time requirement cannot be met). 22 AAC 05.430(a)

2. The Superintendent shall give the prisoner or prisoner's Hearing Advisor a reasonable opportunity to interview witnesses, collect statements, or compile other evidence, if that action would not create a risk of reprisal or threat to security. 22 AAC 05.430(b); *Brandon v. Department of Corrections*, 865 P.2d 87 (Alaska 1993). The prisoner's Hearing Advisor must do this if either the prisoner or the witness is in segregation or the witness is a staff member. 22 AAC 05.430(b)

3. The Committee/Hearing Officer and the prisoner's Hearing Advisor may question the accused prisoner and other witnesses. 22 AAC 05.445 The accused prisoner also may question any witness but must do so through the Chairperson/Hearing Officer. 22 AAC 05.445

4. The Chairperson of the Committee/Hearing Officer may, for compelling reasons, decline to call a witness or limit the examination of a prisoner's witness, and may restrict the introduction of other evidence to avoid repetitious or irrelevant evidence, the risk of reprisal or threat to security, or to preserve decorum. The Chairperson/Hearing Officer must note these reasons on the record. 22 AAC 05.445; 22 AAC 05.430(c)

   a. If the Committee/Hearing Officer finds the prisoner guilty, the Chairperson/Hearing Officer must attach a supplemental report entitled, Witnesses and/or Evidence Disallowed, Limited, or Not Called to the completed Report of Disciplinary Decision form (809.04C). The form must list all persons or evidence that the Chairperson/Hearing Officer limited or excluded at the hearing under section 4 above and a brief statement of the reasons supporting this action. 22 AAC 05.445; 22 AAC 05.430(c)

G. Rules of Evidence in Disciplinary Hearing; Lesser Included Infractions

1. A prisoner is presumed innocent of an infraction until proven guilty. A prisoner cannot be found guilty of an alleged infraction unless a majority of the Committee or a Hearing Officer finds the prisoner guilty by a preponderance of the evidence presented at the hearing, e.g., that the prisoner more likely than not committed the infraction. 22 AAC 05.455(a)

   a. The Committee/Hearing Officer may consider the disciplinary report as evidence. If the prisoner does not request the presence of the staff member who wrote the report, the report alone may serve as the basis for a decision. 22 AAC 05.455(a)

   b. The Committee/Hearing Officer may consider other hearsay evidence if it appears reliable and relevant to the alleged infraction. 22 AAC 05.455(a)

   c. The institution shall present physical evidence with an intact chain-of-custody and shall present any field test results.

2. During the adjudicative phase, the Committee/Hearing Officer may only consider facts and evidence specific to the alleged infraction presented at the hearing. In the dispositive phase of the hearing, the Committee/Hearing Officer may consider evidence presented at the hearing or information in the prisoner's case record. 22 AAC 05.455(a)

3. The Committee/Hearing Officer may find the prisoner guilty of a lesser infraction necessarily included in the infraction charged if it is not convinced from the evidence presented at the hearing that the prisoner is guilty of committing the infraction charged and a preponderance of the evidence at the hearing establishes the prisoner's guilt of the lesser infraction. 22 AAC 05.455(b). A lesser infraction is necessarily included in the infraction charged if:

   a. the lesser infraction is inherently related to the infraction charged in such a way that proof of the greater infraction would ordinarily entail proof of the lesser; 22 AAC 05.455(c)(1)

   b. the infraction charged requires the Committee/Hearing Officer to find a disputed fact that is not needed to convict the prisoner of the lesser infraction; and 22 AAC 05.455(c)(2)

   c. the evidence that the Committee/Hearing Officer relies upon supports conviction of the lesser infraction. 22 AAC 05.455(c)(3)

   Examples:

   A prisoner is charged with stealing property valued at over $1,000.00, a major infraction. The actual value of the stolen property is $600.00, constituting a lesser, high-moderate infraction. The disputed fact is value.

   A prisoner is charged with assault upon another prisoner, a major infraction. The evidence substantiates a mutual combat fight which contributes a lesser, high-moderate infraction. The infractions are inherently related and the distinction is between an attack and a fight.

4. The Chairperson/Hearing Officer may recess the hearing for consultation to obtain assistance in determining a lesser included infraction.

H. Prisoner's Right to Confront Accusers in a Disciplinary Hearing

1. The accused prisoner or Hearing Officer has the right to call the facility staff member who wrote the disciplinary report or any other staff witness as a witness subject to section F.4 above. 22 AAC 05.435(a); *Brandon v. Department of Corrections*, 865 P.2d 87 (Alaska 1993)

2. The accused prisoner has the right to be present while another prisoner, an unidentified informant, or other witness testifies concerning a charge that is based in whole or in part upon information supplied by that witness, unless the accused

prisoner's presence would create a risk of reprisal or a threat to security. 22 AAC 05.435(b)

a. The Chairperson/Hearing Officer may exclude the accused prisoner but not the prisoner's Hearing Advisor while this witness testifies. See section D.3 above. 22 AAC 05.435(b). The Hearing Advisor may examine the witness on behalf of the accused prisoner.

b. The Chairperson/Hearing Officer must note the reasons for excluding the prisoner on the record. 22 AAC 05.435(b). If the prisoner is found to have committed an infraction, the Chairperson/Hearing Officer shall also file the same form as called for under section F(4)(a) above, listing the persons the accused was not allowed to confront, the reasons for the exclusion, the extent to which that testimony was relied upon, and the facts upon which the Committee/Hearing Officer reasonably concluded that the person was credible and spoke with personal knowledge or gave reliable information. 22 AAC 05.435(b)

I. Punishment. Only a Disciplinary Committee/Hearing Officer may impose punishment on a prisoner for an infraction. See policy #809.02, Prohibited Acts and Penalties and 22 AAC 05.470.

J. Written Decision of Disciplinary Committee/Hearing Officer. The Disciplinary Committee/Hearing Officer shall issue a written Report of Disciplinary Decision (form 809.04C) and give the prisoner a copy within five *working* days of the hearing if the prisoner is found guilty of an infraction. The Committee/Hearing Officer shall issue the report within one *working* day of the hearing if the prisoner is scheduled to be released from incarceration before the expiration of the time allowed for appeal. 22 AAC 05.480(l). The decision must include:

1. a summary of the accused prisoner's statements; 22 AAC 05.475(a)(1)
2. a summary of the witnesses' testimony; 22 AAC 05.475(a)(2)
3. the Committee/Hearing Officer's adjudicative and dispositive decisions and the specific reasons for those decisions, including a brief statement of the facts and evidence relied upon to support the decision; and 22 AAC 05.475(a)(3); *Brandon v. Department of Corrections*, 865 P.2d 87 (Alaska 1993)
4. the supplemental report entitled Witnesses and/or Evidence Disallowed, Limited, or Not Called as required under section F(4)(a) and H(2)(b) above (the institution should not give this report to the prisoner if it would create a risk of reprisal or a threat to security). 22 AAC 05.475(c)

K. Disposition of Reports, Tape Record, and Evidence. See also policy #809.03, Reporting Procedures for Rule Violations and 22 AAC 05.465.

1. The institution shall keep the tape recorded proceedings of the disciplinary hearing for 60 days after the final departmental decision on administrative appeal or the time

frames for appeal have expired, whichever occurs first. If the prisoner appeals the decision to the court, the tape recording must be kept until all judicial proceedings are complete.

2. The Department shall retain evidence used in connection with a disciplinary action with the chain-of-custody intact for the same time period as under section 1 above.

L. Appeal of Disciplinary Committee Action. If the Disciplinary Committee finds the prisoner guilty, and the prisoner wishes to appeal the decision, the prisoner must provide notice of his or her intention to appeal on the Summary Findings for (809.04B) and the Disciplinary Appeal form (809.06). The prisoner must prepare the appeal under policy #809.06, Disciplinary Appeal.

February 2, 1997
Date

Margaret M. Pugh
Margaret M. Pugh, Commissioner
Department of Corrections

Authority:
Cleary Final Order, 3AN-81-5274 CIV, Sept. 1990
Brandon v. Department of Corrections, 865 P.2d 87 (Alaska 1993)
22 AAC 05.415
22 AAC 05.420
22 AAC 05.425
22 AAC 05.430
22 AAC 05.435
22 AAC 05.440
22 AAC 05.445
22 AAC 05.450
22 AAC 05.455
22 AAC 05.460
22 AAC 05.465
22 AAC 05.470
22 AAC 05.475
22 AAC 05.480

Applicable Forms:
809.04A
809.04B
809.04C
809.06A