

Issue: Compliance/consolidation of grievances for the purposes of hearing; Ruling Date:  
November 3, 2004; Ruling #2004-896; Agency: Department of Juvenile Justice;  
Outcome: consolidation granted



## ***COMMONWEALTH of VIRGINIA***

### ***Department of Employment Dispute Resolution***

#### **COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Juvenile Justice  
Ruling Number 2004-896  
November 3, 2004

The Department of Juvenile Justice (DJJ or the agency) has requested a compliance ruling regarding two grievances initiated by the grievant on July 20, 2004 and one grievance initiated by the grievant on August 9, 2004. The agency requests that the three grievances be consolidated for a single hearing. For the reasons discussed below, the agency's request for consolidation is granted.

#### FACTS

The grievant was employed by the agency as an intake, probation and parole officer. On June 25, 2004, the grievant was issued two Group II written notices. On July 20, 2004, the grievant initiated two grievances challenging these written notices. On July 12, 2004, the grievant received a third Group II written notice and was subsequently terminated. The grievant initiated a grievance challenging these actions on August 9, 2004.

The agency has qualified these three grievances for hearing and asks that the grievances be consolidated for a single hearing.<sup>1</sup> The grievant agrees with the agency's request for consolidation.

#### DISCUSSION

Written approval by the Director of this Department or her designee in the form of a compliance ruling is required before two or more grievances are permitted to be consolidated in a single hearing. EDR strongly favors consolidation and will grant consolidation when grievances involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.<sup>2</sup>

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<sup>1</sup> This is the agency's second request for consolidation of these grievances. The agency previously requested consolidation after only one of the three grievances had been qualified for hearing. The agency's request was denied at that time as being premature.

<sup>2</sup> *Grievance Procedure Manual* § 8.5.

While the Group Notices being grieved are distinct disciplinary actions issued for separate alleged offenses, this Department finds that consolidation of the three grievances is nevertheless appropriate. The grievances involve the same parties and common themes of harassment and retaliation, both parties have requested consolidation and, most importantly, consolidation is not impracticable. For these reasons, the three grievances are consolidated for a single hearing.<sup>3</sup> This Department's rulings on compliance are final and nonappealable.<sup>4</sup>

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Claudia T. Farr  
Director

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Gretchen M. White  
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<sup>3</sup> It should be noted that this Department will not automatically consolidate multiple grievances challenging separate disciplinary actions that are based on unrelated circumstances. However, where *both* parties have requested consolidation, the potential for prejudice to either is presumably minimized. For that reason, and in the interest of judicial economy and the economic interests of the parties, this Department *generally* will consolidate such grievances if *both* parties request consolidation *and* this Department does not find consolidation impracticable. *Compare* Switzenbaum v. Orbital Sciences Corp., 187 F.R.D. 246 (E.D. Va. 1999), discussing Rule 42(a) of the Federal Rules of Civil Procedure, which permits the consolidation of actions that pose common questions of law and fact. In that case, the court concluded that “[j]udicial economy generally favors consolidation, but the court must conduct a careful inquiry in this regard that balances the prejudice and confusion that consolidation might entail against the waste of resources, the burden on the parties, and the risk of inconsistent judgments that separate proceedings could engender.” Switzenbaum at 247-248. Likewise, the primary objective of this Department is to ensure that both parties are ensured a full and fair opportunity to present their cases through a well-administered hearing process. Therefore, as is the case with all compliance matters, this Department shall make the final determination as to whether consolidation is practicable and appropriate.

<sup>4</sup> Va. Code § 2.2-1001 (5).