

Issue: Compliance/grievance procedure/documents; Ruling Date: September 20, 2006;  
Ruling #2007-1433; Agency: Department of Corrections; Outcome: request for  
compliance is premature.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

COMPLIANCE RULING OF DIRECTOR  
In the matter of Department of Corrections  
Ruling No. 2007-1433  
September 20, 2006

The grievant has asked for a compliance ruling from this Department. She alleges that the Department of Corrections (DOC or the agency) failed to comply with the grievance procedure by not providing requested documents.

FACTS

The grievant is employed by the agency as a Corrections Officer. On June 12, 2006, the grievant received a Group III Written Notice with suspension, demotion, and a 10% reduction in pay. On July 16, 2006, the grievant initiated a grievance challenging the disciplinary action taken against her.

On August 10, 2006, following the third resolution step, the grievant made a request for documents under the Freedom of Information Act and § 8.2 of the *Grievance Procedure Manual*. On August 28, 2006, after the grievant apparently failed to receive a response to this request, her attorney sent a letter to an agency human resources analyst, advising the agency that it was out of compliance with the grievance procedure. On August 29, 2006, the grievant's attorney requested a compliance ruling by this Department regarding the agency's alleged noncompliance.<sup>1</sup>

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily without this Department's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>3</sup> If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from this Department.

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<sup>1</sup> The grievance was qualified for hearing by the agency head on August 17, 2006; and on August 23, 2006, the agency requested the appointment of a hearing officer. This Department received the grievant's request for a compliance ruling prior to making an appointment.

<sup>2</sup> *Grievance Procedure Manual* § 6.1.

<sup>3</sup> *Grievance Procedure Manual* § 6.3.

In this case, the grievant's request for a compliance ruling is premature because the grievant has not shown that she first notified the agency head in writing of the alleged procedural violations, as required by the grievance procedure.<sup>4</sup> The grievant is therefore advised that if she still desires a compliance ruling from this Department, she must first give written notice of the alleged noncompliance to the agency head and allow the agency five days to correct any noncompliance. Only once the grievant has satisfied this procedural prerequisite will this Department address her claim of noncompliance.

As a general rule, a party may raise a claim of noncompliance at any point in the grievance process.<sup>5</sup> However, because a request for the appointment of a hearing officer is also pending with this Department, if the grievant intends to request a compliance ruling regarding her August 10, 2006 document request, she must give written notice to the agency head within ten days of the date of this ruling.<sup>6</sup> If she fails to give such notice, this Department will appoint a hearing officer, who may address any remaining issues regarding document production.<sup>7</sup> However, if the grievant gives the agency head timely notice of noncompliance, this Department will stay the appointment of a hearing officer until resolution of the compliance matter.

This Department's rulings on matters of compliance are final and nonappealable.<sup>8</sup>

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Claudia T. Farr  
Director

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<sup>4</sup> Although the grievant, through her attorney, had advised the agency of its alleged non-compliance, she had done so by notifying a human resources analyst, rather than the agency head.

<sup>5</sup> *Grievance Procedure Manual* § 6.3.

<sup>6</sup> To avoid any unnecessary delay in the appointment process, the grievant must also provide this Department with a copy of any such written notice.

<sup>7</sup> *Grievance Procedure Manual* § 8.2.

<sup>8</sup> Va. Code § 2.2-3003(G).