

Issue: Compliance/Grievance Procedure/documents; Ruling Date: January 30, 2007;  
Ruling #2007-1515; Agency: Department of Corrections; Outcome: grievant not in  
compliance



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

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections  
Ruling No. 2007-1515  
January 30, 2007

The grievant has asked for a qualification ruling from this Department. In his letter requesting qualification, the grievant also has indicated his dissatisfaction with the agency's alleged failure to respond to his requests for production of documents, which is also documented in the grievance record. For that reason, this ruling will address the production of documents compliance issue and a forthcoming ruling will address the qualification issue.

FACTS

On October 19, 2006, the grievant initiated a grievance challenging a Notice of Improvement Needed/Substandard Performance he received on October 17, 2006. After being denied relief at the second management resolution step, the grievant sent the second step respondent a memorandum which included the following statement: "I requested from you and was ignored other documentation that supported this action against me to be [the facility's] STANDARD." Similarly, after being denied relief at the third management resolution step, the grievant forwarded his grievance to the agency head for qualification and attached a memorandum to his grievance which included the following language: "[p]resent to me documentation that other supervisors at [the facility] have received substandard write-ups for miscounts" and "[p]resent to me policy or procedure that requires a watch commander to conduct an investigation when a miscount occurs[.]" The agency head subsequently denied the grievant's request for qualification, but makes no mention of the grievant's request for documents.

Based on the grievant's narrative statement in his request for qualification sent to this Department, it appears that he has yet to receive the requested documents and continues to seek them. In particular, in his request for qualification to this Department, the grievant states: "[w]hy have I been denied documentation that other supervisors at [the facility] have received substandard write-ups for miscount:" and "[p]resent me [w]ith policy or procedure that requires a watch commander to conduct an investigation when a miscount occurs[.]"

## DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</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>2</sup> If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from this Department. Should EDR find that the agency violated a substantial procedural requirement, EDR may render a decision against the noncomplying party on any qualifiable issue, unless the noncomplying party can establish just cause for its noncompliance; rendering such a decision is reserved for the most egregious of circumstances. For instance, if a party ignores a previous compliance order from EDR, a ruling in favor of the opposing party may be granted.

In this case, the grievant's request for a compliance ruling is premature because the grievant has not shown that he first notified the agency head in writing of the alleged procedural violations, as required by the grievance procedure.<sup>3</sup> Assuming that the grievant has still not received the requested documents, he must notify the agency head, in writing, of the alleged noncompliance. If it is not corrected within five days of receipt of the notice, the grievant may then request, in writing, a compliance ruling from this Department.

Further, as a general rule, a party may raise a claim of noncompliance at any point in the grievance process.<sup>4</sup> However, because the grievant's request for qualification is also pending with this Department, if he intends to request a compliance ruling regarding his requests for documents, he must give written notice to the agency head within **ten work days of the date of this ruling**. If he fails to do so, this Department will rule on his request for qualification without regard to the alleged noncompliance. However, if the grievant gives the agency head timely notice of noncompliance, this Department will stay its ruling on the grievant's qualification request until resolution of the compliance matter.

We are also compelled to note that the grievance statute provides that "[a]bsent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the

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<sup>1</sup> *Grievance Procedure Manual* § 6.1.

<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> See EDR Ruling No. 2006-1183 ("For a letter of noncompliance to satisfy this procedural prerequisite, it must, at a minimum, provide clear notice that the party writing the letter considers the other party's conduct to constitute noncompliance, and it must advise the opposing party of the specific conduct which is alleged to be noncompliant.").

<sup>4</sup> *Grievance Procedure Manual* § 6.3.

grievance, by the opposing party.”<sup>5</sup> This Department’s interpretation of the mandatory language “shall be made available” is that absent just cause, all relevant grievance-related information *must* be provided. The grievance statute further states that “[d]ocuments pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance.”<sup>6</sup>

This Department’s rulings on matters of compliance are final and nonappealable.<sup>7</sup>

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Claudia T. Farr  
Director

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<sup>5</sup> Va. Code § 2.2-3003(E); *Grievance Procedure Manual*, § 8.2. “Just cause” is defined as “a reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9. Examples of “just cause” include, but are not limited to, (1) the documents do not exist, (2) the production of these documents would be unduly burdensome, or (3) the documents are protected by a legal privilege.

<sup>6</sup> *Id.* Documents, as defined by the Rules of the Supreme Court of Virginia, include “writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form.” *See* Rules of the Supreme Court of Virginia, Rule 4:9(a)(1).

<sup>7</sup> Va. Code § 2.2-3003(G).