

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: November 17, 2010; Ruling No. 2011-2820; Agency: Department of Juvenile Justice; Outcome: Grievant Not In Compliance.



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

**COMPLIANCE RULINGS OF DIRECTOR**

In the matter of the Department of Juvenile Justice  
Ruling No. 2011-2820  
November 17, 2010

The agency has requested a compliance ruling regarding the grievant's September 13, 2010 grievance with the Department of Juvenile Justice ("DJJ" or the agency). The agency asserts that it has not been provided with documents requested pursuant to the grievant's September 13<sup>th</sup> grievance.

FACTS

On September 13, 2010, the grievant initiated a grievance challenging the agency's termination of his employment. Specifically, the agency discharged the grievant for alleged assault and battery of a family or household member. The agency asserts that on July 27, 2010, a juvenile and domestic relations court determined that there was sufficient evidence to justify a finding of guilt, placing the grievant on probation for two years with final disposition of the charge being deferred until July 30, 2012. The agency concludes that the conduct which resulted in this court action, and the grievant's being on probation for a violent offense, (1) severely damaged grievant's ability to be an effective corrections officer, (2) undermines the mission and activities of the agency, and (3) subjects the Department to potential liability with regard to the supervision of residents.

Pursuant to the September 13, 2010 grievance, the agency has requested four groups of documents:

(1) documents relating to the grievant's arrest on domestic assault and battery charges, including arrest warrants or protective orders;

(2) documents submitted to the court by the grievant or his attorney relating to the charge(s);

(3) documents relating to the grievant's appearance before the court on the charges, including any deferred finding referral orders, or other decisions by the court relating to the disposition of the case and the grievant's placement on probation;

(4) documents from the court and/or county probation office specifying the terms and conditions of the grievant's probation.

The agency contends that the grievant never responded to the agency's request, a charge the grievant does not dispute. However, the grievant contends that he has no documents in his possession that the agency does not already have in its possession.

### 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 (EDR'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 opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from the EDR Director, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.<sup>3</sup>

#### *Documents*

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 grievance, by the opposing party.”<sup>4</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. “Just cause” is defined as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.”<sup>5</sup> For purposes of document production, examples of “just cause” include, but are not limited to, (1) the documents do not exist, (2) the production of the documents would be unduly burdensome,

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.

<sup>2</sup> *See Id.*

<sup>3</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant the EDR Director the authority to render a decision on a qualifiable issue against a noncompliant party, this Department favors having grievances decided on the merits rather than procedural violations. Thus, the EDR Director will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, this Department will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

<sup>4</sup> Va. Code § 2.2-3003(E); *Grievance Procedure Manual*, § 8.2.

<sup>5</sup> *Grievance Procedure Manual* § 9.

or (3) the documents are protected by a legal privilege.<sup>6</sup> The 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>7</sup>

This Department has also long held that both parties to a grievance should have access to relevant documents during the management steps and qualification phase, prior to the hearing phase. Early access to information facilitates discussion and allows an opportunity for the parties to resolve a grievance without the need for a hearing. To assist the resolution process, a party has a duty to conduct a reasonable search to determine whether the requested documentation is available and, absent just cause, to provide the information to the other party in a timely manner.

As an initial point, we note that the agency did not inform the grievant of his alleged non-compliance and give him 5-workdays to correct it. However, because the grievant has lost employment and in an effort to expedite the processing of this grievance, we will address the agency’s request ruling now.

The agency appears to have requested documents that would seem to be potentially relevant to the grievant’s grievance. The grievant should have responded to the request and therefore is out of compliance with the process. However, the grievant has represented to this agency that the agency has all documents that are responsive to its request. The agency counters that all it has is the original arrest warrant. Accordingly, within **10 workdays of its receipt of this ruling**, the grievant is ordered to produce any other documents responsive to the agency’s request, or, if applicable, provide the agency with a written “just cause” explanation as to why any such documents will not be produced, such as the documents are protected by a legal privilege.<sup>8</sup> As noted above, documents pertaining to nonparties may be redacted to protect personally identifiable information so long as relevant information is not redacted.

This Department’s rulings on matters of compliance are final and nonappealable.<sup>9</sup>

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Claudia T. Farr  
Director

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<sup>6</sup> See, e.g., EDR Ruling No. 2008-1935, 2008-1936; EDR Ruling No. 2001QQ.

<sup>7</sup> Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

<sup>8</sup> If the grievant provides the agency with a written “just cause” explanation, the agency may challenge the grievant’s “just cause” rationale for not producing the documents through the noncompliance provisions of the grievance process. See *Grievance Procedure Manual* §6.3.

<sup>9</sup> See Va. Code § 2.2-1001(5); § 2.2-3003(G).