

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Terrence T. Haggins 247777,)

Appellant,)

vs.)

South Carolina Department of Corrections,)

Respondent.)

NOTICE OF APPEAL

DOCKET NO. -ALJ-04- -

GRIEVANCE NO.:

Notice is hereby given that Terrence T. Haggins 247777 does hereby appeal the final decision of the South Carolina Department of Corrections dated 4/23/12 and received on 5/2/12, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. DHO did not take into consideration penalties given to other inmates for the same or similar violations pursuant to SCDC (South Carolina Department of Corrections) Policy Procedure "Inmate Disciplinary System" OP-22.14 section 16.2.
2. Warden did not review appeal in compliance with policy/procedure pursuant to SCDC OP-22.14 Section 19.2 and 19.3. Had he reviewed it in compliance with policy/procedures and reviewed disciplinary hearing tape of all inmates involved in this incident report he would have known that DHO did not comply with SCDC Policy OP-22.14 sect. 16.2 of penalties given to other inmates for same or similar violation where both Lazarus Brannon in smu cell-134 and inmate Maldonado Banegas who was my cell mate were not found guilty.
3. The time of return of step 1 grievance had expired and was given back to me 72 days later after 30 day time frame to return it.

Appellant's Name Terrence Haggins

Signed

P.O. Box 205

Mailing Address

Dated

5/2/12

City, State, Zip Code Ridgeville, S.C. 29472

CERTIFICATE OF SERVICE

I hereby certify that I, Terrence Haggins (your name), on the 2 day of August, 2012, in Ridgeville (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Lieber C.I.

Address: P.O. Box 205

City, State, Zip Code: Ridgeville South Carolina 29472

Print your name Sign your name
(See reverse side for instructions)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

11/20/11 (pm) Page 1 of 1

Institution / Center: <u>Lieber</u>	
Date of Report: <u>11-17-11</u>	Time of Report: <u>Approx 11:05am</u>
Reporting Official: <u>Off. Lopez</u>	Date of Incident: <u>11-17-11</u>
Location of Incident: <u>SMU B wing Room 134 and 135</u>	Time of Incident: <u>Approx 11:00am</u>
Inmate(s)/Resident: <u>SCDC#</u> Age Race Sex	Employee(s) Involved:
1. <u>Lazarus Brannon # 227847</u>	1. <u>Agency Search Team</u>
2. <u>Maldonado Banegas # 343494</u>	2. <u></u>
3. <u>Terrence Haggins # 247777</u>	3. <u></u>
4. <u>DD3/MB-134/11-19-21/DD3/MB-135/12-11-44</u>	4. <u></u>
5. <u>DD3/MB-135/14/24/14</u>	5. <u></u>

On the above date and approximate time: While conducting a routine search of SMU B wing Room 134 and 135 the following was confiscated in a vent ~~located~~ that connected the two rooms: A Samsung cell phone charger. The item was confiscated from the room by an Agency Search Team member and Off. Lopez of Lieber Contraband. All inmates will be charged: Lazarus Brannon # 227847, Maldonado Banegas # 343494, and Terrence Haggins # 247777. NONE claimed ownership.

- 898 -

Signature: <u>[Signature]</u>	
Evidence: <u>Samsung cell phone charger</u>	
Witness(es): <u>MIN # 11-11-0421-0074</u>	
Supervisor's Comments: <u>The above inmates will be charged for the above incident.</u>	
Signature: <u>Kevin Williams</u> Title: <u>LT</u>	Date/Time: <u>11-17-11</u>
Major / Responsible Authority: <u>Refer to DHO</u>	
<u>All (2) I/m's charged with 898.</u>	
Signature: <u>[Signature]</u> Title: <u>Min</u> Date: <u>11/17/11</u>	

STG Related - Refer to STG Committee () Yes ☒ No () Unknown	
This Incident is DRUG related () Yes ☒ No () Unknown	
Action Taken <u>398</u>	
() Informal Resolution	
() Administrative Resolution	
☒ Refer to Disciplinary Hearing	

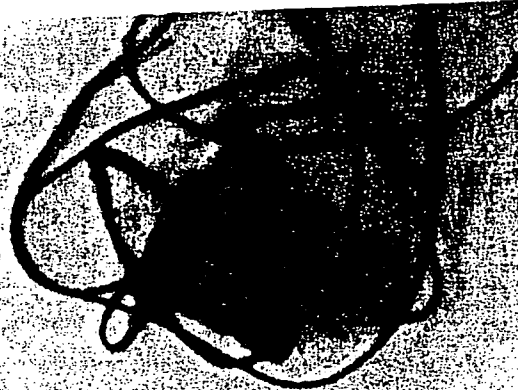
EVIDENCECase No. 11-11-39Evidence Description Samsung cell phone
chargerPlace Evidence Found SMY B Room 1017
Connecting Room 134 + 135Date & Time of Recovery 11-17-11 Approx 11:02 AMSuspect Lazarus Brannon # 227842 Offense 898Victim Maldonado Barrios # 343494 / Terrence HaginsEvidence Recovered By Stacy 40 # 247777
Signature, Rank**CHAIN OF POSSESSION OF EVIDENCE**

Signatures Required

From	To	Date	Time
<u>Stacy</u>	<u>Drop box</u>	<u>11/17/11</u>	<u>12:00 PM</u>

SCDC S-23 (Rev. October, 1996)

3 copies



11-11-39

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD**

sc#: 75 Inmate Name: Haggins, Terrence SCDC#: *247777*
 wing Area: MB-135 Job: _____ Custody: DD3

Hear Date: 11/17/11 Offense Time: 11:00 AM/PM Institution: Lieber - SMU B-Wing, Room 134 & 135
 (898) The Possession of Any Cell Phone or Other Type of Communication Device:
 receives or uses (audio/visual), conceals, disposes, stores, facilitates, barter, sales, of cellular phones or other communications equipment and/or any components thereof. is includes, but is not limited to, MP3 players, I-pods, or any like devices.

Hearing Officer/Employee: Sherry Lopez Title: OFC (Contraband)
INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF HIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

INMATE WAIVERS:

- ☐ I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING
☐ I DO NOT WANT TO BE PRESENT AT MY HEARING
☒ I DO WANT MY ACCUSER PRESENT AT THE HEARING
☐ I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING
- ☐ I WAIVE MY RIGHT TO A HEARING
SMU/SEGREGATION ONLY
☒ I WANT A COUNSEL SUBSTITUTE
☐ I DO NOT WANT A COUNSEL SUBSTITUTE

CS-Bachman Assigned (Reading Level 05.6)

Date & Time Notified: 11/23/11 4:17 PM By (Print): OFC JOHN PARKER
 Inmate Signature: Terrence Haggins SCDC#: 247777 Date: 11/23/11

HEARING INFORMATION:

Hearing Date: <u>12/1/11</u>	Hearing Time: <u>10:30 am</u> am/pm	Tape: <u>G1-11</u>	Side: <u>B</u>	Start: <u>359</u>	End: <u>131</u>
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EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING

OFFENSE CODES	398			
INMATE PLEA (G, NG, None)	NG			
FINDINGS (G, NG, DS)	C			

Maxout
04-24-14

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT: (B) OFFICER'S REPORT: (C) WITNESS TESTIMONY: (D) OTHER. EXPLAIN IN DETAIL: The officer report

HEARING LENGTH: 7 (MINUTES)

SANCTIONS:

Loss of Privileges (Days) _____ Reprimand: _____ Loss of Good Time (days): _____
 * Property (Days) _____ Extra Duty: _____ Restitution: \$ _____
 * Canteen (Days) 30 Visit Suspension Thru 341
 * Other (Days) 30 Cell Restriction (Days): _____
 * Disciplinary Detention (Days): _____

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: The is the main reason

CREDIT FOR PHD TIME SERVED? YES/NO IF YES, DAYS _____

DATE INMATE PLACED IN PHD 1/1

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: _____ DATE: 12/1/11

HEARING OFFICER (PRINT NAME) Sherry Lopez

APPROVED/REVERSE/MODIFY Warden REASON _____

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

White - Institutional Record Canary - Inmate (Service of Disciplinary Report)

ad - Inmate (Service of Disciplinary Hearing Disposition) Pink - Central Record

When there is restitution, a copy of this form should be forwarded to Financial Accounting.)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS INMATE GRIEVANCE FORM

STEP 2

MAR 23 2012

Office Use Only

INMATE NAME: Terrence T. Haggins
SCDC NUMBER: # 247777
INSTITUTION: LIEBER C.I.
HOUSING UNIT: CA-11
WORK ASSIGNMENT: MLA

INMATE GRIEVANCE

Grievance No. LC2-11-02-11
Code: General
Policy
Disc. Hear. ☒
Class.
Date Received 3/19/12
IGC Initials J

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Issue 1: Scene Disciplinary Policy 08-22.14 Sect. 16.2 Mandates: Hearing officer "Will" take into consideration: The Penalties Given to other inmates for the same or similar violations. Hearing officer dismissed Lazarus Brannon #227347 (227347) case who was included in report with me that convicted me. The report specifically asserted: "While conducting a routine search of Smu B-wing Room 134 and 135 the following was confiscated in a vent that connected the two rooms: A Samsung Cell Phone Charger. The item was confiscated for in the room by an Agency Search team member and Ofc. Lopez of Lieber Correctional. All inmates will be charged: Lazarus Brannon #227347, Maldonado Banegas #345444, and Terrence Haggins #247777. None claimed ownership." Therefore, Hearing officer was not in compliance with policies/procedure when he dismissed Lazarus case and convicted me. See SCDC Policy 08-22.14 Sect. 16.2. The report does not state what specific cell it came out of. See report.

~~Issue 2: The report does not state what specific cell it came out of. See report.~~

~~Issue 3: The Warden's review would have revealed that nothing in the report asserted that it came out of my cell or knew it was in the vent because report does not say that. That report is clueless as to what vent it actually was taken out of with accuracy as a fact as stated by Policy 08-22.14 3.2. There was no witnesses called which leaves the report the only thing to be used against me for accused. The Warden's review would have revealed that regardless what an office states later, the report is not certain or sure if the item found came from cell-135. The facts alleged in the report are insufficient and charge should have been expunged.~~

TERRENCE T. HAGGINS 3/15/12

Grievant Signature

Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Possession or Attempt to Possess a Cell Phone (898) on December 1, 2011, under SCDC OP-22.14, Inmate Disciplinary System, dated September 1, 2009, and the sanction(s) imposed, which included the loss of -0- days accrued good time, were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received twenty-four (24) hour notice prior to the hearing, you were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

[Signature] 3/15/12
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature

Date

IGC Signature

Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

C-111
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: TERRENCE T. HARRISON
SCDC NUMBER: #219777
INSTITUTION: LESLIE CORR. INST.
HOUSING UNIT: SMU-B-135
WORK ASSIGNMENT: _____

Office Use Only
Grievance No. LCI 1662-11
Code: General _____
Policy _____
Disc. Hear. ✓ 12-1-11
Class. 898
Date Received 12/12/11
IGC Initials ✓ 108

DEC 08 11

9 Per complaint to PIO

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) I APPEAL DAD'S DECISION OF 12-1-11 ON CHARGE OF 398 "POSSESSION OF CONTRABAND" ON THE FOLLOWING GROUNDS: INCIDENT REPORT STATES "WHILE CONDUCTING ROUTINE SEARCH OF SMU-B WING ROOM 134 AND 135 THE FOLLOWING INMATES COMPLETED IN A MENT THAT CONNECTED THE TWO ROOMS". INCIDENT REPORT INCLUDES THREE (3) INMATES WITH SAME CHARGE INMATE LAZARUS BRANNON #22787 WAS FOUND NOT GUILTY WHILE I WAS. SCDC REG. 4 OF 22.14 SECT. 14.2 "SENTENCING GUIDELINE 3" MANDATES: "WHEN SENTENCING AN INMATE, THE HEARING OFFICER WILL TAKE INTO CONSIDERATION: PENALTIES GIVEN TO OTHER INMATES FOR THE SAME OR SIMILAR VIOLATIONS." THERE WERE SEVERAL OTHER INMATES WITH SIMILAR CHARGES 12-1-11 WHO ALL WERE DISMISSED, CASES DISMISSED.

ACTION REQUESTED:

THAT CHARGE BE EXPUNGED.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

AFTER BEING ADVISED BY DAD MY RIGHT TO APPEAL DECISIONS OF 12-1-11 BY SUBMITTING GRIEVANCE TO SGC.

TERRENCE T. HARRISON 12/12/11

Grievant Signature Date

ACTION TAKEN BY IGC:

See Dad's response

[Signature] 3/2/12
IGC Signature Date

[Signature] _____
Grievant Signature Date

- ☒ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

WARDEN'S DECISION AND REASON:

Inmate Haggins:

This is in response to LCI-1662-11 In accordance with Agency Policy OP-22.14, "Inmate Disciplinary System", section 19.2 and 19.3, inmates may appeal the decision of the Hearing Officer within 15 days of receiving written decision by the Disciplinary Hearing Officer. The following factors must be considered when reviewing an appeal: (1) whether the Hearing Officer acted in substantial compliance with policies/procedures. (2) whether the decision of the Hearing Officer was based on substantial evidence. (3) whether, under the circumstances, the sentence imposed was proportionate to the violation.

On December 1, 2011 you were convicted of 898 Possession of Any Cell Phone. All time frames and procedures were followed. No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence and Officer Lopez report.

Based on this information, your appeal is without merit and therefore denied. If not satisfied with my response, see Step 5 below.

- ☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Terence T. Haggins 3/15/12
Grievant Signature Date

W. C. M. 42 3-13-12
Warden Signature Date

[Signature] 3/15/12
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

ADMINISTRATIVE LAW COURT DIVISION

TERRENCE T. HAGGINS, #247777,

APPELLANT,

vs.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
RESPONDENT.

DOCKET NO.: 12C0279

GRIEVANCE NO.: LCI 1662-11

BRIEF OF APPELLANT

STATEMENT OF THE CASE

ON NOVEMBER 17, 2011, AFTER COMING OFF CRISIS INTERVENTION (C.I.) WITHOUT PROPERLY DRESSING AND OUT OF SMO A-125 TO SMO B-135 AND WITHOUT ANYTHING BUT A TALL ARMED MY BODY, AND WITHOUT MATTRESS AND HAVING TO SLEEP ON STEEL MUD IN A CELL WITH MEXICAN INMATE NAMED ORLEN MALDONADO BANEAS #343494, THE AGENCY SEARCH TEAM CAME TO THE SPECIAL MANAGEMENT UNIT ON SMO B SIDE AND BEGAN SEARCHING CELLS AT CELL-128 - WHICH IS BEHIND A WALL AND ON UP TO CELL 134 AND 135. THE SEARCH TEAM CAME TO BOTH CELL 134 AND 135 AND HAD THEM - THE INMATES ROLLED OUT OF THEIR ROOMS AND AWAY FROM THE ROOM TO WHERE THE INMATES COULD NOT SEE WHAT WAS GOING ON. TERRENCE HAGGINS AND HIS CELLMATE WAS ORDERED TO GO STAND BEHIND THE WALL THAT WAS IN FRONT OF THEIR CELL. THEY STOOD IN FRONT OF CELL-129 BEHIND THE WALL. OFFICER LOPEZ CAME FROM BEHIND THE WALL WITH AN AGENCY SEARCH TEAM MEMBER AND ASKED ALL INMATES IN CELLS 134 AND 135 IF THE CELL PHONE CHARGER WAS THEIRS. ALL INMATES DENIED AND CLAIMED NO OWNERSHIP OF THE CHARGER. OFFICER LOPEZ WROTE AN INCIDENT REPORT UP ON ALL INMATES - ALL THREE (3) INMATES, CHARGING CELL-134 INMATE LAZARUS BRANNON #227847, MALDONADO BANEAS #343494, AND TERRENCE HAGGINS #247777 WHO WAS IN CELL-135. ON DECEMBER 1, 2011, ALL INMATES WERE TAKEN TO THE PRISON ADJUSTMENT COMMITTEE. ALL INMATES PLEAD NOT GUILTY. THE SAME DAY THERE WERE OTHER PRISONERS CHARGED WITH SAME EXACT OR LIKE OFFENSE AND THEIR CASE WERE DISMISSED. INMATE LAZARUS BRANNON #227847, WHO WAS IN SMO B-134, ONE OF THE INMATES IN TERRENCE HAGGINS #247777, AND MALDONADO BANEAS #343494 CASE, CASE #75, CHARGE WAS DISMISSED. TERRENCE HAGGINS #247777, WHO LIVED IN CELL-135 WITH CELLMATE MALDONADO, WAS CONVICTED. HAGGINS' CELLMATE WAS NOT HEARD THAT DAY BUT THE FOLLOWING WEEK AFTER HAGGINS WAS SENT BACK TO GENERAL POPULATION AND HIS CASE TOO WAS DISMISSED, AND HE WAS SENT TO LEE CORRECTIONAL INSTITUTION. HAGGINS FILED STEP ONE GRIEVANCE AND A WEEK LATER SPOKE WITH THE WARDEN ABOUT THIS MATTER. WHILE IN HOLDING CELL IN OPERATIONS, HAGGINS CONSTRUCTED TO WARDEN THE INCIDENT THAT OCCURRED NOV. 17, 2011, AND TOLD HIM LAZARUS BRANNON #227847 HAD HIS CHARGE EXPUNGED AND THE FOLLOW WEEK HIS CELLMATE (APPELLANT'S CELLMATE) CHARGE WAS DISMISSED. HE TOLD THE WARDEN HE FILED A STEP-1. WARDEN STATED HE HADN'T RECEIVED IT AND THAT WHO SHOULD HAVE EXPUNGED THIS ALSO IF THAT'S THE CASE. APPELLANT'S STEP ONE TIME OF RETURN - 30 DAYS - HAD EXPIRED AND WENT WAY BEYOND LIMITATION.

STATEMENT OF THE ISSUE ON APPEAL

PAGE

1. DISCIPLINARY HEARING OFFICER DID NOT TAKE INTO CONSIDERATION PENALTIES GIVEN TO OTHER INMATES FOR THE SAME OR SIMILAR VIOLATIONS. 1
2. WARDEN DID NOT REVIEW APPEAL IN COMPLIANCE WITH SCDL SOUTH CAROLINA DEPARTMENT OF CORRECTIONS' POLICY / PROCEDURE. 4
3. ~~WARDEN DID NOT REVIEW APPEAL IN COMPLIANCE WITH SCDL SOUTH CAROLINA DEPARTMENT OF CORRECTIONS' POLICY / PROCEDURE~~. FAILURE TO TIMELY RESPOND TO DISCIPLINARY HEARING APPEAL STEP-1 6
4. THERE WAS NO INVESTIGATION CONDUCTED IN ~~APPROPRIATE~~ THIS CASE.

ARGUMENT

DISCIPLINARY HEARING OFFICER DID NOT TAKE INTO CONSIDERATION PENALTIES GIVEN TO OTHER INMATES FOR THE SAME OR SIMILAR VIOLATIONS.

APPELLANT #249777, HIS CELLMATE MALDONADO #343494 OF CELL-135 SMU-B, AND INMATE LAZARUS BRAHUN #227847 CELL-134 OF SMU-B, ARE ALL CHARGED TOGETHER IN THIS ONE INCIDENT REPORT BY OFFICER LOPEZ. NONE OF THEM CLAIMED OWNERSHIP. See incident report dated 11-17-11.

AT HEARING DECEMBER 1, 2011, APPELLANT ARGUED HE HAD MOVED INTO SMU-B CELL-135 WITH INMATE MALDONADO ON NOVEMBER 14, 2011, AFTER HAVING COME OFF SUICIDE STRIP - CELL WATCH OUT OF SMU-A CELL-125, THAT HE WAS NUDE WITHOUT CLOTHING OR PROPERTY AND HAD TO SLEEP ON STEEL BEDS FOR THREE (3) DAYS IN PAIN. THAT HIS CELLMATE GAVE HIM A TOWEL TO WRAP AROUND HIS WAIST. THAT ON NOVEMBER 17, 2011, SEARCH TEAM HAD TO HOLD UP THE TOWEL AROUND HIS WAIST AS HE WAS PLACED IN HAND CUFFS AND ESCORTED AWAY FROM CELL AND HAD TO STAND BEHIND WALL THAT BLOCKED HIM AND HIS CELLMATE FROM SEEING WHAT WAS BEING DONE IN THEIR CELL AS THEY BOTH STOOD IN FRONT OF CELLS 129 AND 130. THAT IT WASN'T UNTIL AFTER SEARCH TEAM LEFT HE WAS GIVEN ANY PROPERTY, 11/23/11 WHEN PROPERTY WAS GIVEN.

LAZARUS ASKED OFFICER LOPEZ WAS THE CHARGE FOUND IN THE MIDDLE BETWEEN THE TWO CONNECTED VENTS. OFFICER LOPEZ STATED, "YES". IN FACT, OFFICER LOPEZ AND AGEN C2 SEARCH TEAM WROTE SEVERAL OF THESE REPORTS ON NUMEROUS INMATES ABOUT THE SAME THING WHICH ON DECEMBER 1, 2011, WERE ALL EXPUNGED. See Disciplinary docket chart of all charges heard December 1, 2011 for possession of cell phone charger in vents. See disciplinary docket chart of the conclusion reached in cases of possession of cell phone charger on Dec 1, 2011 on SMU. Also see 14-69 forms for the conclusion reached in those case of possession of cell phone chargers in vent. See Log Book of SMU for inmates take out their cells to Dho hearing December 1, 2011 - all inmates.

APPELLANT ARGUED THAT LAZARUS #227847 IS PART OF THIS CHARGE WHO LIVED IN SMU-B-134 AND HAS HAD THIS CHARGE EXPUNGED PURSUANT TO SOUTH CAROLINA DEPARTMENT OF CORRECTIONS "INMATE DISCIPLINARY SYSTEM" POLICY / PROCEDURE CP-22.14, APPELLANT'S SHOULD BE ALSO. THAT HIS CELLMATE AND HIM HAD HEARD ITEMS BEING THROWN IN VENT. DHO ASKED APPELLANT TO STEP OUT AND THEN CALLED HIM BACK IN AND BEFORE TAPES CAME ON, TOLD HIM HE GOT TO TAKE THE CHARGE. APPELLANT WAS CONVICTED. ~~See page of Maldonado #343494 of 11-17-11~~
~~See page of Lazarus #227847 of 11-17-11~~
~~See page of Lazarus #227847 of 11-17-11~~

DHO DID NOT ACT IN SUBSTANTIAL (SUBSTANTIAL) COMPLIANCE WITH POLICIES / PROCEDURES. DHO'S PERSON FORGOTTEN TIPS TO THE LEFT. THE ACCUSER TESTIMONY, REPORT, ALONG WITH CELLPHONE CHARGER COULD NOT HAVE GAVE WAY TO THE SLIGHTEST DETERMINATION OF GUILT WHERE NIT THEIR TESTIMONY OF ACCUSER, THE REPORT, OR CELLPHONE CHARGER COULD IN NO WAY MAKE A TRUE CONNECTION WITH APPELLANT BETWEEN ALL THREE (3) INMATE IN THIS REPORT AS THE POSSESSOR OF THE CELLPHONE CHARGER.

IT WASN'T FOUND ON APPELLANT NOR HIS CELLMATE OR IN THEIR CELL-135 BUT IN THE MIDDLE BETWEEN THE VENT THAT CONNECTED THE TWO CELLS - 134 AND 135. See Report dated 11-17-11 See also tape of hearing. THE REPORT IS VOID OF CERTAINTY AS TO WHICH INMATE IS THE OWNER OF THE CELLPHONE CHARGER. See 14-29 report. THE REPORT STATES: "WHILE CONDUCTING A ROUTINE SEARCH OF SMU B-WING ROOM 134 AND 135 THE FOLLOWING WAS CONFISCATED IN A VENT THAT CONNECTED THE TWO ROOMS". See report. ACCUSER NEVER TESTIFIED OR INDICATED THAT CELLPHONE CHARGER WAS APPELLANT'S. See TAPES HEARING. NOR WAS APPELLANT'S FINGER PRINTS FOUND ON IT. THERE WAS NO REPORT OF INVESTIGATION THAT ASSERT THIS. NOR DID APPELLANT INDICATE TO THE COMMITTEE HEARING OFFICER THAT IT WAS HIS. See TAPES.

PURSUANT TO SCDP POLICY / PROCEDURE CP-22.14 SECTION 16.1, THE HEARING OFFICER WILL THEN DECIDE THE INMATE'S GUILT OR INNOCENCE WITH RESPECT TO EACH CHARGE ON THE SCDP FORM 14-69, "DISCIPLINARY REPORT AND HEARING RECORD", BASED ON A PREponderance OF THE CREDIBLE EVIDENCE; IN OTHER WORDS, THE HEARING OFFICER MUST REVIEW ALL OF THE EVIDENCE PRESENTED DURING THE HEARING AND, FROM THE EVIDENCE THAT WAS SUBMITTED, MUST DECIDE WHETHER IT IS MORE LIKELY THAT THE INMATE IS GUILTY OR NOT GUILTY.

THE REPORT WAS TOTALLY VOID OF ANY THING THAT COULD CONNECT APPELLANT TO THE CELLPHONE CHARGER, ALTHOUGH APPELLANT STILL AWAITS IT AT HEARING. PURSUANT TO SCDC POLICY/PROCEDURE 02-22.14 SECTION 15.7 :

THE FAILURE OF THE ACCUSED INMATE TO PRESENT NON-FRIVOLOUS EVIDENCE TO CONTRADICT THE STAFF MEMBER'S REPORT WILL PERMIT THE REPORT TO BE THE ONLY EVIDENCE USED AGAINST THE INMATE. IF, ON THE OTHER HAND, THE ACCUSED INMATE PRESENTS NON-FRIVOLOUS EVIDENCE WHICH, IF TRUE, WOULD CONTRADICT THE FACTS ALLEGED IN THE STAFF MEMBER'S REPORT, THE HEARING OFFICER MUST TAKE AT LEAST OF THE FOLLOWING STEPS AT THE HEARING PRIOR TO THE FINAL DISPOSITION OF THE CASE :

- 15.7.1 QUESTION THE CHARGING EMPLOYEE;
- 15.7.2 EXAMINE ADDITIONAL DOCUMENTARY EVIDENCE (BEYOND INVESTIGATION REPORTS AND/OR WRITTEN STATEMENTS BY THE CHARGING EMPLOYEE OR WITNESSES); OR
- 15.7.3 QUESTION OTHER WITNESSES.

APPELLANT AT THE TIME OF FILING GRIEVANCE WAS GIVEN ONLY A TWO(2) PAGE POLICY SHEET THAT DID NOT HAVE THE WHOLE POLICY/PROCEDURES AND IT ALSO WAS FROM THE YEAR 2007. THE ONLY COPY OF 02-22.14 INMATE DISCIPLINARY POLICE IS LOCATED IN LAW LIBRARY. UPON ARRIVAL INMATES BROUGHT TO AN INSTITUTION ARE TO RECEIVE A PERSONAL COPY OF SCDC POLICY SO THAT THEY WILL KNOW THE RULES, BECAUSE POLICY CHANGES.

THE CASE WAS SO SELF EXPLANATORY THAT THERE WAS NO NEED TO ARGUE, ALTHOUGH APPELLANT DID. THE REPORT WAS VOID OF WHAT INMATE IT WAS, THE ACCUSER DIDN'T STATE THAT IT WAS APPELLANT'S, THE CELLPHONE CHARGER DID NOT HAVE APPELLANT'S FINGER PRINTS ON IT, NONE OF THE INMATES IN THE CHARGE EVER STATE THAT IT WAS APPELLANT'S, AND ALSO APPELLANT STATE THAT THE CELLPHONE CHARGER WAS HIS. THIS WAS MORE THAN ENOUGH NON-FRIVOLOUS EVIDENCE TO ASSIST DAO TO A DETERMINATION OF APPELLANT'S INNOCENCE.

I THINK IT SIGNIFICANT TO GIVE A BRIEF AND COMPREHENSIVE HISTORY OF APPELLANT AT THIS TIME SO THAT THIS COURT IS FULLY AWARE OF THE PERSISTENT CIRCUMSTANCE OR SITUATION IN THIS MATTER AND POSSIBLY WHY HAGGINS IS FINGER POINTED BUT WITHOUT EVIDENCE CONNECTING HIM TO CHARGE AS POSSESSOR OF CELLPHONE CHARGER FROM THE OTHER TWO(2) INMATES IN THIS CASE WHO HAD THEIR CHARGE EXCHANGED. THE FOLLOWING INFORMATION CAN BE OBTAINED BY THIS COURT FROM SCDC AGENCY HEAD QUARTERS OR GENERAL COUNSEL.

THE HISTORY OF HAGGINS AT LIEBER C.I. IS THIS :
HAGGINS ARRIVED AT LIEBER C.I. IN JUNE/JULY 6/2006 FROM BROAD RIVER C.I. AND HOUSED IN ASHLEY UNIT. AROUND NOVEMBER/DECEMBER 2006 HAD AN ALTERCATION WITH THREE(3) OFFICIALS : SERGEANT VONMUTTUS, OFFICER RODGERS AND ANOTHER OFFICER WHICH LED TO ASSAULT. ON JANUARY 2007 HE WAS CONVICTED OF ASSAULT ON STAFF WHILE ON SMU A-121. SERGEANT MANIGALIT TOLD HIM THAT THE OFFICERS HE HAD ASSAULTED SAID THEY WERE GOING TO GET THEIR GET BACK AND DOE HIM HARM OR USE INMATES TO DO IT FOR THEM. HAGGINS FILED GRIEVANCE ON IT. ON FEBRUARY 20, 2007, OTC, RODGERS, ONE OF THE ASSAULTED OFFICIALS, CAME TO WORK ON SMU. CLASSIFICATION APPARENTLY FAILED TO PUT A SEPARATION FLAG IN COMPUTER. HAGGINS HAD NOTIFIED VERBALLY AND ON PAPER ALL LIEBER C.I. STAFF ABOUT THE MATTER AND SHOWED THEM THE 19-69 CONVICTION FORM HE RECEIVED FROM THE ASSAULT ON STAFF CHARGE HEARD IN JANUARY AND SCDC POLICY/PROCEDURE "INMATE CLASSIFICATION PLAN" 02-21.04 SECTIONS 18 AND 18.2. THAT STATES WHEN AN INMATE HAS THREATENED IN OR PHYSICALLY ASSAULTED AN SCDC EMPLOYEE HE IS TO BE TRANSFERRED AND SEPARATION CAUTION FLAG INTO COMPUTER. APPELLANT NOTIFICATION OF THE MATTER TO WAS SENT TO GENERAL COUNSEL, WARDEN BURT OF LIEBER, MAJOR NETTLES, CLASSIFICATION MS. BOWD AT LIEBER C.I., MICHAEL A. MATTHEWS BRANCH CHIEF INSTITUTIONAL CLASSIFICATION, INTERNAL AFFAIRS, AND FILED GRIEVANCE. ON FEBRUARY 20, 2007, APPELLANT RECEIVED ASSAULT CHARGE FOR STABBING OFFICER WHO TOLD HIM BEFORE THE ASSAULT IT WAS NOT OVER. APPELLANT WAS CONVICTED AROUND MARCH 2007. ON AROUND ABOUT AUGUST/SEPTEMBER 2007, HAGGINS RECEIVED ANOTHER CHARGE OF ASSAULT ON SGT. MANIGALIT, AND ANOTHER FOR THREATENING CORPORAL JORDAN WILLIAMS ON AROUND ABOUT 2008. ON AROUND ABOUT APRIL APPELLANT RECEIVED CHARGE ON OFFICER JOHNSON. AFTER WON HIS CRIMINAL CASE IN SUPREME COURT AND LEAVING LIEBER C.I. ON MAY 5, 2008. DAO BACK HELD A HEARING AND AFTER CONVICTING HIM THREATENED HIM STABBING "YOU BETTER NOT COME BACK HERE BECAUSE IF YOU DO NO MATTER WHAT CHARGE YOU GET OR INMATE YOU ARE I'M GIVING YOU THE WAY ON EVERYTHING FOR WHAT YOU DID TO MY OFFICERS."

ON MARCH 18/2010, APPELLANT ARRIVED BACK AT LIEBER C.I. AND PLACED ON SMU. HE CONSULTED TO LIEUTENANT STEVENS THAT HE WAS NOT BY POLICY/PROCEDURE TO BE AT THE LIEBER C.I. DUE TO ASSAULT ON STAFF. THAT CLASSIFICATION FAILED TO PUT THE SEPARATION CAUTION ON HIS RECORD. HAGGINS WAS AT THAT TIME IN SMU A-121. HE LATER WAS PLACED ON THE YARD IN ASHLEY A-13. HE WAS THREATENED BY OFFICER AND RELATED TO ALL SERGENTS, LIEUTENANTS, CAPTAIN PAUL SHEPARD THE ASSOCIATE WARDEN THOMPSON, AND WARDEN, ALSO THE MAJOR MA. NETTLES. SERGEANT MARKING WROTE AN INCIDENT REPORT UP ABOUT IT, LATER HE DID NOT WORK ANY MORE IN THE UNIT. APPELLANT FILED GRIEVANCE WHICH NEVER CAME BACK. SGT. VONMUTTUS APPARENTLY TOLD APPELLANT'S ROOMMATE SOMETHING

THAT CAUSED HIM TO PULL A KNIFE ON APPELLANT AND ATTEMPT TO STAB HIM. APPELLANT CELLMATE TOLD HIM SGT. UOAH-UTUS SAID HE HAD TOLD SOMETHING. OCTOBER 13, 2011, APPELLANT INTENTIONALLY LEFT ASHLEY UNIT BECAUSE OF THE THREATS BY OFFICIALS TO HAVE SOMEONE TO HARM HIM. AFTER RECEIVING ROGUS THREATENING CHARGE BY OFC. T. COOPER MAY 2011, WHO APPELLANT WAS TOLD BY THAT IT WAS GET BACK FOR OFFICIAL ASSAULTED IN 2006, WHO APPELLANT HAD IN COURT (ADMINISTRATIVE LAW COURT) 2011 (See i.e., CASE NUMBER 11C1033-13); APPELLANT WENT TO LOCK-UP INTENTIONALLY. NOTE: TIME GIVEN TO ~~THE~~ APPELLANT BY DHO MAY 31, 2011, FOR THREAT ON OFC. T. COOPER, IS UP ON MAY 29, 2012. THAT ON MAY 28, 2012, COOPER ALONG WITH SGT. CROUT, CAME TO THE UNIT APPELLANT WAS HOUSED IN (ONLY COOPER-A CELL-50) AND SHOOK DOWN AND 6/4/12 IN 2009, AFTER ASSAULT ON SGT. MANIGALCT, IN SMU, APPELLANT SLEEP (SLEPT) NUDE ON CONCRETE FLOOR IN STRIP-CELL FOR A TOTAL OF 52 DAYS STRAIGHT. POLICY/PROCEDURE OP-22.12 ONLY REQUIRED STRIP-CELL UP TO 72 HOURS - THREE (3) DAYS. ANY AND EVERY OFFICER THAT PASSED BY HIS CELL HE ASKED TO GET HIS PROPERTY BUT THEY DENIED HIM. HE ASKED LIEUTENANT MCGHEE WHO ALSO DENIED HIM. HAGGINS HAD ANOTHER INMATE TO WRITE AGENCY DIRECTOR ABOUT THE MATTER. HE LIVED ON SMU-A CELL-210 AT THAT TIME. ASSOCIATE WARDEN THOMPSON HAD HIM BROUGHT TO HIS OFFICE. I.T. MCGHEE AND OFC. THOMPSON WAS PRESENT. ASSOCIATE WARDEN TOLD HIM THE DIRECTOR TOLD HIM TO HANDLE THE MATTER. THOMPSON ASKED MCGHEE WAS THE MATTER TRUE. MCGHEE STATED HE REMEMBER THE MATTER. THOMPSON ASKED OFC. JOHNSON ALSO. JOHNSON ASSERTED: "YES, HE DON'T HAVE NO MATTRESS OR CLOTHING". HAGGINS TOLD THOMPSON EVERY DAY ALL DAY ASKED EVERY OFFICER THAT PASSED BY HIS CELL FOR MATTRESS, CLOTHING, AND PROPERTY. THOMPSON ORDERED THEM TO GET HIM A MATTRESS AND NEW CLOTHING. ON OCTOBER 13, 2011, APPELLANT WENT TO HOLDING CELL TO BE PLACED ON PROTECTIVE CUSTODY DUE TO THREATS BY OFFICERS. HE SET IN HOLDING CELL AND SLEPT ON CONCRETE FLOOR IN PAIN TILL OCTOBER 17, 2011. CAPTAIN ANN SHEPARD HAD HIM PLACED ON P.C. OFFICERS PLACED HIM IN SMU-A CELL-107 WITH GANG MEMBER WHO WAS NOT ON P.C. APPELLANT FILED GRIEVANCE AND WAS PLACED ON STRIP-B IN CELL-137 WITH INMATE NATHAN RAY. ASSOCIATE WARDEN THOMPSON AND CLASSIFICATION MS. BAILEY BROUGHT HIM UP BEFORE P.C. REVIEW BOARD. THOMPSON AND CLASSIFICATION MS. BAILEY TOLD HIM THAT ONCE HIS DTD TIME WAS UP, HE WILL NOT BE ABLE TO GO BACK TO LIEBER C.I. YARD. THIS REVIEW WAS 10/26/11. IN NOVEMBER 2011, APPELLANT WENT TO SUICIDE STRIP-CELL ON SMU-A CELL-125. HE SPOKE TO COUNSELOR WHO TOOK HIM OFF NOVEMBER 07, 2011, BUT HELD HIM IN SUICIDE CELL NUDE TILL NOVEMBER 14, 2011. OFFICERS LONDON AND CORPORAL TURBINE CAME TO ESCORT HIM TO CELL-136. HAGGINS REFUSED BECAUSE THE INMATE IN THAT CELL WAS SOMEONE HE GOT INTO IT WITH ON THE YARD. OFFICERS LONDON ATTEMPTED TO MAKE TO FORCE HIM TO GO. APPELLANT REQUESTED TO SEE A SERGEANT. SGT. JOHNSON CAME AND TOLD HIM HE HAD TO GO. HAGGINS WAS FORCED IN THE CELL-136 OF SMU-B BY CORP. TURBINE AND TOLD TO WAIT THERE FOR A MINUTE TILL HE GOT BACK. HAGGINS WAS ALSO IN HAND - CUFFS WHILE IN THE CELL. OFFICERS CAME BACK AND MOVED HIM TO SMU-B CELL-135 RIGHT IN BETWEEN CELL-134 AND 136 WHO HE HAD PROBLEMS WITH - THOSE INMATES IN THOSE CELLS. ON NOVEMBER 17, 2011, THREE (3) DAYS LATER, SEARCH TEAM CAME AND FOUND A CELL PHONE CHARGER IN THE VENT OF BOTH ROOMS.

FOR THE RECORD, APPELLANT CELLMATE OF CELL-135 SMU-B MALDONADO 343499, IS NAMED AS ONE OF THE INMATES IN THE CHARGE THAT LED TO THIS CASE AS AN ACCUSED INMATE. HE HAD HAD HIS CHARGE DISMISSED THE FOLLOWING WEEK AND TRANSFERRED TO LEE CORRECTION INSTITUTION. BOTH LAZARUS AND INMATE MALDONADO CHARGE WAS DISMISSED BASED ON THE SAME FINDINGS THE DHO AND WARDEN BASED THEIR DECISION ON - THE REPORT AND EVIDENCE.

THE EVIDENCE WAS INSUFFICIENT AND COULD NOT CONNECT APPELLANT TO ~~THE~~ VIOLATION WHERE THERE WERE NO REPORT BY OFFICER STATING THEY SAW HIM WITH IT IN HIS HANDS, INMATES STATING IT WAS HIS, REPORT STATING IT WAS FOUND ON HIM OR IN HIS PROPERTY, OR THAT HIS FINGER PRINTS WERE RECOVERED FROM THEM.

PURSUANT TO DDC POLICY/PROCEDURE ~~OP-22.14~~ OP-22.14 SECTION 24.5 EVIDENCE:

ANY EVIDENCE PRESENTED AT THE INITIAL HEARING MAY BE PRESENTED AT THE REHEARING; HOWEVER, IF THE DISCIPLINARY CONVICTION WAS OVERTURNED DUE TO INSUFFICIENT EVIDENCE, ADDITIONAL EVIDENCE MUST BE PRESENTED AND CONSIDERED AT THE REHEARING IN ORDER TO FIND THE INMATE GUILTY.

THE EVIDENCE PRESENTED HERE IN THIS CASE WAS AT THE INITIAL HEARING INSUFFICIENT EVIDENCE. EVIDENCE DIDN'T TEND TO PROVE ANYTHING. THIS IS WHY THE TWO INMATES NAMED IN THIS AS ACCUSED INMATES ALSO CASE WAS DISMISSED. See Evidence form case No. 11-11-39

THE DISMISSAL OF BOTH INMATES CHARGE CHARGED IN THIS CASE WITH APPELLANT EXPOSED DHO ULTERIOR MOTIVE TO DEPRIVE APPELLANT OF HIS DUE PROCESS RIGHT AND CRUEL AND UNUSUAL WHICH INFERENCE CAN BE DRAWN THAT DHO KNEW THAT WHAT HE WAS DOING VIOLATED APPELLANT CONSTITUTIONAL RIGHT WHERE NO REPORT STATED OFFICER SAW HIM WITH IT IN HIS HANDS, INMATE STATING IT WAS HIS, REPORT STATING ~~IT~~ IT WAS FOUND IN HIS PROPERTY, THAT HE WAS THE ONLY INMATE THAT OCCUPIED BOTH CELLS-134 AND 135, ESPECIALLY WHERE THERE WAS NO FINGER PRINTS RECOVERED FROM CELLPHONE CHARGER INDICATING IT WAS APPELLANTS.

ARGUMENT

WARDEN DID NOT REVIEW APPEAL IN COMPLIANCE WITH SDC POLICY / PROCEDURE

APPELLANT MET WITH WARDEN TWICE; ONCE IN DECEMBER 2011, AND ONCE AFTER COMING OFF SUICIDE WATCH IN FEBRUARY 23, 2012. APPELLANT SPOKE TO WARDEN FROM THE HOLD-ING CELL BY OPERATOR. APPELLANT TOLD WARDEN MCCABE HE HAD BEEN MOVED ON SALL B-WING WITH APELMATE IN CELL 135. THAT AGENCY SEARCH TEAM CAME AND SEARCHED CELLS 134 AND 135 AND FOUND WHAT APPEARED TO BE A CELLPHONE CHARGER. THAT ALL INMATES IN BOTH THE CELLS WERE CHARGED WITH 898, POSSESSION OF CELLPHONE CHARGER. MCCABE ASKED WHAT ELSE HAPPENED AND DID APPELLANT GET CONVICTED AND DID HE APPEAL. HAGGINS TOLD HIM THAT INMATE LAZARUS BAHAMON #227447, IS INCLUDED IN THIS CHARGE, AND ON DEC 1, 2011, HAD HIS CHARGE DISMISSED. HE CONSTRUCTED THAT HE WAS CONVICTED AND THE FOLLOWING WEEK HIS CELLMATE MALDAMADO 343494, HAD HAD HIS CHARGE TOO DISMISSED.

THE WARDEN TOLD HIM IT WAS WIKONGA AND HE TOO SHOULD HAVE HAD HIS CHARGES EXCHANGED ALSO. MCCABE ASKED DID HE APPEAL THE DECISION AND HE ASSERTED, "YES". THE WARDEN SAID HE DON'T OR DIDN'T RECEIVE IT YET AND DON'T THINK HE SEEN IT. ON MARCH 12, 2012, THE WARDEN RESPONDED AND DENIED HIM RELIEF. WARDEN STATED NO TECHNICALITIES / PROCEDUREAL ERRORS, OR MISINTERPRETATIONS OF EVIDENCE WAS NOTED AND THE DECISION OF THE DISCIPLINARY HEARING OFFICER WAS BASED ON SUBSTANTIAL (SUBSTANTIAL) EVIDENCE AND LOVEZ REPORT. THAT BASED ON THIS INFORMATION HIS APPEAL IS DENIED.

See Step-1 grievance LCI-1662-11

FIRST, ANY REASONABLE RESPONSIBLE AUTHORITY OFFICIAL WOULD HAVE KNOWN THAT THIS CASE AND THE PROCEDURES TAKEN IT, DID NOT AFFORD APPELLANT ADEQUATE TIME TO PREPARE.

APPELLANT RECEIVED NOTICE OF CHARGE NOV. 23, 2011. See i.e. 19-69 form Disciplinary report and Hearing Record. PURSUANT TO SDC POLICY / PROCEDURE 08-22.14 4.2: THE MAJOR / RESPONSIBLE AUTHORITY WILL REVIEW THE INMATE'S DISCIPLINARY HISTORY AND THE SDC FORM 19-29A. AFTER THIS REVIEW, THE MAJOR / RESPONSIBLE AUTHORITY WILL USE THE SPACE PROVIDED ON THE SDC FORM 19-29A, TO INDICATE HIS / HER DECISION AND THEN WILL SIGN AND DATE THE SDC FORM 19-29A. THE INMATE WILL BE CONSIDERED FORMALLY CHARGED ON THE DATE THE DISCIPLINARY IS ENTERED INTO THE OFFENDER MANAGEMENT SYSTEM.

THE DATE MAJOR SIGNED OFF ON HAGGINS CHARGE WAS 11/21/11. HOWEVER, HAGGINS DID NOT RECEIVE NOTICE OF CHARGES UNTIL NOVEMBER 23, 2011. See 19-69 form. ~~and~~ **NOVEMBER** PURSUANT TO SDC POLICY / PROCEDURE 08-22.14 SECTION 7.2:

ONCE THE INMATE IS FORMALLY CHARGED (AND ENTERED INTO THE OFFENDER MANAGEMENT SYSTEM), THE HEARING WILL BE HELD WITHIN 21 CALENDAR DAYS. HAGGINS TIME WHEN FORMALLY CHARGE APPARENTLY WAS NOV. 21, 2011. AGAIN, HOWEVER, HE DIDN'T RECEIVE NOTICE OF CHARGE UNTIL NOVEMBER 23, 2011. SINCE WEEKENDS ARE EXCLUDED PURSUANT TO POLICY / PROCEDURE 08-22.14, ON NOVEMBER 30, 2011, INMATE REPRESENTER HAD CAME TO HIS CELL FIVE DAYS LATER. ON THE NEXT DAY, DECEMBER 1, 2011, THE HEARING FOR THIS CHARGE WAS HELD. FROM NOVEMBER 23, 2011, TO DECEMBER 1, 2011, EXCLUDING WEEKENDS PURSUANT TO POLICY / PROCEDURE 08-22.14, THE TOTAL AMOUNT (AMOUNT) OF TIME WAS SEVEN (7) DAYS. WITHOUT PROPERTY OR CLOTHING UNTIL ~~and~~ **AROUND** ABOUT NOVEMBER 26, 2011, APPELLANT WAS UNPREPARED - ALTHOUGH USED SUPPLIES FROM OTHER INMATES.

NEVER THELESS, APPELLANT ARGUE, COMMONSENSE TELL US THE REPORT IS CLUELESS AS TO WHO CELLPHONE CHARGER IT IS. See 19-29 incident report dated 11-17-11

THE WARDEN'S REASON AND DECISION WAS BASED ON THE SAME THING AS DHO'S - THE EVIDENCE AND THE REPORT. THE WARDEN STATED "NO TECHNICALITIES / PROCEDURAL ERRORS, MISINTERPRETATIONS OF THE EVIDENCE."

THE REPORT INCLUDED THREE (3) INMATES CHARGED WITH 898: LAZARUS BRANNON, MALDONADO BARRAGAS, AND TERREURE HAGGINS. See incident report dated 11-17-11

LAZARUS BRANNON CHARGE WAS DISMISSED, AND LATER MALDONADO'S CHARGE ALSO. WHATEVER PROMPTED THE DHO TO DISMISS THEIR CHARGE WAS THE SAME ERROR IN TERREURE'S CHARGE BECAUSE ALL INMATES NAMED IN THIS CHARGE HAS THE SAME CASE AND/OR ERROR FOUND IN THEIR CHARGE IS ALSO PRESENT IN TERREURE'S CHARGE.

THE REPORT NEVER STATED THE CELLPHONE CHARGER WAS TAKEN OFF APPELLANT, FOUND IN HIS PROPERTY THAT HE OCCUPIED BOTH CELLS 134 AND 135, OR WAS THE ONLY INMATE NAMED IN THIS REPORT AS ACCUSED OF 898, OR THAT FINGER PRINTS OF APPELLANT WAS FOUND ON IT. See 19-29 report dated 11-17-11.

PURSUANT TO SDC POLICY / PROCEDURE 09-22.14 SECTION 19 APPEALS AND SECTION 19.3:
THE FOLLOWING FACTORS MUST BE CONSIDERED WHEN REVIEWING AN APPEAL:

- WHETHER THE HEARING OFFICER ACTED IN SUBSTANTIAL COMPLIANCE WITH POLICY / PROCEDURES.
- WHETHER THE DECISION OF THE HEARING OFFICER WAS BASED ON ANY EVIDENCE.
- WHETHER, UNDER THE CIRCUMSTANCES, THE SENTENCING IMPOSED WAS PROPORTIONATE TO THE VIOLATION.

A REASONABLE PERSON, WHEN REVIEWING APPEAL, WOULD HAVE KNOWN WHEN ~~REVIEWING APPEAL~~ REVIEWING APPEAL TO REVIEW ~~DISMISS~~ DISPOSITIONS BY DHO GIVEN TO ALL INMATES AT HEARING INCLUDED IN REPORT WHEN REPORT IN FACT NAMED THREE (3) INMATES CHARGE WITH 898 POSSESSION OF CELLPHONE CHARGER TO SEE WHY THEY HAD CHARGE DISMISSED AND WHY APPELLANT WAS CONVICTED WHEN SAME ERROR THAT IS IN THEIR CHARGE EXISTED ALSO IN APPELLANT'S CHARGE. ESPECIALLY WHERE APPELLANT POINTED OUT IN STEP-1 APPEAL THOSE INMATES INCLUDED IN REPORT AS ACCUSED INMATES CHARGES WERE DISMISSED, AND WHERE EVIDENCE COULDN'T LINK APPELLANT TO CHARGER (CELLPHONE CHARGER) AND REPORT WAS NOT CERTAIN AS TO WHO'S CELL PHONE CHARGER IT WAS, AND WHERE DHO DISMISSED TWO OF THE INMATES INCLUDED IN CHARGE AS ACCUSED INMATES AND CONVICTED APPELLANT WAS ERROR THAT VIOLATES HIS CONSTITUTIONAL DUE PROCESS RIGHT.

APPARENTLY THE WARDEN'S MIND SET IS "WHAT EVER MY OFFICERS SAY I'LL GO ALONG WITH NO MATTER IF THE INMATE IS INNOCENT OR RIGHT" THIS IS PART OF WHY MOST OF US FIND OURSELVES IN SITUATIONS WE HATE OR DON'T LIKE TO BE IN. THE WARDEN SHOULD HAVE KNOWN TO REVIEW THE DISPOSITIONS OF ALL INMATES INCLUDED IN THIS CHARGE. ~~BY DHO~~ GIVEN THEM BY DHO TO SEE THE ERROR THAT WARRANTS DISMISSAL OF CHARGE. FURTHERMORE, WHEN REVIEWING APPEAL, SHOULD HAVE KNOWN DHO DID NOT ACT IN SUBSTANTIAL COMPLIANCE WITH POLICY / PROCEDURE WHERE REPORT NEVER STATED OFFICERS FOUND CELLPHONE CHARGE ON HIM OR IN HIS PROPERTY, THAT APPELLANT OCCUPIED BOTH CELLS 134 AND 135 BY HIMSELF, THAT OFFICERS SAW HIM WITH IT IN HIS HAND, THAT INMATES POINTED HIM OUT, WHERE THERE WERE NO FINGER PRINTS TO CONNECT APPELLANT TO CHARGER, THAT HE WAS OR IS THE ONLY ONE NAMED IN CHARGE, AND WHERE DHO CONVICTED HIM BASED ON ~~IN SUFFICIENT~~ REPORT AND INSUFFICIENT EVIDENCE.

See i.e. 19-b9 form of appellant. See Step-1 appeal.

FAILURE TO TIMELY RESPOND TO DISCIPLINARY APPEAL STEP-1

THE DEPARTMENT OF CORRECTIONS CREATED A STATE-CREATED LIBERTY INTEREST IN ACCORDANCE WITH THE 1ST AND 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION WHEN IT ELECTED A GRIEVANCE PROCEDURE TO AFFORD INMATES RELIEF THROUGH EXHAUSTION OF ADMINISTRATIVE REMEDIES BEFORE PROCEEDING TO COURT. SDC POLICY/PROCEDURE "INMATE GRIEVANCE SYSTEM" GA-01.12 PURPOSE: "TO ESTABLISH GUIDELINES FOR THE DEVELOPMENT AND IMPLEMENTATION OF AN INMATE GRIEVANCE SYSTEM WHEREBY INMATES MAY SEEK FORMAL REVIEW OF COMPLAINTS RELATIVE TO DISCIPLINARY HEARING APPEALS, CLASSIFICATION APPEALS, DEPARTMENT POLICIES/PROCEDURES, DIRECTIVES, OR CONDITIONS WHICH DIRECTLY AFFECT AN INMATE."

GA-01.12 POLICY STATEMENT: "THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ADVOCATES TIMELY AND EFFICIENT RESOLUTION OF COMPLAINTS AND GRIEVANCES BROUGHT TO THE ATTENTION OF ADMINISTRATORS BY INMATES. TO THIS END, THE DEPARTMENT WILL DEVELOP, ADMINISTER, AND IMPLEMENT AN INMATE GRIEVANCE SYSTEM ACCESSIBLE TO ALL INMATES REGARDLESS OF THEIR CUSTODY LEVEL, CLASSIFICATION, DISCIPLINARY STATUS, DISABILITIES, OR OTHER ADMINISTRATIVE OR LEGISLATIVE MATTERS AFFECTING INMATES. AT A MINIMUM, THE GRIEVANCE SYSTEM WILL BE DESIGNED TO PROVIDE INMATES WITH A MECHANISM BY WHICH THEY MAY SEEK FORMAL REVIEW OF THEIR COMPLAINTS; PROVIDE A VEHICLE FOR INTERNAL SOLUTIONS AT THE LEVEL HAVING MOST DIRECT CONTACT WITH THE INMATE; AND PROVIDE A MEANS OF MANAGEMENT REVIEW OF STAFF DECISIONS AND POLICY/PROCEDURES THAT MAY BE THE SOURCE OF A COMPLAINT, NOTIFICATION OF THIS POLICY/PROCEDURE WILL BE MADE IN COMPLIANCE WITH THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSON ACT."

APPELLANT ARGUES THAT ON DECEMBER 2/2011, DISCIPLINARY APPEAL STEP-1 WAS SENT TO GRIEVANCE OFFICE. THAT THERE ARE TWO DATES ON STEP-1 GRIEVANCE: DECEMBER 8/2011, AND DECEMBER 12/2011. EXCLUDING WEEKENDS THE TOTAL AMOUNT OF DAYS TO BE RECEIVED BY INMATE GRIEVANCE COORDINATOR WAS SIX(6) DAYS. THE DATE RECEIVED IS ASSUMED TO BE THE DATE IGC JENKINS ENTERED STEP-1 INTO THE OMS SYSTEM. THE PROCESS TOOK 6 DAYS TO RECEIVE STEP-1. See Step-1 disciplinary System Number LCI-1662-11 See also

FROM DATE IGC JENKINS RECEIVED STEP-1 DISCIPLINARY APPEAL TILL DATE OF MARCH 7, 2012, WHEN IGC WROTE "SEE WARDEN'S RESPONSE" AND SIGNED AND DATED IT WAS A TOTAL OF 60 DAYS. See i.e. disciplinary hearing appeal Step-1 Number LCI-1662-11

A STEP-1 DISCIPLINARY HEARING APPEAL IS NEVER TO TAKE 60 DAYS TO RESPOND TO IT. HOWEVER, STEP-2 GRIEVANCE CAN.

IGC HELD DISCIPLINARY HEARING APPEAL STEP-1 IN POSSESSION FOR 60 DAYS. WITHIN THAT TIME NOTHING WAS DONE TO RESOLVE THE MATTER. THE 30 AND 40 DAY TIME FOR WARDEN'S RESPONSE EXPIRED. PURSUANT TO SDC POLICY/PROCEDURE "INMATE DISCIPLINARY SYSTEM" DP-22.14 SECTION 19.2 LAST PARAGRAPH: "THE WARDEN WILL RESPOND TO DISCIPLINARY HEARING APPEALS WITHIN 30 CALENDAR DAYS FROM THE INITIAL FILING OF THE GRIEVANCE."

WARDEN RESPONDED TO DISCIPLINARY HEARING APPEAL STEP-1 3/12/12, WELL OVER 30 OR 40 DAYS TIME LIMIT. SDC "INMATE GRIEVANCE SYSTEM" POLICY/PROCEDURE GA-01.12 SECTION 13.4 STATES: "THE WARDEN WILL RESPOND TO GRIEVANT IN WRITING IN THE STEP-1 INDICATING IN DETAIL THE RATIONALE FOR THE DECISION RENDERED AND ANY RECOMMENDED REMEDIES. THE WARDEN WILL RESPOND TO THE GRIEVANT NO LATER THAN 40 DAYS FROM THE DATE THE GRIEVANCE WAS FORMALLY ENTERED INTO THE OMS SYSTEM BY THE IGC (WITH THE EXCEPTION OF A DISCIPLINARY HEARING APPEAL, WHICH WILL BE RESPONDED TO WITHIN 30 DAYS.)"

ASSUMING IGC JENKINS ENTERED THE DISCIPLINARY HEARING APPEAL STEP-1 INTO OMS SYSTEM DEC 12/2011. STILL YET 63 DAYS HAD PASSED WHEN WARDEN DECIDED TO RESPOND TO APPELLANT'S APPEAL STEP-1.

THE LIEBER ADMINISTRATION OFFICIALS ARE UNDER THE IMPRESSION THAT THEY DON'T HAVE TO INFORM INMATES ABOUT CERTAIN THINGS AND/OR HAVE TO RESPOND AND RETURN GRIEVANCES OR INMATES REQUEST TO STAFF RESPONDED TO. MANY CASES HAVE COME TO THE AJS AND OTHER JUDICIAL BRANCHES CONCERNING THESE ISSUES. THE JUSTIFICATION OF A BACK-UP OR BACK-LOG IN GRIEVANCES IS AS A ONE CENT PEECE OF BUBBLE GUM- STALE. IT'S NOT THE BACK-UP IN GRIEVANCES SUBMITTED BY INMATES THATS THE PROBLEM. BUT THE IGC WHO HAS CONTINUOUSLY FOR YEARS TOOK ADVANTAGE OF THE BACK-LOG JUSTIFICATION TO CONCEAL AN ULTERIOR MOTIVE OF CONSPIRACY TO DEPRIVE INMATES THEIR RIGHT OF DUE PROCESS SUCH AS TO APPEAL AND OTHER COMPLAINTS BY WITHHOLDING TO CAUSE INMATES TO FAIL IN EXHAUSTING ADMINISTRATIVE REMEDIES, CAUSE A HOPELESSNESS OF DISCOURAGEMENT IN THE INMATE'S QUEST FOR RELIEF, ETC. APPELLANT FILED STEP-1 GRIEVANCE IN OCTOBER 2010 ABOUT THREATS HE RECEIVED BY OFFICIALS WHO WERE ASSAULTED BY HIM IN 2006 AND ON CLASSIFICATION FOR FAILURE TO PUT A SEPARATIONAL CAUTION IN HIS RECORD AFTER CONVICTED OF ASSAULTING AND THREATENING STAFF AND HAS NOT RECEIVED IT BACK, NOR HAS THERE BEEN AN INVESTIGATION INTO THE MATTER. IN ADDITION, FOR FAILURE TO RESPOND TIMELY TO THOSE STEP-1 GRIEVANCE OR TAKE APPROPRIATE MEASURES TO ALIBIATE THE MATTER, APPELLANT SUFFERED ASSAULT BY INMATES AND BOGUS CHARGES BY THESE OFFICIALS WHO RETALIATED AND ARE STILL RETALIATING AGAINST APPELLANT.

A STATUTE OF LIMITATION EXISTS IN LAW AND IN POLICY/PROCEDURE. NOTHING IN SCDC POLICY/PROCEDURE DEALING WITH STEP'S IN GRIEVANCE PROCEDURE PROCESS ALLOWS A DISCIPLINARY HEARING APPEAL STEP-1 TO EXCEED 30 OR 40 DAYS RESPONSE. UNLESS, HOWEVER, AN INVESTIGATION WAS BEING CONDUCTED WHILE THE DISCIPLINARY HEARING APPEAL STEP-1 WAS IN PROCESS. THERE IS NOTHING THAT INDICATES THAT AN INVESTIGATION HAD BEEN CONDUCTED. OBVIOUSLY THERE WASN'T. BECAUSE APPELLANT HAS NO DOCUMENTATION THAT I WAS. A STEP-2 CAN BE HELD FOR 60 DAYS - NOT A STEP-1.

THE DISCIPLINARY HEARING APPEAL STEP-1 SHOULD NOT HAVE EXCEEDED THE STEP-1 APPEAL PROCESS.

FURTHERMORE, A STEP-2 TIME FRAME IS 60 DAYS OR MORE, AND IF EXTENSION IS NEEDED THE INMATE GRIEVANCE BRANCH APPROVE THE INMATE. FOR STEP-2'S SCDC POLICY/PROCEDURE GA-01.12 SECTION 13.5 APPEALS TO THE RESPONSIBLE OFFICIAL :

"IF GRIEVANT IS NOT SATISFIED WITH THE DECISION OF THE WARDEN, THE GRIEVANT MAY NEXT APPEAL TO THE DIVISION OF OPERATION FOR A FINAL RESOLUTION OF THE GRIEVANCE."

SCDC POLICY/PROCEDURE GA-01.12 SECTION 13.6 APPEAL PROCESS : "THE GRIEVANT MAY APPEAL BY COMPLETING STEP-2, AND SUBMITTING THIS, AS WELL AS THE STEP-1 TO THE IGC WITHIN FIVE (5) DAYS OF THE RECEIPT OF THE RESPONSE BY THE GRIEVANT. IF AN INMATE NEEDS ADDITIONAL SPACE TO COMPLETE THEIR STEP-2, ONLY ONE ONE-SIDED PAGE WILL BE PERMITTED. THE INSTITUTIONAL GRIEVANCE COORDINATOR WILL FORWARD THE STEP-2 AND 1 TO THE INMATE GRIEVANCE BRANCH WITHIN FIVE (5) DAYS. THE INMATE GRIEVANCE BRANCH WILL CONFIRM RECEIPT OF APPEAL, CONDUCT ANY FURTHER INVESTIGATION NECESSARY, PREPARE A REPORT, AND PRESENT ALL AVAILABLE INFORMATION TO THE RESPONSIBLE OFFICIAL. THE RESPONSIBLE OFFICIAL WILL RENDER THE FINAL DECISION ON THE GRIEVANCE WITHIN 60 DAYS FROM THE DATE THAT THE INSTITUTIONAL INMATE GRIEVANCE COORDINATOR RECEIVED THE APPEAL OF THE WARDEN'S DECISION."

THE INMATE GRIEVANCE BRANCH OBVIOUSLY TOO DID NO INVESTIGATION OR REVIEW AT THE STEP-2 LEVEL. HAD THERE BEEN, A REASONABLE PERSON WOULD HAVE KNOWN TO OBTAIN THE DISCIPLINARY HEARING TAPES OF ALL THE INMATES INCLUDED IN THE INCIDENT REPORT AND ON APPELLANTS STEP-1 GRIEVANCE WHO WERE ALSO ACCUSED AND HAD THEIR CHARGE MISSED, FOR THE PURPOSE OF SEEING WHY WHO DISMISSED THE OTHER INMATES INCLUDED IN THIS CHARGE CASE AND CONVICTED APPELLANT. BECAUSE A REASONABLE PERSON WOULD HAVE KNOWN THAT THE SAME ERROR THAT IS IN THEIR CASE WAS IN APPELLANTS CASE (CHARGE).

THE LIMIT FOR RESPONSE IN DISCIPLINARY HEARING APPEAL STEP-1 WAS VIOLATED, RELIEF ~~AND~~ SHOULD HAVE BEEN GRANTED.

CONCLUSION

WHEREFORE, APPELLANT RESPECTFULLY ASK THAT CASE 15
BE EXPUNGED.

RESPECTFULLY SUBMITTED,

TERRENCE T. HAGGINS /

TERRENCE T. HAGGINS 247777

LIEBER C.I. COOPER A-50

P.O. Box 205

RIDGEVILLE S.C. 29472

DATE: 7/3/2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I, TERRENCE HAGGINS, ON THE 3 DAY OF JULY
2012, SERVED A COPY OF THE BRIEF OF APPELLANT ON ALL PARTIES-GENERAL
COUNSEL - TO THIS MATTER BY DEPOSITING THE SAME IN THE UNITED STATES
MAIL, POSTAGE PRE-PAID, AND/OR IN THE MAIL ROOM OF THE UNDERSIGNED
INSTITUTION AND SENT TO HIS/HER LAST KNOWN ADDRESS AS FOLLOWS:

OFFICE OF GENERAL COUNSEL
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
P.O. Box 21787
COLUMBIA, S.C. 29221.

RESPECTFULLY SUBMITTED,

TERRENCE T. HAGGINS /

TERRENCE T. HAGGINS 247777

LIEBER C.I. CA-50

P.O. Box 205

RIDGEVILLE, S.C. 29472

DATE: 7/3/12



NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

August 8, 2012

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

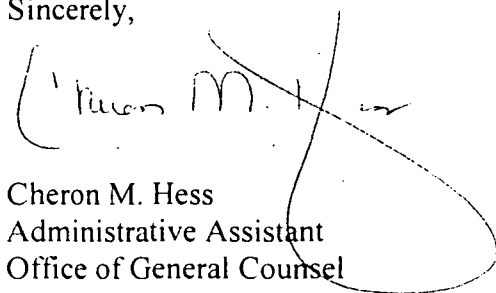
Re: Terrence Haggins, #247777 vs. SCDC
Docket No. 12-ALJ-04-0279-AP

Dear Judge Lenski:

Find enclosed an original and one copy of the *Respondent's Brief and Motion To Dismiss* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed envelope.

If you have any questions, please do not hesitate to contact me at (803) 896-3922.

Sincerely,



Cheron M. Hess
Administrative Assistant
Office of General Counsel

cc: Inmate Terrence Haggins, #247777
Lieber Correctional Institution

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Terrence Haggins, #247777,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

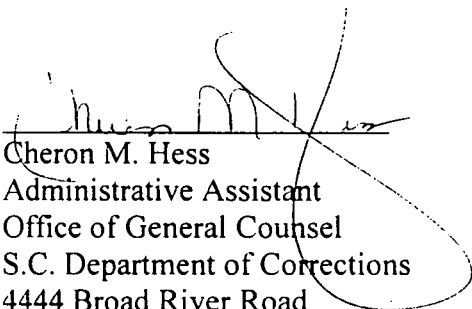
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Certificate of Service

Docket# 12-ALJ-04-0279-AP

I hereby certify that a copy of the foregoing motion was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Terrence Haggins, #247777
Lieber Correctional Institution


Cheron M. Hess
Administrative Assistant
Office of General Counsel
S.C. Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787
(803) 896-3922

August 8, 2012

Terrence Haggins, # 247777,
Appellant,
v.
South Carolina Department of Corrections,
Respondent.

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Docket No.: 12-ALJ-04-0279-AP

RESPONDENT'S BRIEF AND MOTION
TO DISMISS
Honorable Phillip Lenski

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of Terrence Haggins ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on December 8, 2011, challenging his conviction for the Possession of Any Cell Phone or Other Type of Communication Device, 898, under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on March 23, 2012. This grievance was also investigated and denied.

③ Loss of good time is not an issue in the present case. However, Appellant failed to Attack

Should have been indicated on 19-69 form that good time was taken

other than "no-parole" offenses are eligible to earn 20 days of good time each month, and inmates convicted of no-parole offenses are eligible to earn three days of good time for each month.¹ Therefore, SCDC, through SCDC Policy OP-21.11, Loss of Statutory Good Time, provides for an inmate's failure to earn good time for a given month upon the inmate's violation of a rule.² In addition, pursuant to SCDC Policy OP-22.14, Inmate Disciplinary System, an inmate's violation of certain rules can result in the deduction of good-time credits the inmate has earned in past months.

ARGUMENT

THE ADMINISTRATIVE LAW COURT SHOULD DISMISS THIS CASE UNDER SLEZAK V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 361 S.C. 327; 605 S.E.2D 506 (2004), SKIPPER V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 370 S.C. 267; 633 S.E.2D 910 (Ct. App. 2006), AND IN LIGHT OF THE LEGISLATURE'S RECENT AMENDMENT TO THE SOUTH CAROLINA ADMINISTRATIVE PROCEDURES ACT

The ALC's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Slezak v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2004). The Supreme Court held that, although the ALC had jurisdiction over all properly perfected inmate appeals, the ALC may summarily decide those appeals that do not implicate an inmate's state-created liberty or property interest. SCDC reads Slezak as encouraging, for the sake

Adopted by the Court to allow the ALC to decide appeals that do not implicate an inmate's state-created liberty or property interest.

¹ "[N]o prisoner serving a sentence for life imprisonment or a mandatory minimum term of imprisonment for thirty years pursuant to S.C. Code Ann. § 16-3-20 is entitled to credits under this provision. No prisoner convicted of a 'no parole offense' is entitled to a reduction below the minimum term of incarceration provided in § 24-13-125 or 24-13-150. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which the good conduct credit is computed." S.C. Code Ann. § 24-13-210(B).

² A rule violation may be determined through informal resolution or following a disciplinary hearing. If the inmate does not accept informal resolution, the incident may be referred to a disciplinary hearing, where the inmate may plead guilty to the infraction, or be found guilty of the infraction following the hearing.

of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest.

Recently, the South Carolina Court of Appeals has interpreted Slezak to mean that where a state-created liberty interest is not implicated in a prisoner appeal, the "ALJ should" dismiss the appeal. Skipper v. SCDC, 370 S.C. 267; 633 S.E.2d 910 (Ct. App. 2006). In 2007, the South Carolina Supreme Court expanded the scope of the state-created liberty interest in Furtick v. SCDC, 374 S.C. 334. In Furtick, the Court held that following a disciplinary conviction, an inmate's failure to earn good time for a given month, even in the absence of the loss of previously earned good-time credits, implicated the state-created liberty interest. 374 S.C. at 340. As a result, inmates who were eligible to earn good time appealed to the ALC disciplinary convictions that caused them to fail to earn good time credits for a given month, even though no previously earned good time was lost.

Saying they want it dismissed

to be held

However, due to a recent amendment to the South Carolina Administrative Procedures Act, SCDC submits that the ALC no longer should hear appeals pursuant to Furtick. The amendment provides that:

[A]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A). S.C. Code 1-23-600(D). (H4328, Rat. # 0413).

However, this does not mean they can't hear Constitutional Claims. A credit taken.

South Carolina Governor Mark Sanford signed the amendment on June 16, 2008.

SCDC submits that pursuant to the amendment, this court cannot hear inmate appeals in which inmates have not lost good time, but have failed to earn good time for the month of their disciplinary infraction. South Carolina recognizes several rules of statutory construction, the most fundamental rule being that legislative intent prevails.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” Broadhurst v. City of Myrtle Beach Election Comm’n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000).

A reading of the language of the amendment, the language of the original bill presented to the legislature, and the timing of the bill indicate legislative intent for the ALC to no longer hear these appeals. The bill was presented to the legislature in the 2007-2008 session, within months of the Supreme Court’s decision in Furtick. The bill originally proposed an amendment of the state Administrative Procedures Act, “so as to conform the procedures to other procedural provisions regarding the court *and to prohibit the hearing of certain inmate appeals by the court ...*” H 3575, Rat. #0413 (emphasis added). Clearly, the legislature intended to remove a category of inmate appeals from cases to be heard by the ALC. Because the amended statute specifies appeals involving the loss of the opportunity to earn good-time credits, SCDC concludes that the legislature intended to exclude from the ALC’s jurisdiction cases that would have been heard in light of Furtick.

A literal reading of the amendment could remove all inmate disciplinary appeals from the ALC’s jurisdiction because all major disciplinary appeals are appeals “involving” the failure to earn good-time credits, even if the cases also involve the loss of previously earned good-time credits. However, SCDC submits that this reading would preclude the ALC from hearing inmate appeals involving any disciplinary conviction in which an inmate lost previously earned good-time credits. SCDC submits this result is

likely too absurd to have been intended by the legislature. It follows that such a literal reading would not be permissible under the rules of construction as the South Carolina Supreme court defined them in Unisun Insurance Co. v. Schmidt, 529 S.C. 362 (2000). "We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." Unisun at 368.

In addition, SCDC's reading of the statute comports with the legislative intent behind South Carolina's statutes on good-time credits, S.C. Code Ann. 24-13-210 and 230. Chief Justice Jean Toal, in her dissenting opinion in Furtick, stated the majority's decision ignored the legislature's intent to reward inmates with good-time credits only after they exhibit good behavior. Acknowledging that this is a dissenting opinion, SCDC nevertheless agrees with Justice Toal's interpretation of legislative intent as to the scope of the state-created liberty interest. Furthermore, Justice Toal referred to the Court's "long-standing 'hands-off' approach to judicial supervision of internal prison disciplinary matters which do not amount to a violation of constitutional dimensions." Id. at 341. *This goes back to page 1 paragraph 7* SCDC's reading of the amended APA is consistent with this long-standing approach to internal prison disciplinary matters.

* In the instant case, Appellant states his conviction for possession of a cell phone or other type of communication device should be overturned. Appellant lost 360 days of canteen, phone and visitation privileges. However, Appellant lost no good time due to this conviction but only failed to earn good time for the month of the infraction. Therefore, the ALC should dismiss this appeal.

CONCLUSION

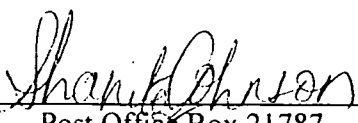
Based on the foregoing reasons and legal authorities, SCDC respectfully requests

that this matter be dismissed pursuant to the newly amended South Carolina Administrative Procedures Act, S.C. Code Ann. §1-23-600(D), Rule 12(b)(1), and Slezak v. SCDC, 361 S.C. 327; 605 S.E.2d 506 (2004).

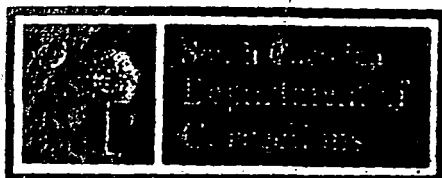
Respectfully submitted,

SHANIKA JOHNSON
Staff Attorney

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

BY: 
Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-1943

August 7, 2012
Columbia, South Carolina



SCDC POLICY/PROCEDURE

Change 1 to OP-22.14: 1.3; 4.3.2; 8.1.4; 14.5; 17; 17.5; 19.3; 24; 28; 903; 29; 801; 807; 820; 822; 895; 856; 601

NUMBER: OP-22.14

TITLE: INMATE DISCIPLINARY SYSTEM

ISSUE DATE: SEPTEMBER 1, 2009

RESPONSIBLE AUTHORITY: DIVISION OF OPERATIONS

OPERATIONS MANUAL: OPERATIONS

SUPERSEDES: OP-22.14 (October 1, 2007); (May 14, 2004); Change 1 (March 15, 2004); Change 2 (June 14, 2004); Change 3 (July 9, 2004); Change 4 (January 4, 2005)

RELEVANT SCDC FORMS/SUPPLIES: 10-5, 19-11, 19-29A, 19-69, 19-71, 19-79, 19-106, S-29

ACA/CAC STANDARDS: Not annotated

STATE/FEDERAL STATUTES: S.C. Code of Laws, Sections 24-1-140, and 24-13-210

PURPOSE: To provide guidelines for the administration and application of the South Carolina Department of Corrections' (SCDC) Inmate Disciplinary System.

POLICY STATEMENT: To promote the order and maintain the security and safety of the South Carolina Department of Corrections (SCDC), the SCDC will develop and administer an Inmate Disciplinary System to provide appropriate redress and sanctions for violations of any Agency rules and regulations and federal/state statutes by inmates. The administration and application of the Inmate Disciplinary System will be completed in compliance with all applicable state and federal statutes, rules and regulations, and in a manner that ensures inmates are afforded adequate due process protection. All inmates under the custody of the SCDC are required to abide by the rules and regulations established by the SCDC. Inmates who violate any of the rules and regulations of the SCDC may be subject to disciplinary action under the terms of this policy/procedure. When an inmate has committed a crime, criminal prosecution may also be pursued.

SPECIAL NOTES See PS-10.09, "Youthful Offender Intensification Program (YOIP)," for supplemental procedures that govern the disciplinary process for offenders sentenced under the Youthful Offender Act.

TABLE OF CONTENTS

1. GENERAL PROVISIONS
2. IMMEDIATE CORRECTIVE ACTION
3. SUPERVISORS' REVIEW/RESPONSIBILITIES
4. MAJOR/RESPONSIBLE AUTHORITY REVIEW
5. INFORMAL RESOLUTION
6. ADMINISTRATIVE RESOLUTION
7. DISCIPLINARY HEARINGS
8. COUNSEL SUBSTITUTES
9. HEARING OFFICER DUTIES
10. RECORDER
11. MODIFIER
12. TAPE RECORDER

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of
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13.	<u>RESTRICTIONS ON PERSONNEL PARTICIPATING IN THE HEARING</u>
14.	<u>PRESENCE OF INMATE AT DISCIPLINARY HEARING</u>
15.	<u>PRESENTATION OF EVIDENCE AT THE HEARING</u>
16.	<u>STANDARD OF GUILT</u>
17.	<u>PENALTIES IMPOSED BY HEARING OFFICER</u>
18.	<u>HEARING RECORD</u>
19.	<u>APPEALS</u>
20.	<u>WARDEN'S REVIEW</u>
21.	<u>DISCIPLINARY CHARGES FOR INMATES IN SPECIAL MANAGEMENT UNIT AND MAXIMUM SECURITY UNIT</u>
22.	<u>CRIMINAL CHARGES FOR INMATES</u>
23.	<u>INMATE ACCESS TO TAPE RECORDINGS</u>
24.	<u>REHEARING</u>
25.	<u>RECORD KEEPING</u>
26.	<u>ADDITIONAL INFORMATION ABOUT SANCTIONS</u>
27.	<u>ESCAPES</u>
28.	<u>DRUG CHARGES</u>
29.	<u>DEFINITIONS</u>
<u>APPENDIX A - SCDC DISCIPLINARY OFFENSES</u>	

1. GENERAL PROVISIONS:

1.1 All SCDC rules and regulations for which an inmate may be disciplined must be in written form describing violations, sanctions, and penalties; must provide adequate notice of the conduct prohibited by SCDC; must be appropriately distributed for inmates to review; and must be reviewed by the responsible authority annually, and updated as necessary. These rules will be enforced and ignorance of the rules will not be accepted as an excuse for violations. A written explanation of the inmate disciplinary system will be provided to each inmate during the inmate's processing at the Reception and Evaluation Center. Receipt of the written explanation by inmates will be documented via the fiscal/commissary automated system.

1.2 When an inmate exhibits a literacy or language problem, an employee will be designated at each institution to assist the inmate in understanding the rules. A memorandum from the Warden will be posted for the staff and inmate population identifying the employee(s) designated to assist the inmates. This memorandum will be updated as necessary.

1.3 ~~During new employee orientation, all employees will be given a copy of this policy/procedure. Receipt will be documented on the new employee orientation checklist, which is maintained in the employee's manual training record.~~ Employees who work with inmates will receive training regarding rules of inmate conduct, the rationale for the rules, and the sanctions available. (Amended by Change 1, dated September 16, 2010)

2. IMMEDIATE CORRECTIVE ACTION:

2.1 When an SCDC employee witnesses or has knowledge of any act by an inmate which is a violation of the rules and regulations of the SCDC, the employee will first attempt, if appropriate, to correct the behavior immediately. The circumstances of the violation and the inmate's disciplinary history should be taken into consideration when determining whether or not to attempt to correct the behavior on the spot. Corrective action may include:

- counseling;
- instructions, or directives;
- verbal reprimand;
- extra duty or chores not to exceed four (4) hours;
- restriction of recreation time not to exceed one (1) day (general population only);
- restriction of television viewing and/or radio not to exceed one (1) day;
- restriction of canteen privileges not to exceed one (1) day;
- and/or confinement to his/her cell or cubicle for the remainder of the shift
- *if confinement to his/her cell is to exceed the shift, approval must be obtained from the shift supervisor. This confinement cannot exceed 24 hours.*

2.2 If the inmate's behavior cannot be corrected on the spot by the observing employee, the employee will bring the matter to the attention of the supervisor on-duty. The supervisor on-duty may attempt to resolve the matter with the above actions, if appropriate. The supervisor may also impose an additional four (4) hours of extra duty or chores (for a total of eight (8) hours) and/or up to seventy two hours of cell/cubicle confinement.

3. **SUPERVISORS' REVIEW/RESPONSIBILITIES:** If the supervisor on-duty cannot correct the inmate's behavior using the corrective actions listed in Paragraph 2.1 and 2.2, above, or the incident is too serious to be resolved in this manner, s/he will instruct the observing employee to complete SCDC Form 19-29A, "Incident Report." This report will be typed (if possible) and will, at a minimum, include the following information:

- Institution/Center;
- Reporting Official's Full Name,
- Location of Incident;
- Date/Time of Report;
- Date/Time of Incident;
- Employee(s)/Witnesses Involved;

* * 3.2 A description of the facts of the offense(s), to include, at a minimum:

- the name and SCDC number of the inmate;
- the names of all witnesses;
- the general location of the offense; and
- a full statement of the facts underlying the offense, to include witnesses, evidence, and disposition of evidence.
- the reporting employee's signature, title, list of any evidence, and disposition of evidence.

f 3.3 **Review:** The supervisor will review the SCDC Form 19-29A, "Incident Report" within 24 hours of the incident or date of discovery unless there are exceptional circumstances for delaying this review, which must be approved by the Warden or Associate Warden. The review may include interviewing the reporting employee, other employee witnesses, the accused inmate, or the accused inmate's witnesses. Upon review, the supervisor will make a determination whether to refer the inmate to the Major/Responsible Authority (Responsible Authority includes the Warden or Duty Warden, or for institutions with no Major assigned, the Captain) for disciplinary action. The supervisor will document his/her review in the space provided on SCDC Form 19-29A and will annotate the form in the proper block to indicate whether or not the incident was Security Threat Group (STG) or drug related. NOTE: If the inmate has a mental health issue noted on his/her MEDCLASS screen or is acting in such a manner that indicates a mental health concern, then a copy of the Incident Report must be forwarded to the mental health staff. This referral must be documented on the 19-29A. In these instances, a memorandum from the mental health care professional must be included as an attachment to SCDC Form 19-29A, "Incident Report," attesting to the inmate's mental status and accountability for his/her actions. Refer to SCDC Policy/Procedure HS-19.01, "Placement of Inmates in Mental Health Observation and Evaluation Status," for additional information.)

4. MAJOR/RESPONSIBLE AUTHORITY REVIEW:

4.1 **Formally Charging the Inmate:** The Major/Responsible Authority will have up to nine (9) calendar days from the date of the incident or date of discovery of the incident to take one of the following three (3) actions:

- 4.1.1 Informally Resolve the incident;
- 4.1.2 Administratively Resolve the incident; or
- 4.1.3 Formally charge the inmate and refer the incident to a Disciplinary Hearing. (NOTE: When the violation has been received by the Hearing Officer, the violation will not be rescinded for Informal/Administrative Resolution without written approval by the Division of

Operations.)

4.1.4 All Level I and II offenses will be heard by the Hearing Officer only.

4.2 The Major/Responsible Authority will review the inmate's disciplinary history and the SCDC Form 19-29A. After this review, the Major/Responsible Authority will use the space provided on the SCDC Form 19-29A to indicate his/her decision and then will sign and date the SCDC Form 19-29A. The inmate will be considered formally charged on the date the disciplinary is entered into the Offender Management System (OMS).

4.3 Extension for Investigations:

4.3.1 Institutional Investigations: If the Major/Responsible Authority believes that further investigation of the circumstances is needed in order to determine the inmates to be charged, the nature of their acts, etc., then he/she can direct that an institutional investigation be conducted. Investigations conducted by the institution will be completed within 21 calendar days. The start and end of the 21 day initial investigation should be documented on the Form 19-29 A, Incident Report, by the Major/Responsible Authority. An entry of investigation should be made into the OMS. The OMS narrative should reflect the beginning and ending dates of the investigation, to include any extensions, if applicable. If more than 21 calendar days are required for completion of the investigation, an extension may be granted by the Division of Operations. The written extension request should be completed and signed by the Warden/Designee and approved by the Division of Operations prior to the expiration of the initial 21 days. The 21 day extension will commence on the date of approval by the Division of Operations. The nine (9) day time frame for entering the charge into the system will commence from the date of the completion of the investigation and submission of the results in writing.

 **4.3.2 Inspector General Investigations: Investigations conducted by the Inspector General/Division of Investigations will be conducted in accordance with Agency Policy. Due to the serious nature of the matters referred to the Inspector General/Division of Investigations, and due to the requirement that certain matters must be referred to other law enforcement entities, a prescribed time frame will not be established. The OMS entry described in paragraph 4.3.1 will be completed. Upon completion of the investigation by the IG/Division of Investigations or receipt of a completed investigation from an outside law enforcement entity a report will be furnished by the IG/Division of Investigations to the Warden through the Division of Operations. Upon receipt of the report by the Warden, the 21 day requirement to hear the case will commence. The nine (9) day time frame for entering the charge into the system will commence from the date the investigative report is submitted to the Warden, Associate Warden or Major. The 24 hour review by a supervisor will not be required in these instances. (Amended by Change 1, dated September 16, 2010)**

4.3.3 In cases where the investigative report confirms the decision to take internal disciplinary action against an inmate, the decision how to logistically charge the inmate will be made mutually by the Division of Operations, the Warden at the Institution where the incident occurred, and the Warden of the Institution where the inmate is housed (if different.) Because time frame issues could result from the amount of time between the incident and the issuance of an investigative report, the Division of Operations will coordinate any necessary requests to waive time frames in order for the disciplinary hearing to be heard. OMS narrative should reflect the beginning and ending dates of the investigation, as well as the requests to waive time frames.

4.4 When the Major/Responsible Authority is unsure about whether or not a Level 3, 4, or 5 Disciplinary Infraction should be resolved by Informal Resolution, Administrative Resolution, or should be referred to a Disciplinary Hearing, s/he will confer with the assigned Hearing Officer and jointly determine the appropriate disciplinary response. If agreement is reached, the appropriate disciplinary action (Informal Resolution, Administrative Resolution, or Disciplinary Hearing) will proceed. If these two employees cannot agree on the appropriate disciplinary action, the Warden will confer with the Division of Operations to arrive at the most appropriate disciplinary action.

5. INFORMAL RESOLUTION:

5.1 The inmate will appear in person before the Major/Responsible Authority who *will read the charge and the narrative to the inmate, allow the inmate to respond to the charge, and then make a decision as to the inmate's guilt or innocence. If found guilty, the Major/Responsible Authority may impose any of the following sanctions on the inmate as a means of resolving the incident informally:*

- counseling;
- instructions or directives;
- verbal reprimand;
- extra duty or chores up to 40 hours;
- restriction of recreation time (general population only) up to 30 days;
- restriction of canteen, visitation, or other privileges up to 90 days;
- restriction of television viewing and/or radio up to 90 days;
- payment of restitution;
- cell or cube restriction up to 30 days. (See Paragraph 26.1 through 26.2.2, below, for rules related to Cell or Cube Restriction.)

5.2 The Major/Responsible Authority may impose any of the above sanctions and may suspend implementation of these sanctions for up to 90 days if the inmate does not commit any additional disciplinary infractions during that time period. The advantage to the inmate of informal resolution is that the inmate does not lose, nor does s/he fail to earn, good time. The Major/Responsible Authority will document the action taken on SCDC Form 19-106, "Inmate Disciplinary System Informal/Administrative Resolution," and explain the following issues to the inmate. All dispositions will be entered in the OMS within two (2) working days of the informal resolution.

5.2.1 The inmate has the right to decline informal resolution and request that the incident be referred to a disciplinary hearing, however, if the inmate is convicted as a result of a hearing, the inmate will fail to earn good time for that month, the Hearing Officer has the authority to take accrued good time, and the Hearing Officer may levy additional sanctions. (NOTE: Should the inmate decline informal or administrative resolution, the inmate will sign and date the SCDC Form 19-106 and it will be forwarded by the Major/Responsible Authority to the Hearing Officer.)

5.2.2 The inmate waives any appeal rights including grievance rights under the Agency Inmate Grievance System and those pursuant to *Al-Shabazz v. State* if s/he accepts the informal resolution.

5.2.3 If the inmate accepts informal resolution, s/he will be required to sign and date the SCDC Form 19-106, accepting informal resolution, waiving the privilege of a disciplinary hearing, and waiving his/her grievance rights.

5.3 The incident is entered into the automated system as a "CLOSED" incident.

6. ADMINISTRATIVE RESOLUTION:

6.1 If the Major/Responsible Authority believes that the inmate's offense should not be resolved informally, as discussed in Paragraph 5., above, the inmate will appear in person before the Major/Responsible Authority who *will read the charge and the narrative to the inmate, allow the inmate to respond to the charge, and then make a decision as to the inmate's guilt or innocence. If found guilty, the Major/Responsible Authority may offer the inmate the opportunity to resolve the incident administratively. The advantage to the inmate of administrative resolution is that the inmate will fail to earn good time for the month of the infraction (if eligible to earn good time), but no earned good time will be taken from the inmate. The circumstances of the violation and the inmate's disciplinary history should be taken into consideration. The Major/Responsible Authority will complete SCDC Form 19-106, "Inmate Disciplinary System Informal/Administrative Resolution," and explain the following issues to the inmate.*

All dispositions will be entered in the OMS within two (2) working days of the administration resolution.

6.1.1 The inmate has the right to refuse administrative resolution and request that the incident be referred to a disciplinary hearing, however, the Hearing Officer has the authority to levy additional sanctions and to take accrued good time if the inmate is found guilty of the incident. (NOTE: Should the inmate decline informal or Administrative Resolution, the inmate will sign and date SCDC Form 19-106, and it will be forwarded to the Hearing Officer by the Major/Responsible Authority.

6.1.2 The inmate waives any appeal rights including grievance rights under the SCDC Inmate Grievance System and those pursuant to Al-Shabazz v. State if s/he accepts the administrative resolution.

6.1.3 If the inmate is eligible to earn good time, s/he will fail to earn good time (3 or 20 days dependent on the inmate's conviction) for the month of the incident, but no earned good time will be taken if s/he accepts administrative resolution.

6.2 The Major/Responsible Authority may impose any of the following sanctions on the inmate as a means of resolving the incident administratively:

- counseling;
- instructions or directives;
- verbal reprimand;
- extra duty or chores up to 40 hours;
- restriction of recreation time (general population only) up to 30 days;
- restriction of canteen, visitation, or other privileges up to 90 days;
- restriction of television viewing and/or radio up to 120 days;
- payment of restitution;
- cell or cube restriction up to 60 days (see Paragraph 26.1 through 26.2.2, below for rules related to Cell or Cube Restriction);
- disciplinary detention up to 20 days in an institutional Special Management Unit;
- Suspension of a program privilege, with justification, for up to six (6) months with approval by the Warden.

6.3 The Major/Responsible Authority may impose any of the above sanctions or combination of sanctions and may suspend implementation of these sanctions for up to 90 days if the inmate does not commit any additional disciplinary infractions during that time period. If the inmate accepts administrative resolution, s/he will be required to sign the SCDC Form 19-106, accepting administrative resolution, waiving the privilege of a disciplinary hearing, and waiving his/her grievance rights. If the inmate does not wish to accept administrative resolution, the Major/Responsible Authority will refer the matter for a disciplinary hearing.

6.4 If the inmate accepts the administrative resolution, the incident is entered into the automated system as a "Guilty" and "Convicted" disposition.

7. DISCIPLINARY HEARINGS:

7.1 Inmates will be served with notice of disciplinary charges at least 24 hours prior to their hearings. Should the inmate refuse to sign Form 19-69, "Inmate Disciplinary Report and Hearing Record", s/he will forfeit the opportunity to request that their accuser and/or witness(s) be present at their scheduled hearing. *refus*

7.2 Once the inmate is formally charged (and entered into the Offender Management System), the hearing will be held within 21 calendar days. SCDC Form 19-69, "Disciplinary Report and Hearing Record," will be used to document the charges and the results of the hearing. The charges will be explained by the Hearing Officer to the inmate in terms s/he can understand. Inmates may not be

subjected to any form of coercion designed to persuade them to waive their rights to 24 hour notice. If inmates are offered the opportunity to waive 24 hours notice, they must be fully informed, in terms understandable to them, of the nature of the rights at stake. In addition, an inmate may waive his/her right to a hearing and indicate such on SCDC Form 19-69. When an inmate waives his/her right to a hearing, the Hearing Officer will review the waiver section of the SCDC Form 19-69, conduct the hearing in the absence of the inmate, determine guilt or innocence; if guilty, decide on appropriate penalties, and notify the inmate of the same using SCDC Form 19-69. Should an inmate refuse to sign a waiver and/or attend the hearing, the hearing will be held in the inmate's absence and tape recorded. (NOTE: The Hearing Officer will determine if a witness(es) will testify should an inmate waive his/her right to attend their hearing.) (4-4237)

7.3 The inmate may submit a written statement to the Hearing Officer in response to the charges. In addition, the inmate may make a verbal statement in his/her defense during the hearing. At the time an inmate is served with notice pursuant to a disciplinary hearing, the inmate will be informed of these rights. Confirmation that the inmate was advised of these rights will be noted on the original copy of SCDC Form 19-69, "Disciplinary Report and Hearing Record."

7.4 One (1), 21 calendar day extension for holding the hearing will be allowed only with the written approval of the *Division of Operations* for unforeseen circumstances (inmate assault leave, employee extended leave, family medical emergency, etc.) via a memorandum. The extension must be submitted to the *Division of Operations* prior to the expiration of the initial 21 calendar day period. *If approved, the 21 calendar day extension will begin after the completion of the initial 21 day hearing period. The expiration date of the initial 21 day period must be noted in the memorandum.* Only one (1) such extension will be authorized. If the extension is approved by the *Division of Operations*, the inmate will be provided with a copy of the approval.

7.5 When an investigation is needed, the nine (9) calendar days begins once the investigation information is submitted to the Major (or Captain at those institutions with no Major) or higher authority. (NOTE: An investigation conclusion date will be noted on the investigative information report.)

21 days
7.6 If the inmate is transferred to another institution, the hearing will still be held within 21 calendar days of being charged, unless extenuating circumstances prevent the hearing. For extenuating circumstances, the Division Director of Operations or designee may approve an extension. All documentation concerning the charges will be forwarded to the receiving institution promptly upon transfer of the inmate.

30 days
7.7 Disciplinary hearings held more than 30 calendar days after the incident date or date of the discovery of the incident, ~~when no extension has been approved by the Warden~~, may only be held if approved by a ~~designee from the Division of Operations~~. It will be the responsibility of the Warden where the inmate was charged to provide justification for disciplinary action beyond 30 calendar days.

Contradiction
If 21 days 55 hrs
deadline to hear a case, if
not extended are 30 days
The 30 day 17, 17
section about 30 days
must be deleted.
8. COUNSEL SUBSTITUTES: Each institution will assign an employee(s) to act as a Counsel Substitute. A Counsel Substitute is an SCDC non-uniformed employee who is assigned to assist inmates with a disciplinary hearing.

8.1 Inmates will be assigned a Counsel Substitute at least twenty-four (24) hours prior to a hearing in the following cases: (Note: There is no requirement for the inmate to be interviewed by the Counsel Substitute twenty-four (24) hours prior to the hearing.)

8.1.1 When the inmate is intellectually impaired or has a physical disability which makes it difficult for him/her to understand and/or participate in the disciplinary process. Counsel Substitutes will be appointed in all cases in which: inmates are assigned to a sheltered unit for the intellectually impaired, i.e., Habilitation Unit, etc.; or inmates have questionable mental intellect or a mental illness as confirmed by mental health personnel.

8.1.2 When the inmate's literacy or understanding of English is questionable. (NOTE: Inmates

reading at the sixth grade level and below will be assigned a counsel substitute. The highest consistent reading level noted in the Offender Management Screen will be the reading level considered when deciding if an inmate should be assigned a counsel substitute.)

8.1.3 When the inmate, because of the complexity of the issue, will be unlikely to be able to collect and present the evidence necessary for an adequate comprehension of the case.

8.1.4 When the inmate is confined to a segregation status pending the hearing, *unless the inmate documents on the 19-69, or verbally states on tape that s/he does not want a counsel substitute and they have no mental health issues.* (Amended by Change 1, dated September 16, 2010)

8.1.5 When a witness requested by the accused inmate is unable to attend a disciplinary hearing because either the requested witness or the accused inmate has been transferred to another institution. (NOTE: Inmates who exhibit inappropriate behavior with a counsel substitute will forfeit the use of counsel substitute and may be charged accordingly.)

8.2 Responsibilities: Prior to the disciplinary hearing, the Counsel Substitute has the following responsibilities in preparing for the hearing:

8.2.1 Read the SCDC Form 19-29A and 19-69 to the accused inmate and make sure the inmate understands the charges.

8.2.2 Obtain the accused inmate's statement as to exactly what took place.

8.2.3 Obtain the names of all employees and inmates whom the accused wishes to call as witnesses.

8.2.4 Interview relevant witnesses prior to the hearing. For those witnesses who will not be able to appear at the hearing (e.g., an inmate who has been transferred to another institution), obtain written statements that can be given to the Hearing Officer at the hearing (NOTE: Inmates will be required to use SCDC Form 19-11, "Request to Staff Member," listing the names of all witnesses they wish to be made available at their hearing. The form must be addressed to the inmate's Counsel Substitute or to the Hearing Officer if no Counsel Substitute has been assigned and must be received no later than 24 hours prior to the hearing.)

8.2.5 Inform the Hearing Officer of the names of all witnesses the inmate has requested.

8.2.6 Obtain any documentary evidence relevant to the case that is not already in the possession of the accused inmate.

9. HEARING OFFICER DUTIES: The Hearing Officer is responsible for the following:

9.1 Implementing and adhering to established guidelines as they relate to the hearing phase of the disciplinary process;

9.2 Overseeing and coordinating due process hearings for inmates with rule violations to include, but not be limited to maintaining an automated disciplinary case tracking system, and providing assistance to the institutions in setting case dockets and proper scheduling of rule violators to appear at hearings in the prescribed time limits set forth above.

9.3 Ensuring that the appropriate transactions are executed in the inmate's automated record within two (2) working days of the completion of SCDC Form 19-69, "Disciplinary Report and Hearing Record."

9.4 The charges will be explained by the Hearing Officer to the inmate in terms s/he can understand. The Hearing Officer will also inform the inmate that if a guilty plea is rendered or if s/he is found guilty, s/he will automatically fail to earn his/her normal rate of good time (3 or 20 days depending on his/her

conviction[s]) for the date/month of the rules violation. *The Hearing Officer will inform the inmate of additional sanctions that may be imposed in addition to the forfeiture of earned good time if found guilty, or if they plead guilty.*

9.5 *The Hearing Officer will ensure that inmates with mental health issues, or language barriers are provided the necessary assistance to understand the disciplinary proceedings. The necessary assistance may require the postponement of the disciplinary hearing. NOTE: Must be noted on SCDC Form 19-69 and on the hearing tape.*

9.6 If, during the hearing, the Hearing Officer determines that the report should have been processed as a lesser included offense that more appropriately characterizes the incident, the Hearing Officer should reduce the charge to the lesser included offense. In such cases, there is no need to provide the accused inmate with an additional 24 hour notice to prepare for the hearing. However, if the Hearing Officer determines that another offense of an equal level is more appropriate, the inmate is entitled to an additional 24 hours notice in order to prepare for the new charge.

9.7 The Hearing Officer will complete SCDC Form 19-69, which will become a permanent part of the inmate's institutional and central records.

10. RECORDER: Each Warden will assign two (2) employees as a recorder. A recorder is an SCDC employee who is assigned to assist the Hearing Officer and the Major/Responsible Authority with their duties as it relates to the disciplinary process. S/he will be responsible for ensuring that all documentation for each case is available and each disciplinary infraction is entered in the automated system within time frames as outlined in policy as it relates to informal and administrative resolution cases as well as disciplinary hearings.

10.1 The Recorder will be responsible for the following:

- Prepare SCDC Form 19-69, Disciplinary Report and Hearing Record" with violation code, offense and description/definition;
- ensure the SCDC Form 19-69 will be served to the inmate at least 24 hours prior to the hearing;
- prepare a docket for cases to be heard by the Hearing Officer;
- notify accusers/witnesses of their need to be available for the hearing;
- ensure all hearing tapes are accounted for and secured for future use;
- maintain a disciplinary file on each case from the Hearing Officer and Major/Responsible Authority;
- ensure all sanctions are entered into the automated system within two (2) working days; and
- Prepare and submit reports as required to the Hearing Officer and/or to the Division of Operations.

11. MODIFIER: Each Warden will assign two (2) employees as a modifier. A modifier is an SCDC employee who is assigned by the Warden who will modify the hearing record in the automated system *if the disciplinary is reduced or dismissed at the Institutional level as a result of SCDC Policy GA-01.12, "Inmate Grievance System".*

11.1 The modifier will be responsible for modifying sanctions that were imposed by the Hearing Officer and ensure that copies of all documentation are forwarded to the recorder. S/he will also serve as back up to the Recorder.

12. TAPE RECORDER:

12.1 All disciplinary hearings will be recorded by tape recorder or other means of preserving a verbatim record of the proceedings. The recording will not be turned off at any time during the taking of evidence, regardless of the Hearing Officer's opinion concerning the relevancy of the testimony. However, if an inmate becomes assaultive or disruptive, the Hearing Officer may stop the tape recorder to regain security and control of the inmate. When the tape recorder is started again, the Hearing Officer will state the

reasons for the interruption and continue the hearing. The inmate will be excused from the hearing room during the Hearing Officer's deliberation (sanctioning process).

12.2 The recording will be maintained for a period of at least 18 months after the hearing.

12.3 The Hearing Officer will be responsible for ensuring that all tapes are numbered and dated. The tape number/date and the counter stop/start reading for each hearing conducted will be recorded on SCDC Form 19-69, "Disciplinary Report and Hearing Record," in the space provided.

13. RESTRICTIONS ON PERSONNEL PARTICIPATING IN THE HEARING: Neither the Hearing Officer nor the Counsel Substitute may be:

- an employee who has filed the charges;
- an employee who ordered the filing of the charges;
- an employee who participated in any incident that led to the charges in question;
- an employee who participated in investigation of the charges; or
- an employee who made the decision to process the report through a disciplinary hearing.

14. PRESENCE OF INMATE AT DISCIPLINARY HEARING:

14.1 Inmates charged with rules violations will be present at their disciplinary hearings unless s/he has waived the right to be present or *if the DHO determines that his/her behavior prior to, or during the hearing justifies their exclusion. If an inmate refuses to appear at the hearing or fails to appear at the notified time, or is unavailable (i.e., when an inmate has escaped or for a protracted court appearance, etc.), the hearing may be conducted in the inmate's absence. See paragraph 7.2 for additional information.*

14.2 Inmates may hear all evidence presented at the hearing, unless hearing the evidence will jeopardize the life or safety of persons or the security and order of the institution.

14.3 The Hearing Officer must provide written reasons in the record for the accused inmate's absence during any portion of the hearing. If security considerations require that the inmate be removed from the hearing for the presentation of any evidence or questioning of any witness, the inmate's Counsel Substitute will be permitted to remain and to act in the inmate's behalf. **NOTE:** Must be noted on SCDC Form 19-69 and on the hearing tape.(4-4241)

14.4 An inmate may be physically restrained during hearings if a present threat of violence or physically disruptive behavior exists.

14.5 If an inmate with a pending disciplinary is transferred to Gilliam Psychiatric Hospital, the Department of Mental Health, an SCDC Infirmary, or any other health care facility outside the control of the Agency, *or for protracted court appearances*, the 9/21 day time limit for holding the hearing will be suspended until the inmate is returned to his/her institution. The suspended period of time will be noted on the SCDC Form 19-69 by the Hearing Officer *or on the 19-106 by the Major/Responsible Authority.* (Amended by Change 1, dated September 16, 2010)

14.6 *If a Hearing Officer determines that an inmate is behaving irrationally at the hearing, and believes he/she is unable to understand the significance of the disciplinary proceeding, the Hearing Officer will refer the inmate for assessment by the appropriate mental health staff. The hearing will be rescheduled once the mental health staff has documented that the inmate is lucid enough to understand the disciplinary proceeding. The 9/21 day time limit for holding the hearing will be suspended during this period. NOTE: Must be noted on SCDC Form 19-69 and on the hearing tape.*

14.7 For inmates who are outside the physical custody of SCDC when an incident occurs (e.g., designated facility, post conviction relief, community hospital, etc.), the date of the discovery will be the date and time of return to an SCDC institution or the date and time when the appropriate employee learns of the

incident, whichever is later.

14.8 An inmate who refuses to attend a hearing without properly waiving his/her appearance automatically waives the right to counsel substitute, the presence of accuser, and witness(es).

15. PRESENTATION OF EVIDENCE AT THE HEARING:

15.1 At the start of the hearing, the Hearing Officer will advise the inmate of the charges against him/her and will advise the inmate to enter a plea to each charge. If one or more of the charges involved the possession of contraband, the item(s) of contraband, a sample of the contraband, or a picture of the item should be produced at the hearing. Also, if the contraband involves a controlled substance, i.e., illegal drugs such as marijuana, the Hearing Officer must have available a copy of SCDC Form 19-79, "Controlled Substance Testing and Disposition Form," that establishes the exact type of illegal drug found in the possession of the inmate.

15.2 The accused inmate, or the inmate's Counsel Substitute, may make a statement on the inmate's behalf. The accused inmate, or the inmate's Counsel Substitute, may present documentary evidence.

15.3 The inmate may call witnesses unless the Hearing Officer decides that the testimony of such witnesses is repetitive (that is, will simply repeat the testimony of other witnesses), *is not relevant to the case*, or is likely to jeopardize the life or safety of persons or the security and order of the institution. If witnesses are denied by the Hearing Officer, the Hearing Officer must write his/her reasons for this denial on the SCDC Form 19-69, "Disciplinary Report and Hearing Record," in the space provided. If an employee has been called as a witness and has information that is relevant to the case, then he/she is obligated to provide *said* information.

15.4 The inmate must request the accuser's(s) presence prior to the hearing utilizing Form 19-69.

15.5 The Counsel Substitute, or inmate, if no counsel substitute is appointed, may question all witnesses who appear at the hearing. The Hearing Officer will ask the inmate, or the inmate's Counsel Substitute, whether there are any questions for the witnesses. The questioning of the accusing employee or other witnesses will be conducted by the Counsel Substitute or Hearing Officer, if no Counsel Substitute is appointed. Written statements from witnesses other than the accusing employee may be presented as evidence when the witnesses are unable to attend the hearing. Any witness, including the accusing employee, who is unable to attend the hearing may be interviewed by a speaker telephone during the hearing and the answers of the witness must be recorded. The unavailability of the accusing employee must be limited to those occasions when circumstances (i.e. employee is on inmate assault leave, medical emergency, military leave, etc.) arise at which time the approving supervisor indicated on SCDC Form 19-29A may be used as the accusing official.

15.6 In circumstances where an inmate is an adversarial witness, the inmate who is charged may be excluded from hearing the testimony of the witness. In such cases, the charged inmate will be required to give a list of questions s/he wants asked of the witness to his/her Counsel Substitute. If no Counsel Substitute has been assigned, then the inmate will be required to provide a list of questions to the Hearing Officer who will ask the questions for the accused.

15.7 The failure of the accused inmate to present non-frivolous evidence to contradict the staff member's report will permit the report to be the only evidence used against the inmate. If, on the other hand, the accused inmate presents non-frivolous evidence which, if true, would contradict the facts alleged in the staff member's report, the Hearing Officer must take at least one of the following steps at the hearing prior to the final disposition of the case:

15.7.1 question the charging employee;

15.7.2 examine additional documentary evidence (beyond investigation reports and/or written statements by the charging employee or witnesses); or

Q: Did you examine a



16. STANDARD OF GUILT:

16.1 The Hearing Officer will then decide the inmate's guilt or innocence with respect to each charge on the SCDC Form 19-69, "Disciplinary Report and Hearing Record," based on a preponderance of the credible evidence; in other words, the Hearing Officer must review all of the evidence presented during the hearing and, from the evidence that was submitted, must decide whether it is more likely that the inmate is guilty or not guilty.

16.2 Sentencing Guidelines: If the inmate is found guilty, the Hearing Officer will determine the sanctions to be imposed for the violation. When sanctioning an inmate, the Hearing Officer will take into consideration:

- the inmate's prior conduct and the period of time since the inmate's last disciplinary violation;
- nature and seriousness of the offense;
- extent of injury to persons or damage/destruction to property (if applicable);
- penalties given to other inmates for the same or similar violations;
- specific program and security needs of the inmate.

The sanctions will be proportionate to the offense committed, and the Hearing Officer will be responsible for justifying any disciplinary actions imposed.

16.3 *Guilty But Not Accountable: If a mentally ill inmate commits a disciplinary infraction, and the mental health staff determines that the inmate was not accountable for his/her actions, if the inmate is found guilty through a preponderance of the evidence presented, the inmate should be found Guilty But Not Accountable. The case will be referred back to the Mental Health authorities for appropriate intervention.*

16.4 If an inmate is charged with multiple offenses, the inmate cannot be sanctioned separately for each offense unless they are totally separate and distinct violations. If the offenses are separate and distinct, then the inmate may be sanctioned consecutively for each offense. Inmates may not be sanctioned consecutively for lesser included offenses.

16.5 Inmates released from the Department of Corrections and returned to the Agency within three (3) years of their release can have their disciplinary history used in determining appropriate sanctions if they commit an Agency rules violation. Hearing Officers and Major/Responsible Authority(s) will have the discretion to use an inmate's prior disciplinary history. This procedure will apply to all inmates regardless of the method of release prior to their return, i.e. max-out, parole, probation, etc.

16.6 *Inmates who had disciplinary sanctions imposed prior to release from SCDC on probation, parole, supervised furlough, or any other supervision under control of the SCDPPPS, and who return to SCDC before the "day for day" completion date of the sanctions, will have the sanctions remain in place until the original completion dates expire. Once the inmate is assigned to an institution from R&E, the resumption of Disciplinary Detention time will be at the discretion of the receiving Warden.*

17. PENALTIES IMPOSED BY HEARING OFFICER: Penalties for disciplinary offenses are consecutive. If an inmate is serving Disciplinary Detention or has a loss of privileges or other sanction and commits another offense during the period of time s/he is in Disciplinary Detention or has lost privileges, the subsequent penalty period will begin upon completion of the first. More than one type of sanction may be imposed for a violation. *Penalties will be imposed for a second or subsequent offense when the offense committed is identical to a previous offense(s).* (Amended by Change 1, dated September 16, 2010)

17.1 Disciplinary Detention is served in an institutional Special Management Unit and may be imposed in the following amounts:

Disciplinary Offense	
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Level	1st Offense	2nd or Subsequent Offense
1	0 - 360 Days	360 - 720 Days
2	0 - 180 Days	90 - 360 Days
3	0 - 60 Days	45 - 90 Days
4	0 - 45 Days	45 - 60 Days
5	0 - 10 Days	0 - 20 Days

Note: Inmates who are placed in Disciplinary Detention will be managed pursuant to SCDC Policy/Procedure OP-22.12, "Special Management Unit." Inmates who are subsequently re-classified and placed in Security Detention will complete their Disciplinary Detention time prior to re-classification into Security Detention.

17.2 Loss of Accrued Good Time may be imposed in the following amounts:

Disciplinary Offense Level	1st Offense	2nd or Subsequent Offense
1	No limit on loss of good time - All good time may be taken.	No limit on loss of good time - All good time may be taken.
2	0 - 60 Days	0 - 90 Days
3	0 - 30 Days	0 - 60 Days
4	0 - 20 Days	0 - 60 Days
5	0 Days	0 Days

Note: A finding of guilt as a result of a disciplinary hearing will result in the inmate's failure to earn good time for the month in which the violation occurred and may also result in the loss of good time as shown in the above chart.

17.3 Counsel and Reprimand.

17.4 Extra duty not to exceed 40 hours.

17.5 Loss of privileges (Canteen, Television, Radio, Visitation, Telephone, Personal Property, Programs, Employment in Prison Industries, or Other Privileges/Leisure Activities): (Amended by Change 1, dated September 16, 2010)

Disciplinary Offense Level	Number of Days of Privileges Loss
1	No privileges during Term of Disciplinary Detention and an additional mandatory 360 days after Disciplinary Detention. See Appendix A, Charges 802, ~~822~~ and ~~854~~ for additional instructions on privilege loss for that charge.
2	No privileges during Term of Disciplinary Detention and an additional mandatory 180 days after Disciplinary Detention. See Appendix A, Charges 802, 822 and 854 for additional instructions on privilege loss for those charges.
3	0 - 180 Days <i>No privileges during term of Disciplinary Detention</i>
4	0 - 90 Days <i>No privileges during term of Disciplinary Detention</i>
5	0 - 90 Days <i>No privileges during term of Disciplinary Detention</i>

17.6 Restitution.

17.6.1 Medical Costs for Self-Inflicted Injuries or Injuries to Others: For self-inflicted injuries or injuries to others, the inmate who caused the injuries will be charged restitution of \$50.00 for services provided by SCDC Medical. If the injured inmate required outside treatment, the inmate who caused the injury will be required to pay for all extra costs charged to SCDC to include, but not limited to, EMS (or Medivac), emergency room, physician, all outpatient services, and \$50.00 for security/transportation. These costs will be handled according to Agency Policy/Procedure ADM-

15.01, "Repayment of Costs by Inmates."

17.6.2 If the incident is resolved by Informal Resolution or Administrative Resolution, the Major/Responsible Authority will determine the financial responsibility of the inmate(s) and will provide the amount of restitution in the appropriate block of SCDC Form 19-106, "Inmate Disciplinary System Informal/Administrative Resolution."

17.6.3 If the incident is resolved by a Disciplinary Hearing, the Hearing Officer will determine the financial responsibility of the inmate(s) and will provide the amount of restitution using information provided by the Major/Responsible Authority, (on Form 19-106 or 19-69), of the fees incurred by the inmate. Under no circumstances will the DHO arbitrarily impose money restitution.

17.6.4 If an inmate has been convicted and sanctioned by the DHO at a disciplinary hearing and additional restitution for the same disciplinary conviction is warranted, the imposition of the additional restitution will be conducted at a later time through an Informal Resolution Hearing by the Major/Responsible Authority. This entry will be documented in the narrative of the original case and on SCDC Form 19-106, "Inmate Disciplinary System Informal/Administrative Resolution." This hearing is to officially notify the inmate of additional restitution, not a hearing to determine guilt or innocence.

17.7 Other Restrictions/Sanctions: The Disciplinary Hearing Officer may also impose any of the restrictions/sanctions that are permitted under any other parts of the disciplinary process.

17.8 Issue of Jumpsuits: Inmates who are convicted of the infraction 854 Exhibitionism and Public Masturbation" will be provided with three pink jumpsuits to wear instead of the inmate uniform. (Note: Inmates in SMU for Security Detention or Disciplinary Detention will wear the SMU uniform until their release from SMU.) Inmates will wear the pink jumpsuit for three months after the completion of the disciplinary process or their release from SMU. All inmates assigned pink jumpsuits will wear them at all times except when sleeping at night. All inmates assigned pink jumpsuits will be required to report to their assigned areas, (i.e. job, school, visitation, etc.) wearing the pink jumpsuit. Should an inmate refuse to wear the pink jumpsuit, s/he will be charged accordingly and sanctioned to additional disciplinary detention. If the inmate continues to refuse s/he will be subject to being placed in security detention. Any subsequent violations of 854 will result in wearing of the pink jumpsuit for an additional year. All sanctions involving the wearing of the pink jumpsuits will be consecutive. If the inmate is placed in SMU during the time of wearing the pink jumpsuit, s/he will be required to resume wearing the pink jumpsuit for the remainder of their sanction time, after release from SMU. (NOTE: Any inmate convicted for acts of exhibitionism and/or public masturbation under infraction 822 and 802 prior to the adoption of infraction 854 shall continue to be subject to the penalty/sanction and provisions set forth in this paragraph.)

17.8.1 If an inmate is convicted of Sexual Assault (802) of an employee, or other person authorized to enter the institution, the inmate will be required to wear a pink jumpsuit as outlined in Section 17.8 above. All sanctions/issues listed in Paragraph 17.8 will apply to this conviction.

17.9 In addition to the wearing of the pink jumpsuit, the Warden *will* send a letter concerning the inmate's conviction of a sexual offense, (see Attachment A), to anyone on the inmate's visiting list s/he feels will be impacted by this behavior.

17.10 Disciplinary Violations/Job Assignments: Inmates who may have a disciplinary violation/conviction dismissed, a grievance appeal upheld, and/or a disciplinary conviction overturned via an appeal to the Administrative law Court are not entitled to return to a job assignment, if removed, without approval of the Warden or affected Division Director. This requirement will include, but not be limited to prison industry, work release, and contract labor crews. (NOTE: For designated facility inmates, refer to Agency Policy/Procedure OP-21.05, "Designated Facility Inmate Transfers.")

18. HEARING RECORD:

18.1 SCDC Form 19-69, "Disciplinary Report and Hearing Record," will be used to provide a written record of the hearing. The record will include the following information:

18.1.1 Whether the accused inmate was excluded from the hearing during the taking of evidence and, if so, the reasons for the exclusion.

18.1.2 Whether any requested witnesses were excluded and, if so, the reasons for the exclusion.

18.1.3 Whether any documentary evidence was excluded and, if so, the reasons for the exclusion.

18.1.4 Whether questioning of the inmate's accusers, if requested, was denied and, if so, the reasons for the denial.

18.1.5 If found guilty, the evidence presented and considered, and the reasons for determination of guilt.

18.1.6 If found guilty, the penalty imposed, and the specific factual reasons for the particular penalty chosen by the Hearing Officer. PHD time will be awarded towards the satisfaction of any DD time imposed unless the inmate received disciplinary charges subsequent to his/her placement in PHD.

18.2 At the conclusion of the hearing, the inmate will be given a copy of the written record of the hearing using SCDC Form 19-69. If the inmate was not present at the hearing, the Hearing Officer will notify the inmate if his/her whereabouts are known, of the hearing results and right to appeal the finding of guilt and/or penalty imposed by completing SCDC Form 10-5, "Inmate Grievance Form." A copy of SCDC Form 19-69 will be provided to the inmate. Upon the review and approval of the Warden, the SCDC Form 19-69 will be placed in the inmate's Institutional and Central Record. An additional copy will be maintained in the Hearing Officer's files. The Recorder will forward SCDC Form 19-69 to the Warden for his/her review.

18.3 Additionally, if the incident occurred at another institution, the Warden at the institution currently housing the inmate will review and sign the SCDC Form 19-69. Once signed, a courtesy copy will be sent to the Warden of the institution where the offense occurred.

19. APPEALS:

19.1 At the conclusion of the hearing, the Hearing Officer will inform the inmate of his/her right to appeal the decision of the Hearing Officer with respect to guilt or to the penalty imposed by using the inmate grievance procedure. If the inmate requests, a SCDC Form 10-5, "Step I Grievance Form," will be provided to the inmate by the Hearing Officer (see SCDC Policy/Procedure GA-01.12, "Inmate Grievance System"). (NOTE: Inmates may request the assistance of the Institutional Inmate Grievance Coordinator to assist them in completing their grievance form if they are unable to read or write, or have a language barrier.)

19.2 Inmates may appeal the decision of the Hearing Officer. The appeal must be initiated by the inmate and must be filed within 15 calendar days after receiving the written decision of the Hearing Officer or the inmate forfeits all rights to appeal. Appeals will be processed as described in SCDC Policy/Procedure GA-01.12, "Inmate Grievance System." The Warden will respond to disciplinary hearing appeals within 30 calendar days from the initial filing of the grievance.

19.3 The following factors must be considered when reviewing an appeal:

- Whether the Hearing Officer acted in substantial compliance with policies/procedures.
- Whether the decision of the Hearing Officer was based on substantial any evidence. (Amended by Change 1, dated September 16, 2010)
- Whether, under the circumstances, the sentence imposed was proportionate to the violation.

20. WARDEN'S REVIEW: Upon receipt of SCDC Form 19-69, when the inmate is found guilty, the Warden or his/her designee at the institution where the inmate is housed may approve hearing results, overturn a guilty finding, or reduce the sanction of the Hearing Officer. The Warden will document this information on SCDC Form 19-69 in the space provided. If the Warden overturns or reduces the sanction, s/he will be responsible for providing the inmate with written notice of the overturned or reduced disposition. Copies of both SCDC Form 19-69 and the written notice provided to the inmate by the Warden will be placed in the inmate's Institutional Record and Central Record. An additional copy will be maintained in the Hearing Officer's files.

20.1 Disciplinary data entered into the OMS at the conclusion of a disciplinary hearing, which has been reviewed and approved by the affected Warden, will not be arbitrarily modified. Any need for modification must have the approval of the Division of Operations.

21. DISCIPLINARY CHARGES FOR INMATES IN SPECIAL MANAGEMENT UNIT AND MAXIMUM SECURITY UNIT: Inmates housed in SMU and MSU, who *habitually* commit non-assaultive offenses will have the incidents disposed of by utilizing SCDC Form 19-29A. The infraction will be entered into the Offender Management System DISC screen using Type Action "03" which will show as, "Closed-Other Action Taken/Informally Resolved." If the inmate commits a non-assaultive charge and earns good time, s/he may be charged once per month and provided with a disciplinary hearing. Therefore, accrued good time may be taken for disciplinary violations. (NOTE: These Closed/Informally Resolved Cases will remain a part of the inmate's automated disciplinary history. The Institutional Classification Committee will consider these Closed/Informally Resolved charges to assess the inmate's behavior and determine the inmate's Security Detention level, readiness for release from Security Detention and/or transfer to the Maximum Security Unit.)

22. CRIMINAL CHARGES FOR INMATES: Cases involving inmates who have committed a criminal act will be immediately reported to the Warden or designee for transmission to an Investigator from the Division of Investigations in accordance with SCDC Policy/Procedure GA-05.01, "Investigations."

23. INMATE ACCESS TO TAPE RECORDINGS:

23.1 The inmate will have access to listen to (but not possession of) the tape recording of his/her disciplinary hearing to assist in preparing an appeal. The inmate will not have access to any portion of the tape where s/he was excluded from the hearing. If, after the inmate has been transferred to a new institution, the inmate then requests access to the tape recording of the hearing, the recording will be forwarded to the *Major* where the inmate is currently housed. *The Major will task one of their staff members to coordinate the opportunity for the inmate to hear the tape.*

23.2 Inmates desiring to listen to a copy of their taped hearing must *submit a SCDC Form 19-11, "Request to Staff Member,"* informing the *Major*. *The Major will task one of their staff members to coordinate the opportunity for the inmate to hear the tape. This staff member will be responsible for requesting the tape from the Hearing Officer/Recorder. The tape will be given to the assigned staff member who will be responsible for advising the inmate when it has been received and for scheduling a time for the inmate to review that portion of the tape for the respective inmate's hearing. The tape will be played for the inmate by, and in the presence of, the assigned staff member within fifteen (15) days of receiving the request. The Institutional Grievance Coordinator will be notified that the inmate has requested to hear their disciplinary hearing tape.*

23.3 Once the tape has been played for the inmate, the *assigned staff member* will return the tape to the *Hearing Officer/Institutional Recorder*, and will notify the *Inmate Grievance Coordinator* that the inmate has heard the tape.

23.4 If the inmate so requests in the appeal, the tape recording will be made available to the appropriate reviewing authority before deciding the appeal.

24. REHEARING:

24.1 Where exceptional circumstances are found to exist, the Division of Operations may order that a disciplinary case be reheard. This may be ordered if it is determined a disciplinary charge was dismissed, but compelling reasons exist for proceeding again with a rehearing of the disciplinary violation. Compelling reasons may include, but are not limited to, situations in which ~~significant and material~~ evidence concerning a violation is discovered after the violation hearing has been conducted. In such cases, the Division of Operations will indicate in writing the compelling reason(s) that require a rehearing of the disciplinary violation. A rehearing may not be ordered for which an inmate did not receive timely notice of charges or an initial disciplinary hearing in a timely manner unless authorized in writing by the Division of Operations. (NOTE: A request for a disciplinary re-hearing will include written justification by the Warden to the Division of Operations.) (Amended by Change 1, dated September 16, 2010)

24.2 Step 1 Grievance: A Warden can request, through the Division of Operations, that a hearing be reheard at their level if the reasons noted in 24.1 are applicable.

24.3 Step 2 Grievance: *The Division of Operations can order that a hearing be reheard if the reasons noted in 24.1 are applicable or if directed by the Administrative Law Court (ALC).* (Amended by Change 1, dated September 16, 2010)

~~24.3~~ **24.4 Time Limits:** A rehearing must occur within 21 calendar days from the date that the rehearing is ordered and signed by the Division of Operations. *If a rehearing is ordered as a result of the inmate's appeal to the ALC, and the ALC specifies a time frame for the rehearing other than the established 21 days, the rehearing will be held in accordance with the ALC Order. If no time limit is specified in the ALC Order, then the rehearing will be held within 21 working days of the signed ALC Order.* (Amended by Change 1, dated September 16, 2010)

~~24.4~~ **24.5 Evidence:** Any evidence presented at the initial hearing may be presented at the rehearing; however, if the disciplinary conviction was overturned due to insufficient evidence, additional evidence must be presented and considered at the rehearing in order to find the inmate guilty. (Amended by Change 1, dated September 16, 2010)

~~24.5~~ **24.6 Penalties:** (Amended by Change 1, dated September 16, 2010)

~~24.5.1~~ **24.6.1** Sanctions imposed at a rehearing involving loss of good time will be made effective from the date of the disciplinary infraction.

~~24.5.2~~ **24.6.2** Sanctions imposed as a result of the initial hearing may again be assessed; however, the inmate will be given credit for penalties already served.

25. RECORD KEEPING:

25.1 In cases where an inmate has been found guilty, all written disciplinary records will be maintained for a period of five (5) years. (NOTE: Tape recordings will be maintained for a period of 18 months.)

25.2 If an inmate is found guilty, SCDC Forms 19-29A, "Incident Report," and 19-69, "Disciplinary Report and Hearing Record," will be placed in the inmate's Institutional Record. If multiple charges have been made against an inmate, then only those charges for which the inmate has been found guilty will be maintained. Charges for which the inmate has been found not guilty included on the same reports will be marked out by the Hearing Officer. (NOTE: This does not mean that the Agency cannot utilize such records for purposes of maintaining or collecting statistical or historical data.)

25.3 *In cases where an inmate's disciplinary conviction(s) have been overturned as a result of an appeal (i.e., Inmate Grievance System, Administrative Law Court etc.), SCDC Forms 19-29A, "Incident Report," and 19-69, "Disciplinary Report and Hearing Record," will remain in the inmate's institutional and central records. Documentation approving the dismissal will be placed in the inmate's institutional and/or central records.*

26. ADDITIONAL INFORMATION ABOUT SANCTIONS:

26.1 Cell or Cube Restriction: An inmate may be placed in cell or cube restriction for the following lengths of time:

- For the *remainder* of the shift *on which the restriction was imposed*;
- *For up to 24 hours*, as a result of the employee's immediate corrective action with the concurrence of the Supervisor;
- For up to seventy two hours as a result of the supervisor's immediate corrective action;
- For a maximum of 30 days as a result of Informal Resolution;
- For a maximum of 60 days for Administrative Resolution;
- For a maximum of 60 days for a Disciplinary Hearing.

26.2 When an inmate is placed in cell or cube restriction, the following will apply:

26.2.1 Activities: The inmate is not allowed to leave his/her cell or cube except for medical reasons, meals, showers/hygiene, law library visits (during the inmate's non-work hours only), work, educational or vocational school/training, compulsory program activities, religious services (one [1] hour of worship services weekly), and legal visits. The inmate will not be authorized visitation.

26.2.2 Exercise: The inmate will lose out-of-cell/cube exercise privileges for the period of time that s/he is placed on cell or cube restriction status.

26.2.3 Extra Duty: If an inmate is given extra duty as a result of an informal or administrative resolution or pursuant to a finding of guilt at a disciplinary hearing, and the inmate refuses to perform the extra duty, s/he may be charged for the refusal. If the inmate is found guilty and given the penalty of loss of good time, s/he may still be required to perform the extra duty.

26.3 Restitution: Refer to SCDC Policy/Procedure ADM-15.01, "Repayment of Costs by Inmates," for procedures to be followed to assess restitution pursuant to state statutes.

26.4 Loss of Privileges: Inmates may not be denied purchase or possession of legal correspondence materials, incoming/outgoing mail, legal visits, legal phone calls upon verification by staff, educational materials needed for an educational program in which the inmate is enrolled, clothing necessities pursuant to SCDC Policy/Procedure OP-22.03, "Authorized Inmate Property and Disposition of Unauthorized Property," or hygiene supplies if not issued.

- Canteen Purchases Access to canteen items may be suspended, except legal and correspondence materials, and hygiene items (e.g., tooth brushes, toothpaste/powder, soap, etc.) if these items are not issued. Restrictions may be documented via the automated disciplinary system. If an inmate loses his/her canteen privileges, s/he will also lose the privilege of purchasing Service-Fund Raising Project Items

- *Televisions Purchased From The SCDC Canteen Beginning November 2007: The following sanctions apply to inmates who have purchased a television:*

- *Conviction of a level 1 disciplinary offense-loss of television set (must be mailed out)*
- *Conviction of a level 2 disciplinary offense-loss of television set (must be mailed out)*
- ** - *Conviction of a level 3 disciplinary offense-loss of television privilege for 90 days*
- ** - *Conviction of a level 4 disciplinary offense-loss of television privilege for 60 days*
- ** - *Conviction of a level 5 disciplinary offense-loss of television privilege for 30 day*
- ** - *Any combination of three (3) level 3, 4, or 5 offenses-loss of television set (must be mailed out)*

- **Visitation:** Certain offenses may also carry a suspension of visitation privileges by the Warden pursuant to SCDC Policy/Procedure OP.22.09, "Inmate Visitation." In such cases, the Warden will notify this

Inmate of the visitation suspension using the procedures outlined in OP-22.09.

- **Telephone:** (NOTE: Inmates may not be denied use of a telephone to contact their attorney or legal representative; or to make a star 22 call; however, such calls must be verified by staff.) Restrictions on telephone access may be documented via the automated disciplinary system.
- **Personal Property:** Except legal and correspondence materials (to include incoming and outgoing correspondence); hygiene items (tooth brushes, toothpaste/powder, and soap), if these items are not issued; religious literature; clothing necessities (as per SCDC Policy/Procedure OP-22.03, "Authorized Inmate Property and Disposition of Unauthorized Property"; and educational materials needed for academic programs in which the inmate is enrolled. SCDC Form 19-71, "Loss of Privileges - Personal Property," will be completed by the Hearing Officer in these cases.
- **Other Privileges/Leisure Activities:** (e.g., day room activities, handicrafts, etc.) Anything that is determined to be a privilege as opposed to a basic necessity may be restricted, suspended, or limited by proper authority as a sanction.
- **Grandfathered Items:** If an inmate is convicted of a Level 1 offense, or 903 The Use or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, or Inhalants (Old Disciplinary Code 1.10 and 2.02) or an Escape, the inmate will be given 30 days to either mail all their grandfathered property items to a family member or friend, or the items will be disposed of pursuant to SCDC policies/procedures related to contraband control.

27. ESCAPES: Escapes from correctional facilities, labor crew work sites, or work release sites by inmates are a special area of concern for the Agency. The Agency's primary mission is to protect the public, therefore, the disciplinary sanctions for escapes must be carefully managed. For that reason, all escapes must be referred to a disciplinary hearing and the following guidelines must be used in determining sanctions for inmates who are convicted of an escape.

27.1 901 Class I: Any escape, attempted escape, or aiding/abetting escape from a Level 2 or 3 institution or from medium or maximum custody at a local detention center. Also includes escapes from a Level 1 institution or minimum custody at a local detention center that involves any threat of violence, physical harm, or other aggravating circumstances; to include actual or constructive possession of tools or items which are intended to be used to facilitate an escape. Note: Should an inmate assigned to an outside detail, at any level institution, walk-off (with no aggravating circumstances); this should be classified as a Class II escape. The Hearing Officer will impose the following sanctions on an inmate who is convicted of a Class I escape:

Disciplinary Detention	360 to 720
Loss of Good Time	No limit - All good time may be taken
Restitution	Costs may be deducted from an inmate's account to reimburse the state for the costs associated with searching for and apprehending an inmate when s/he escapes or attempts to escape. See SCDC Policy/Procedure ADM-15.01, "Repayment of Costs by Inmates," for additional information.
Loss of Privileges	360 to 720 days

27.2 902 Class II: Any escape, attempted escape, or aiding/abetting escape from a Level 1 institution or minimum custody at a local detention center that does not involve any threat of violence, physical harm, or other aggravating circumstances. The Hearing Officer will impose the following sanctions on an inmate who is convicted of a Class II escape:

Disciplinary Detention	180 to 360 days
Loss of Good Time	No limit - All good time may be taken
Restitution	Costs may be deducted from an inmate's account to reimburse the state for the costs associated with searching for and apprehending an inmate when s/he escapes or attempts to escape. See SCDC Policy/Procedure ADM-15.01, "Repayment of Costs by Inmates," for additional information.
Loss of	

28. DRUG CHARGES: The South Carolina Department of Corrections has zero tolerance for anyone found possessing, introducing, or attempting to introduce illegal drugs, alcohol, or other related substances considered to be unauthorized property into any SCDC facility, building, or vehicle, or on to any property under the control or jurisdiction of the SCDC. The presence and/or use of drugs by inmates creates a danger to the public, to employees, and to other inmates, therefore, the disciplinary sanctions for drug possession or use must be carefully managed. For that reason, all charges for 903 The Use or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, or Inhalants must be referred to a Disciplinary Hearing and the following guidelines must be used in determining sanctions for inmates who are convicted of these charges: (Amended by Change 1, dated September 16, 2010)

903 The Trafficking and/or Use or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, or Inhalants: The actual or constructive possession of any item which was not issued to the inmate officially or which cannot be purchased by him or her in the prison canteen, or which has not been authorized by the Agency Director or Warden. Drugs of any description (except those prescribed by an authorized physician and within authorized amounts), e.g., barbiturates, narcotics, medicines, marijuana, and poisons, as well as all drug paraphernalia, such as needles, syringes, etc. Any inmate testing positive for any unauthorized drug, refusing to submit to a drug test, or failing to produce a specimen within three (3) hours as specified in SCDC Policy/Procedure GA-03.03, "Inmate Drug Testing/Screening Program." Additionally, for clarification purposes, the "hoarding" of prescribed medications by an inmate will apply to this violation. Any inmate acting under the influence of any inhalant other than one prescribed by an authorized physician which, when inhaled, creates altered states of physical or mental activity is in violation of this charge. (Amended by Change 1, dated September 16, 2010)

Number of Drug Conviction	Disciplinary Detention	Good Time	Privileges Suspended
1	0-45 days	0-90 days	Mandatory one (1) year suspension:
2	45-60 days	90-180 days	Mandatory one (1) year suspension:
3	45-90 days	180-360 days	Mandatory one (1) year suspension:
4th or more	90-360 days	No limit in loss of good time. All accrued good time may be taken.	No privileges during Term of Disciplinary Detention and Mandatory one (1) year suspension:
5 or more	360-720 days	No limit on loss of good time. All accrued good time may be taken.	No privileges during Term of Disciplinary Detention and Mandatory one (1) year suspension:

29. DEFINITIONS:

Cell or Cube Restriction generally refers to the confinement of an inmate in his/her cell or cube other than for attending work and/or educational or vocational training, other compulsory (mandatory) programs, showers, religious services, medical reasons, law library, meals, and legal visits.

Common Area refers to the living areas that are equipped with day/TV rooms, bathrooms, and other areas where an inmate has no specific ownership or responsibility. (Amended by Change 1, dated September 16, 2010).

Disciplinary Hearing refers to a formal proceeding conducted by a Hearing Officer to process serious rule violations.

Major Disciplinary: Any Level 1 or 2 disciplinary offense; or any disciplinary case referred to the Disciplinary Hearing Officer for disposition.

Lesser Included Offense refers to instances when it is impossible to commit a particular offense without, at

the same time and by the same conduct, committing a less serious offense. The latter is a lesser included offense (e.g., possession of contraband and possession of contraband for planning an escape) when the two charges involve the same items of contraband.

Major/Responsible Authority refers to the Major, Associate Warden, Duty Warden, or Warden of an institution, or where there is no Major assigned, the Captain. In Level II/III Institutions, the Warden can designate a Captain to serve in this capacity with the written concurrence of the Division of Operations. Level I Institutions can be a Lieutenant and above.

Continuance: When a case is moved to another hearing date within the appropriate timeframe. The reasons for a continuance include, but are not limited to : employee on medical, military inmate assault or some other type of leave; a need to review additional information relevant to the disposition of the case.

Convicted: When an inmate is/was found guilty, or pled guilty of the charged infraction.

Dismissed: When an inmate's charge was dropped due to technical reasons and/or procedural errors.

Closed: When an infraction is disposed of through informal or some other means (Inmate in SMU that is a habitual offender and the action is non-assaultive in nature) within the disciplinary process.

Not Guilty: When an inmate is cleared of charged infraction in a formal disciplinary hearing through a preponderance of the evidence presented.

Guilty But Not Accountable: When a mentally ill inmate commits a disciplinary infraction and the mental health staff determines that the inmate was not accountable for his/her action(s), and the Hearing Officer finds the inmate guilty through a preponderance of the evidence presented, the inmate should be found guilty, but not accountable.

s/Jon E. Ozmint, Director

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT.

APPENDIX A

Access to the automated Inmate Disciplinary System will be limited. The Division of Operations will determine and manage employee application usage. The Division of Resource and Information Management will provide employees with access to the automated Inmate Disciplinary System.

All Wardens will determine the employees responsible for managing the institutional disciplinary process as follows. The employees will have specific access to the automated system as it relates to their duty assignment.

Employee/Assignment	Authorized Number of Employees
Major/Responsibility Authority	No Limit
Recorder	Limit 2
Modifier	Limit 2
Counsel Substitute	No Limit
Shift Supervisor	No Limit

NOTE: Other institutional employees will have inquiry access only to the inmate automated disciplinary system.

Agency employees in designated divisions will have approved access to the automated inmate disciplinary system.

Agency Hearing Officers will have limited access to the automated inmate disciplinary system.

SCDC DISCIPLINARY OFFENSES

1. RULES VIOLATION DEFINED: The following disciplinary offenses represent violations of the SCDC inmate rules. A violation of these rules may consist of any of the following:

- Engaging in the specified behavior;
- Attempting to engage in the specified behavior;
- Conspiring to engage in the specified behavior; or
- Aiding others in engaging, attempting to engage, or conspiring to engage in the specified behavior.

2. LIST OF OFFENSES: The following is a list of the titles and code numbers of offenses.

Level 1 Offenses

801 Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, or Volunteer, or Member of the Public with Means/and/or Intent to Kill or Injure: The willful hitting, striking, or unauthorized touching of an SCDC employee or other government agency employee, contract employee, or volunteer, or member of the public with or without a weapon or the throwing of any substance at or on an SCDC employee or other government agency employee or contract employee who is exercising legitimate authority over an inmate, when such hitting, striking, throwing, or unauthorized touching causes bodily injury. (Amended by Change 1, dated September 16, 2010)

802 Sexual Assault: Forcing another person, by violence or threats of violence, to perform a sexual act. (A sexual act is any intentional contact between the genitals of one inmate and the genitals, mouth, anus, or hands of another person.) A conviction for this charge will result in a loss of the inmate's visitation privileges for one (1) year regardless of where the infraction occurred.

803 Riot: When an inmate, with two or more persons, intentionally participates in conduct that creates danger of damage or injury to property or persons and substantially obstructs the performance of unit operations or institutional operations.

804 Homicide: The killing of any person with/without malice, advance thought, either expressed or implied.

805 Hostage Taking: The act of any inmate acting alone or with others who by threats, coercion, intimidation, or physical force, takes, holds, or carries away any person as a hostage for any reason whatsoever.

806 Any Act Defined as a Felony by the Laws of the State of South Carolina or the United States and not otherwise Defined in these Rules.(State Criminal Statute must be provided.)

857 Assault and/or Battery of an Inmate with Means and/or Intent to Kill or Injure: The willful hitting, striking, throwing of substances, or unauthorized touching of an inmate with or without a weapon by another inmate, when such hitting, striking, throwing, or unauthorized touching results in great bodily injury.

896 Unauthorized wearing, possession and/or providing Agency uniform(s): The wearing, possession and or providing of an Agency uniform is a serious offense as it relates to inmate identification, institutional order and security.

897 Possession of Security Equipment/Property: The unauthorized possession and or use of security equipment/property of SCDC or that of an outside source. Unauthorized items may include, but not be limited to, keys, restraints, chemical munitions, employee ID cards, crafted devices, i.e., hand cuff keys, or dummy like objects, (for escape/attempt escape purposes),etc.

898 The Possession of Any Cell Phone or Other Type of Communication Device: Possession of, receives or uses (audio/visual), conceals, disposes, stores, facilitates, barter, buys, sales of cellular phones or other communications equipment and/or any components thereof. This includes, but is not limited to, MP3 players, I-pods, or any like devices.

901 Class I Escape: Any escape, attempted escape, or aiding/abetting escape from a Level 2 or 3 Institution or from medium or maximum custody at a local detention center. Also includes escape from a Level 1 Institution or minimum custody at a local detention center that involves any threat of violence, physical harm, or other aggravating circumstances. **NOTE:** Should an inmate assigned to an outside detail at any level institution, walk-off (with no aggravating circumstances), should be classified as a Class II escape.

902 Class II Escape: Any escape, attempted escape, or aiding abetting escape from a Level 1 Institution or minimum custody at a local detention center that does not involve any threat of violence, physical harm, or aggravating circumstances.

903 The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants. The actual or constructive possession of any item which was not issued to the inmate officially or which cannot be purchased by him or her in the prison canteen, or which has not been authorized by the Agency Director or Warden. Drugs of any description (except those prescribed by an authorized physician and within authorized amounts, *expiration date*, e.g. barbiturates, narcotics, medicines, marijuana and poisons, as well as all drug paraphernalia, such as needles, syringes, etc. Any inmate testing positive for any unauthorized drug, refusing to submit to a drug test, or failing to produce a specimen within three (3) hours, as specified in SCDC Policy GA-03.03, "Inmate Drug Testing/Screening Program." This rule violation encompasses the "hoarding" of prescribed medication by any inmate(s). Any inmate acting under the influence of any inhalant other than one prescribed by an authorized physician which when inhaled, creates an altered state of physical or mental activity.

904 Possession of Escape Tools and/or Paraphernalia: *The actual or constructive possession of any tool, device, document, drawing, or any other item that could be used to plan or execute an escape from a correctional institution.*

Level 2 Offenses

807 Striking an SCDC Employee or other Government Employee, Contract Employee, or Volunteer, or Member of the Public: The willful hitting, striking, or unauthorized touching of an SCDC employee or other government agency employee, contract employee, or volunteer, or member of the public with or without a weapon or the throwing of any substance at or on an SCDC employee, other government agency employee, contract employee, or volunteer who is exercising legitimate authority over an inmate, when such hitting, striking, throwing, or unauthorized touching does not cause bodily injury. (Amended by Change 1, dated September 16, 2010)

808 Fighting With a Weapon: Any group of two or more inmates who engage in a physical altercation with any instrument used for the purpose of inflicting physical injury on another person.

809 Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public: Communication, verbal or written, by an inmate to an individual that s/he intends to injure that person or commit a violent or unlawful act dangerous to human life, presently or in the future; or one who commits a physical act of a threatening nature, and the probable result of such threats or action is to place the individual in fear of bodily injury; or one who causes evacuation of a building; or one who creates serious disruption or alarm. Any unauthorized body contact of an employee or member of the public which creates serious alarm, but does not result in bodily injury.

810 Striking an Inmate With or Without a Weapon: The willful hitting, striking, throwing of any substance at, or unauthorized touching of one inmate by another inmate with or without a weapon, whether or not such hitting, striking, or unauthorized touching causes bodily injury.

811 Possession of a Weapon: The actual or constructive possession by an inmate of any instrument intended to be used to inflict physical injury on another person.

812 Robbery with Force: The taking of property of another person in that person's presence with use of force and violence which places that person in fear of his/her safety by the use of such force, violence, or threats.

813 Throwing of any Substance or Object on an SCDC Employee or other Government Employee, Contract Employee, or Volunteer : The throwing of any substance at or on an SCDC employee or other government agency employee, contract employee, or volunteer who is exercising legitimate authority over an inmate, whether or not such throwing causes bodily injury.

814 Inciting/Creating a Disturbance: Any act or activity which results in a disruption of institutional operations or a breach of institution security. Any inmate who purposefully incites or urges a group of two or more other inmates to engage in a current or impending disturbance of institutional operations or gives commands, directions, instructions, or signals to a group of two or more persons to cause, continue, or enlarge a disturbance. An inmate may be found guilty of this violation even where no disruption of institutional operations actually occurs as a direct or indirect result of his/her *actions*. A disturbance as used herein is an assemblage of three or more persons which creates grave danger or damage or injury to property or persons and/or substantially disrupts the normal functioning of the institution.

820 Damage, Loss, Destruction, or Defacing of Property Valued at 100.00 or more: *The intentionally intentional or reckless* damaging, destroying, or disfiguring property belonging to a government agency, a private citizen, an employee, or another inmate. *Possession of damaged, destroyed, or disfigured property also qualifies as a violation of this offense.* (NOTE: This does not include cases in which an inmate loses his/her ID Card or issued room key. In these cases, the inmate will be required to pay a replacement fee for such items and will not be processed pursuant to these procedures. See also, SCDC Policies/Procedures OP-21.06, "Inmate Identification Cards," and OP-22.17, "Key Control," for information regarding the processing of replacement fees.) This charge must be forwarded to a Disciplinary Hearing. (Amended by Change 1, dated September 16, 2010)

822 Sexual Misconduct: (1) Engaging in sexual acts or intimate physical contact of a sexual nature with others; or soliciting sexual acts from others." A conviction for this charge will result in a loss of the inmate's visitation privileges for 360 days regardless of where the infraction occurred. This charge must be forwarded to a Disciplinary Hearing. *NOTE: The conviction of 822 does not require the wearing of pink jumpsuits with the exception noted in section 17.8.* (Amended by Change 1, dated September 16, 2010)

854 Exhibitionism and Public Masturbation: (1) Engaging in acts of indecent and/or unnecessary exposure of genitals or other private body parts to a staff member or other person; or (2) engaging in acts of masturbation or any manual stimulation of one's exposed or unexposed genitals in a public setting, or in the view of a staff member or other person. A conviction of this charge will result in a loss of the inmate's visitation privileges for one (1) year.

855 Smuggling and/or Conspiracy to Smuggle in Contraband: Any inmate found to have conspired, aided, or acted in collusion with any person, *or acting alone* with the intent of introducing any form of contraband into any SCDC facility. Conspiracy, aid, or collusion may be defined as using any form of communication or providing any type of assistance with/to any person where plans are made with the intent of introducing contraband. The physical possession/receipt of the contraband by the inmate is not needed to support this charge. An inmate can be charged with this offense if his/her approved visitor is caught bringing in contraband and it is reasonable to believe that the visitor's intent was to supply the inmate with the contraband.

~~895 The possession and/or use of another inmate's identification card. To have possession of another inmate's ID card is a serious violation. To possess another inmate's ID card for the purpose of misrepresentation, making purchases, etc., is a chargeable violation to include monetary reimbursement.~~ (Amended by Change 1, dated September 16, 2010)

895 Inmate ID Card Violations: *The following are violations of this infraction:*

- *To have possession of another inmate's ID card;*
- *To give another inmate possession of your ID card, or another inmate's ID card;*
- *To give your ID card to anyone not authorized to have possession of your ID card;*
- *The forgery of ID cards;*
- *Any other actions or use of an ID card that is inconsistent with the ID card's purpose.*

858 The Use or Possession of Practice GED Cheat Sheet, the Official GED Test, or Related GED Materials Not Authorized for Use by the Inmate: *Possession of, attempt to use, or provide others with a cheat sheet and/or answers to the GED questions, with the intention to gain unfair advantage in securing a passing score on the Practice GED Test or the Official GED Test. (NOTE: Any inmate convicted of this offense will also be prohibited from taking the GED Test while incarcerated.)*

Level 3 Offenses

815 Evading a Security Device: The act of an inmate to obstruct, tamper with, or jam any opening, closing, or exiting of a cell door, food flap, locks, any restraint devices, and/or secured area(s).

816 Trafficking and Trading: The buying or selling or unauthorized exchange of any commodity from any individual within the institution, other than authorized purchases from the canteen (evidence may include an excessive inventory of marketable items).

817 Possession of Contraband: The possession of any unauthorized, *altered or excessive* property, including money, tobacco products, gambling paraphernalia, unauthorized publications and unauthorized clothing. The possession of tobacco in a quantity larger than 40 grams is enough to reasonably assume that the intent of the possession was for distribution to other inmates and can be heard as a major disciplinary. Unauthorized property is any item to include keys not assigned to the inmate by the Department or purchased by the inmate from the canteen.

818 Use of Obscene, Vulgar or Profane Language or Gestures: The act of any inmate who verbalizes or writes lewd or indecent notes or letters to another person, or makes gestures or actions that are discourteous or disrespectful in nature, when the person who receives verbal statements, notes, letters, gestures, or actions complains of such.

819 Stealing: Intentionally taking any property belonging to a government agency, a private citizen, the State, an employee, or another inmate.

821 Gambling and Loan Sharking: Any inmate who bets, lends, offers to lend, borrows or attempts to borrow anything of value from another person, or organizes the outcome of any event, including sporting contests. The possession of gambling paraphernalia may be sufficient evidence.

823 Fighting Without a Weapon: Any group of two or more inmates who engage in a physical altercation.

824 Threatening to Inflict Harm, Physical or Otherwise/Assault, on Another Inmate: The communication, verbal or written, by an inmate to another inmate that s/he intends to injure or commit a violent act, dangerous to human life, presently or in the future; or commits a physical act of a threatening nature placing another inmate in fear of bodily injury, causing evacuation or serious disruption.

825 Refusing or Failing to Obey Orders: Noncompliance with a legitimate order from an SCDC employee or other government/contracted employee who is in a position of authority over the inmate. This includes resisting arrest or failure to follow written policy/procedure requirement (i.e., grooming standards, etc.). The act of any inmate whose actions interfere with or tends to interfere with anyone in pursuit of their assigned duties.

826 Refusing to Work: Refusing to begin or complete a work assignment without a legitimate reason,

such as illness.

827 Refusing to Attend the Compulsory (Mandatory) Program: The refusal of any inmate who scores below an eighth grade reading or math level to enroll/attend/participate in school and/or the refusal of any inmate to attend or participate in any compulsory (mandatory) program.

828 Out of Place: The act of an inmate who without authority either fails to report to his/her appointed place of duty or assignment or any other place to which he/she was ordered; leaves his or her appointed place of duty or assignment; is found to be in an unauthorized area; or does not have specific approval to be in an unauthorized area of the institution.

829 Failure to Work: Failure to complete a reasonable amount of an inmate's work assignment within a reasonable period of time, or sleeping on the job.

830 Mutiny: When two (2) or more inmates conspire and refuse, as a group, to work, move, return to their cells or cubes, and/or create a work stoppage or other similar activity.

831 Lying to an Employee or Knowingly Making False Statements: The intentional making of untrue statements by any inmate who makes a false statement under oath, makes inconsistent statements which are false, or makes a false statement to or against an employee or anyone. The act of any inmate who gives an untrue statement deliberately or a false impression to any SCDC employee, contracted employee or to an employee of a government agency which has authority in supervising the inmate.

832 Unauthorized Inmate Organization Activity or Participation in a Security Threat Group (STG) or STG Activity: Any participation of any inmate in any organization which has not been approved or any informal organization, association, or group of three (3) or more inmates that has a common name, and whose members or associates engage or have engaged in activities that include planning, organizing, threatening, soliciting, or committing unlawful acts of misconduct classified as serious threats or potential threats to the safety and security of the public, the Department, employees, visitors, and/or other inmates, or any other group that has been designated a Security Threat Group by the Agency Director. Possession of STG material is sufficient to warrant this charge.

833 Abusive Treatment of an Animal, Including Carnal Relations With an Animal: Any physical maltreatment or improper misuse of an animal and/or engaging in sexual activities with an animal.

834 Any Act Defined as a Misdemeanor by the Laws of the State of South Carolina or the United States Not Otherwise Defined in these Rules: (State criminal statute must be provided)

835 Forgery or Possession of Any Forged Document: The act with intent to defraud or deceive another person by falsely making, completing, or altering any document; or knowingly issuing or possessing such an instrument.

836 Disrespect: The failure of any inmate to observe proper decorum or who willfully engages in action or make statements to a person which are discourteous in nature, which may or may not include the use of profanity.

837 Interfering with Count: Failure to stand for count, movement during count which may create confusion or distraction of any kind, or activity by any inmate which may disrupt concentration or the orderly counting of inmates:

838 Soliciting Improper Relationships: Assistance from an Employee or an Inmate to Violate an Agency Rule or an Employee Rule: The act of any inmate who willfully induces any person to do or agree to do any act in violation of his/her lawful duty or in violation of SCDC rules and regulations, or in violation of the lawful rules and regulations of a government agency which is exercising legitimate authority over an inmate. **Assisting in the Corruption of or Entering into an Improper Relationship with an Employee:** The act of any inmate who willfully gives, offers or promises anything of value with the intent to influence any

Level 5 Offenses

601 Court Order Credit Loss: Pursuant to §24-27-200, a prisoner shall forfeit all or part of his earned work, education, or good conduct credits in an amount to be determined by the Department of Corrections upon recommendation of the court or administrative judge. Pursuant to South Carolina Supreme Court Opinion # 25409, filed 02/11/2002 (also known as the Wade Decision). A forfeiture of earned credits pursuant to South Carolina Statute §24-27-2000 cannot be as result of a post conviction relief hearing decision. (Amended by Change 1, dated September 16, 2010)

845 Unauthorized Services/Piddling (Handicrafts): No inmate shall provide or attempt to provide professional services or handicrafts for any person for any reason whether it is for profit or not.

846 Creating Unnecessary Noise: The act of any inmate who engages in any action which disrupts or may lead to the disruption of the orderly operation of the institution, the yelling/banging or excessive noise level by any inmate.

847 Abuse of Privileges: The willful violation by an inmate of any provision of an institutional regulation dealing with a privilege. A privilege as used in this subsection is any benefit provided by institutional, SCDC, contracted services, or another governmental agency's regulations.

848 Exerting Any Authority Over Another Inmate, to Include:

- a. Administering any punishment or other form of discipline to other inmates;
- b. Granting or denying another inmate access to any benefit or activity;
- c. Controlling the movement or activities of other inmates;
- d. Escorting another inmate from one place to another, without a staff member, except as required by a bona fide emergency;
- e. Inventorying, with or without a staff member, another inmate's property or searching another inmate, his/her living area, or his/her property;
- f. Mailing or distributing another inmate's correspondence;
- g. Participating in the taking of any count; and
- h. Enforcing any SCDC or institutional or other governmental agency rule or regulation.

849 Disregarding Safety Regulations, to Include:

- a. Failing to wear safety goggles when performing any grinding, chiseling, filing, chipping, or buffing operation;
- b. Failing to wear hearing protection on any work station designated as a high noise level area or failing to wear work or safety shoes when instructed;
- c. Continuing to work in an area or on any machinery or equipment that is deemed unsafe or improperly guarded by the work supervisor;
- d. Operating machines or equipment or performing any operation that has not been specifically assigned;
- e. Operating equipment without using the safety guards provided or removing the safety guards;
- f. Unauthorized fabricating or repairing of personal items on government agency equipment;

official act or action within the official responsibility of any employee; the act of any inmate who enters into an improper relationship with an employee. **Soliciting Money or Gifts from a SCDC Employee or an Inmate, or from Another Person For the Benefit of an Inmate:** Any inmate who tries to obtain, buy, or entice money or gifts from any SCDC employee or another person for his/her benefit.

853 The unauthorized use of an inmate's telephone personal identification number(PIN). The unauthorized use of telephone personal identification number is a serious violation. Inmate are prohibited from sharing and using other inmate's telephone PINs.

856 Damage, Loss, Destruction, or Defacing of Property Valued at Less than \$100.00: *The intentionally intentional or reckless* damaging, destroying, or disfiguring property belonging to a government agency, a private citizen, an employee, or another inmate. *Possession of damaged, destroyed, or disfigured property also qualifies as a violation of this offense.* (NOTE: this does not include cases in which an inmate loses his/her ID card or issued room key. In these cases the inmate will be required to pay a replacement fee for such items and will not be processed pursuant to these procedures.) For further information regarding the processing of replacement fees, see SCDC Policies/Procedures OP-21.06, "Inmate Identification Cards," and OP-22.17, "Key Control." (Amended by Change 1, dated September 16, 2010)

899 The Use, Possession, or Distilling and/or Brewing of any Alcoholic Beverage: Any inmate acting under the influence of alcohol or in possession of alcohol or alcoholic beverage or other brewed substance which, when ingested, creates altered states of physical or mental activity. Note: The first two infractions of 899 for any inmate may be resolved Informally or Administratively by the Major/Responsible Authority. The third or subsequent infractions of 899 by an inmate must be referred to a hearing officer. However, regardless of how many times the inmate has committed this infraction, any large quantities of alcohol, or possession of alcohol which is commercially produced, or behavior which endangers the security and good order of the institution should be referred for a disciplinary hearing and Hearing Officers will consider such evidence when determining the severity of the sanctions imposed (i.e. large quantities of alcohol, multiple offenses, commercial alcohol, and endangering the security and good order of the institution, etc., will result in more severe sanctions). As always, the circumstances of the infraction and the inmate's disciplinary history should be taken into consideration. Questions should be addressed to the Division of Operations.

859 Disorderly Conduct: *Any inmate who engages in any action which disrupts, or may lead to the disruption of the orderly operations of the institution.*

Level 4 Offenses

839 Mutilation: Physical injury to an inmate's body that is self-inflicted, allowing it to be inflicted by others with the inmate's permission, or assisting another inmate in mutilating himself/herself. (NOTE: Any inmate who pierces or attempts to pierce any part of his/her body, or assists others in piercing or attempting to pierce any part of their body will be charged with this offense as the practice creates a health and safety risk.)

840 Failing or Refusing to Respond to an Employee's Questions: The failure of any inmate to respond to any SCDC employee question even if it is felt that the question is unjust. It is not a defense that an inmate considers the question invalid.

841 Malingering Pretending to be ill or otherwise incapacitated in order to avoid duty or work.

842 Use or Possession of Tattooing Paraphernalia: The actual or constructive possession by an inmate of a tattooing device or a tattoo magazine, which may be used for the purpose of tattooing.

843 Refusing Medical Treatment for a Communicable Disease: The failure or refusal of medical treatment by any inmate with a disease capable of being transmitted.(NOTE: In these cases, inmates will be placed in medical isolation and will not be placed in PHD, Disciplinary Detention, or security detention status.)

844 Interfering with the Duties of any Person The act of any inmate whose actions interfere with anyone in pursuit of their assigned duties.

- g. Riding on the draw bars of farm vehicles;
- h. Standing up while riding in moving vehicles or allowing legs to hang over sides of trailers while moving;
- i. Creating a health and/or safety hazard (to include flooding of cells).

850 Violation of a Written or Posted Institutional Rule Not Contained in These Rules, But Consistent with These Rules:

851 Supervised Furlough II Violation: Any inmate who is returned to the custody of the SCDC due to a violation of the Supervised Furlough Program. S/he will fail to earn any good time for the month s/he is returned to the custody of SCDC (automatic forfeiture). (NOTE: For further clarification, refer to SCDC Policy/Procedure OP-21.11, "Loss of Statutory Good Time.")

Attachment A

Dear

Since you are on the approved visiting list of Inmate _____,

SCDC # _____, this letter is to inform you that Inmate _____ was recently convicted of a violation of Exhibitionism and Public Masturbation or Sexual Assault and has been sanctioned for this behavior through the Inmate Disciplinary System. Sexual assault is defined as forcing another person, by violence or threats of violence, to perform a sexual act. Exhibitionism and Public Masturbation is defined as the engaging in acts of indecent and/or unnecessary exposure of private body parts to a staff member or other person or engaging in acts of masturbation or any manual stimulation of one's exposed or unexposed genitals in a public setting or in the view of a staff member of other person. Specifically, Inmate _____ was convicted of _____ because he (exposed his genitals and masturbated in front of a female/male employee; exposed himself to an employee or used violence to force an employee/inmate to perform a sex act.) As a result of this behavior, Inmate _____ has had his/her visitation privileges suspended for at least one year.

The issue of sexual misconduct and sexual assault by inmates is a serious one that profoundly affects the safety and security of our Agency. Inmates who commit these offenses are jeopardizing the safety of our employees, other inmates, the general public, and you, the visitor.

The South Carolina Department of Corrections is committed to protecting the public, our employees, and our inmates. Therefore, we are providing you with this information so that you can make an informed decision about whether to continue to visit Inmate _____. If you wish to be removed from his/her list of approved visitors, please sign the statement below and return to the SCDC Central Visitation Center, 3765-A Leeds Avenue, North Charleston, South Carolina, 29485.

We regret this action, but trust that you understand the nature of our concerns. Your assistance and understanding are appreciated.

Warden

REQUEST TO REMOVE NAME FROM INMATE VISITATION LIST

I hereby request that I be removed from the visitation list of Inmate _____.

Visitor's Signature

Social Security Number

Date