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NO RESPONDENT'S BRIEF

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, *Administrative Law Judge*

ALC Case No. 13-ALJ-04-0456-AP

Appellate Case No. 2013-002692

David Bentley, # 337750,.....Respondent,

v.

South Carolina Department of Corrections.....Appellant.

**RECORD ON APPEAL**

February 9, 2015

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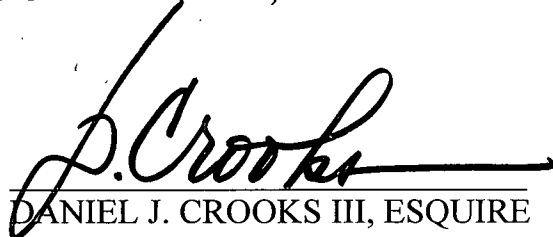
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**SC Court of Appeals**

**CERTIFICATE OF COUNSEL**

I, the undersigned attorney, counsel for Appellant, do hereby certify that this Record on Appeal contains only that material proposed to be included by Appellant, since Respondent has failed to submit a brief or designation of matter; the Record contains no additional material. I further certify that I have complied, to the best of my ability, with the South Carolina Supreme Court's Order of April 15, 2014 entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

**SO CERTIFIED THIS 9th DAY OF FEBRUARY, 2015.**



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## SCDC POLICY/PROCEDURE

Change 1 to GA-01.12: 6.3.1; 13.2

**NUMBER: GA-01.12**

**TITLE: INMATE GRIEVANCE SYSTEM**

**ISSUE DATE: OCTOBER 1, 2010**

**RESPONSIBLE AUTHORITY: OFFICE OF GENERAL COUNSEL**

**OPERATIONS MANUAL: GENERAL ADMINISTRATION**

**SUPERSEDES: GA-01.12 (September 1, 2009); (July 1, 2008); (January 1, 2006)**

**RELEVANT SCDC FORMS/SUPPLIES: 10-5, 10-5(a), 19-11**

**ACA/CAC STANDARDS: 4-ACRS-4C-01, 4-ACRS-6B-03, 4-ACRS-6C-03, 4-4284, 4-4301, 4-4344**

**STATE/FEDERAL STATUTES: Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 (Pub.L. 96-247, May 23, 1980, 94 Stat. 349)**

**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.

**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 matter(s) affecting inmates. (4-ACRS-6B-03, 4-4284)

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 for management review of staff decisions and policies/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 Persons Act.

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## **SPECIFIC PROCEDURES:**

### **1. RESPONSIBILITIES/APPLICABILITY:**

1.1 The Office of General Counsel will manage an Inmate Grievance Branch responsible for the development, management, and implementation of a system-wide inmate grievance system.

1.2 The Inmate Grievance Branch will be responsible for developing written procedures designed to address the management and use of the inmate grievance system. The procedures will, at a minimum, address staff and inmate responsibilities relative to the inmate grievance system; limitation requirements for inmates found abusing or misusing the grievance system; definitions of grievable and non-grievable actions; documentation requirements; evaluative mechanisms for ensuring the efficiency and effectiveness of the inmate grievance system; steps in the grievance process; emergency grievance procedures; and confidentiality requirements. Suggestions or problems may be submitted by staff and inmates to the Chief, Inmate Grievance Branch, at any time. Inmates will utilize a "Request to Staff Member," SCDC Form 19-11, for this purpose.

1.3 The inmate grievance system will be available for use by all inmates regardless of their custody level, classification, disciplinary status, disability, or any other administrative or legislative action that may affect any inmate incarcerated in a facility of the South Carolina Department of Corrections. Every inmate assigned to a South Carolina Department of Corrections (SCDC) institution is eligible to utilize the grievance system as set forth in this policy/procedure. Staff assistance will be provided to non-English speaking inmates, inmates unable to read and write, and disabled inmates in order to ensure their access to the grievance system. (4-ACRS-4C-01, 4-ACRS-6B-03, 4-4284, 4-4344)

### **2. ORIENTATION:**

2.1 Upon arrival at any SCDC Reception and Evaluation Center, inmates will be provided an explanation of the SCDC inmate grievance process during new admission orientation. Arrangements will be made through the Inmate Grievance Branch to provide non-English speaking, disabled, and or illiterate inmates with this information in a language or mode that they can comprehend. An inmate may also submit an SCDC Form 19-11, "Request to Staff Member," to the IGC at his/her institution concerning any questions about the grievance process. (4-ACRS-4C-01, 4-ACRS-6B-03, 4-4284, 4-4334)

2.2 Each SCDC institution will also include in its inmate orientation an oral explanation of how the grievance procedure operates. Wardens may contact the Inmate Grievance Branch to obtain assistance in locating qualified individuals to explain the procedure to non-English speaking, disabled; or illiterate inmates.

2.3 As a part of the Department orientation program, all newly hired employees will receive written and/or oral explanations of the Department's grievance policy/procedure by a representative of the Inmate Grievance Branch.

**3. REPRISALS:** No inmate will be subjected to reprisal, retaliation, harassment, or disciplinary action for filing a grievance or participating in the resolution of a grievance. The grievance procedure will be used by any inmate who is alleging reprisals of this nature. Allegations of reprisal may also be investigated by the Chief/designee, Inmate Grievance Branch, if deemed necessary.

### **4. CONFIDENTIALITY:**

4.1 To the extent possible, all documentation pertaining to inmate grievances will be considered confidential and will not be included as part of an inmate's institutional or central record. Statements made by, or information

received from, a grievant or other affected inmate relating to a grievance will not be used to initiate internal disciplinary action against an inmate(s). Grievance forms and accompanying documents will be treated as confidential.

4.2 If an inmate files a grievance that pertains to a loss of property or loss of money as a result of legitimate transactions, a reference may be included in his/her institutional record and central record as to how the matter was resolved. However, this reference will not give any indication that a grievance was filed.

4.3 If it becomes necessary to document any other circumstances or actions which are related to a grievance, a reference may be included in the institutional record and central record; however, it must not give any indication that a grievance was filed.

## 5. INSTITUTIONAL INMATE GRIEVANCE COORDINATOR:

5.1 A non-uniformed employee at each SCDC institution will be designated as the Institutional Inmate Grievance Coordinator. Coordinators will make certain that all inmates at that institution have access to the grievance procedure regardless of any disciplinary, classification, disabilities, or other administrative decision concerning them. The Institutional Coordinator will receive grievances from the employee designated by the Warden, and will investigate, resolve, and/or recommend disposition.

5.2 The Inmate Grievance Branch Administrator will be primarily responsible for the preparation of the planning stage and evaluation forms but s/he will consult with the Warden/designee and ensure that the Warden/designee has the opportunity to review and provide additional information for the planning stage and evaluation forms. Both forms will be signed by the Inmate Grievance Branch Administrator and the Warden/designee. The planning stage and the evaluation form will not be discussed with the affected employee until all required signatures are obtained. The Inmate Grievance Branch Administrator will ensure that appraisals are completed and processed within proper time limits.

## 6. MISUSE/ABUSE OF THE GRIEVANCE SYSTEM/LIMITATION:

6.1 Inmates found to be misusing or abusing the inmate grievance system may be subjected to limitation. Exceptions will be made for four (4) types of grievances, which will not be counted against the total(s) if limitation is imposed: disciplinary hearing appeals, classification issues, emergencies, and criminal activity.

6.2 Misuse or abuse of the inmate grievance system may be, but are not limited to, grievances intended to harass another person; the repeated submission of frivolous grievances; and/or the repeated submission of grievances or "Requests to Staff Members," about an issue(s) previously addressed by staff members in written responses.

6.3 Procedures: The following procedures will be used for recommending limitations:

~~6.3.1 The Warden, or designee appointed by the Warden, will meet with the inmate to discuss the perceived abuse of the grievance procedure and try to resolve the issue. The Warden may request assistance from the Grievance Administrator, Inmate Grievance Branch, in evaluating the situation. Documentation will be submitted in memo form and will include reason(s) supporting this belief, type(s) of abuse, and volume of grievances. This documentation will include what efforts institutional personnel have made to address the situation and what has led them to believe that use of the grievance procedure has been inappropriate. The request will be forwarded to the Chief/designee, Inmate Grievance Branch, for review and necessary action. The Warden will inform the inmate via a memorandum that a request for limitation has been forwarded to the Inmate Grievance Branch. This memorandum will include the reasons for the request (number of grievances filed, repeated submissions, frivolous grievances, or Request to Staff, etc.). (Amended by Change 1, dated August 2, 2012.)~~

6.3.2 The Chief/Designee, Inmate Grievance Branch, will review the institutional request and may consult with the General Counsel concerning appropriate action. If limiting action is approved, the Chief/Designee, Inmate Grievance Branch, will notify the inmate in writing of the action, the reasons

for the action, and the duration. Copies of this letter will be forwarded to the Warden. The inmate may appeal this decision in writing to the General Counsel within five (5) days of his/her receipt of notification.

**7. GRIEVABLE ISSUES:** *Only one issue, or one disciplinary conviction may be addressed on each grievance form.* The following issues will be considered grievable:

7.1 Department policies/procedures, directives, or conditions which directly affect the inmate;

7.2 Actions of a staff member toward the inmate;

7.3 Actions of an inmate against the inmate;

7.4 Inmate property complaints;

7.5 Disciplinary Hearing actions to appeal a conviction following an innocent plea, or to appeal any guilty verdict due to alleged technicalities or misinterpretation of evidence, or to appeal a sentence when the sanction imposed was allegedly not proportionate to the rules violation; (4-ACRS-6C-03, 4-4248)

7.6 Any classification decision that directly affects the inmate's custody level; and (4-4301)

7.7 Calculation of sentence-related credits.

**8. NON-GRIEVABLE ISSUES:** The following items are considered non-grievable issues:

8.1 Classification issues, as follow:

8.1.1 Institutional and security assignments made at Reception and Evaluation Centers;

8.1.2 Institutional job assignments, except where there may be extenuating medical circumstances involved; and

8.1.3 Cell, dormitory, or cubicle assignments made within an institution; unless there may be extenuating medical circumstances or criminal activity involved;

8.1.4 Inmates who sign SCDC Form 18-39, "Classification Waiver" waiving their right to be present for classification hearings, waive any grievance rights regarding any decision made by the Institutional Classification Committee.

8.2 Administrative transfers which occur due to needed movement for bedspace availability or security-related matters and which do not result in a custody reduction;

8.3 The disposition of any Department disciplinary proceeding (Disciplinary Hearing, Administrative Hearing) which resulted from a guilty plea by the inmate, *if the inmate is convicted of 601, Court Order Credit Loss*, or if the inmate accepted Informal or Administrative Resolution, unless the sanction imposed was excessive in relationship to the rule violation; and

8.4 Any issue outside of the control of the Department:

8.4.1 State and federal court decisions;

8.4.2 State and federal laws and regulations;

8.4.3 Parole Board decisions;

8.4.4 Any other matters outside the control of the SCDC.

**9. QUESTIONABLE ISSUES:** In those cases where a question may arise as to whether an issue is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch/Designee who will make that determination. The Institutional Inmate Grievance Coordinator will advise the inmate in writing as to the decision of the Chief, Inmate Grievance Branch/Designee. This decision will be final.

**10. REMEDIES:** All SCDC personnel responsible for responding to an inmate grievance will afford each successful grievant a meaningful remedy to the extent that their respective positions, authority, and resources allow. Remedies may include, but are not limited to, the following:

**10.1 Restitution:** Restoration of property by substituting a state-like item. This will normally occur instead of any monetary reimbursement.

**10.2 Monetary:** A fair value will be given for items lost or destroyed when willful negligence is proven. (See SCDC policies/procedures regarding inmate property.)

**10.3** Changes in policies/procedures, rules, or practices.

**10.4** Correction of records.

**10.5** Other remedies, as appropriate. For example, employee discipline, inmate referral to outside sources, etc. *However, employee disciplinary action which may or may not occur will not be disclosed through the grievance process.*

**NOTE:** The Warden's decision to grant restitution/monetary reimbursement will not require additional approval to have state provided like/issued items issued or deposits made to the grievant's E.H. Cooper Account so long as the amount of reimbursement is within the monetary limits of SCDC Policy/Procedure OP-22.03, "Authorized Inmate Property and Disposition of Unauthorized Property." If an inmate does not accept the Warden's response and appeals to Step 2, the property/monetary reimbursement will be held by the institutional inmate grievance coordinator until a final decision has been made at the Step 2 level.

**11. RESPONSES:** Each grievance will be answered in writing at each level of decision using the applicable SCDC Form (either Form 10-5 or 10-5a) and will be served by the Inmate Grievance Coordinator to the inmate personally. Exceptions to this procedure will be required to be approved by the Chief, Inmate Grievance Branch. The response will state the reasons for the decision reached and inform the grievant of his/her rights of appeal. Time limits at each step in the procedure are contained herein; but in most instances, grievances will be processed from initiation to final disposition within 125 days except when the Chief/Designee, Inmate Grievance Branch, specifically agrees to a request for an extension. If an extension is granted, the Inmate Grievance Coordinator will notify the inmate in writing. (NOTE: The maximum extension that may be given is 90 days. Under certain circumstances the grievance process may exceed 215 days.) (See also Procedures #13 and #14.)

**12. RECORDS:** Records regarding the filing and disposition of grievances will be maintained at each institution in a manner determined by the Institutional Inmate Grievance Coordinator and the Warden; and approved by the Chief, Inmate Grievance Branch or designee. *All grievances will be maintained for at least seven (7) years from the inmate's release.* Staff participating in the disposition of a grievance will have access to records essential to its resolution. Records pertaining to grievances will not be available to individuals who make recommendations or decisions about parole or other decisions that are not related to the grievance process. Once a grievance has been closed, it should not be reviewed or referred to unless necessary to accomplish legitimate data gathering or other grievance related objectives or for accreditation documentation with only the inmate's name blackened out as appropriate. Should any questions arise as to who should be allowed access to any such record, they will be referred to the Chief, Inmate Grievance Branch, for resolution.

**13. STEPS IN THE GRIEVANCE PROCESS:**

**13.1** Inmates must make an effort to informally resolve a grievance by either submitting a Request to Staff Member Form or by discussing their complaint with the appropriate supervisor/staff. However, in certain cases, informal resolution may not be appropriate or possible (e.g., when the matter concerns staff not working at the institution, or when the matter involves allegations of criminal activity). An informal resolution is not necessary when appealing a disciplinary conviction or a custody reduction. If informal resolution is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, i.e., living areas, libraries, etc. and will submit the Form to an employee designated by the Warden (not the Inmate Grievance Coordinator) within 15 days of the alleged incident. Requests to hear disciplinary tapes must be submitted to the Major, utilizing a Request to Staff Member form within 15 days of their disciplinary conviction. The Institutional Inmate Grievance Coordinator will be notified of this request, as well as the date the hearing tape was played for the inmate through CRT message/memorandum. If an inmate needs additional space to complete their grievance, only one additional one sided page will be permitted. An inmate will submit a grievance within the time frames established in the policy. (NOTE: Allegations involving sexual conduct between inmates and staff constitute criminal activity. When an inmate alleges that sexual activity/conduct has occurred between an inmate(s) and a staff member(s), that grievance must be processed as criminal activity.) See Procedure 15., below, for more information on processing a grievance alleging criminal activity. (4-ACRS-6C-03)

(The only exceptions are listed at Procedure(s) #13.7 and 14.) The grievance form must contain information about how and when attempts were made to resolve the problem informally, a brief statement of the circumstances of the grievance, to include date and time; why the grievant believes s/he is entitled to relief, and a brief statement of the action(s) requested for which relief may be available through the grievance procedure. No inmate or employee (other than those specified in this policy/procedure) will be given a copy of a grievance. Exceptions to policy must be requested, and approved through the Chief, Inmate Grievance Branch. Inmates will only be allowed to submit one grievance per incident or circumstance.

**13.2** All grievances will be picked up on a daily basis, during normal working hours, by an employee designated by the Warden (not the Grievance Coordinator). All grievances will be numbered and entered into the automated system (regardless of whether the issue is grievable or non-grievable) within ten (10) working days by an employee designated by the Warden (not the Inmate Grievance Coordinator). The employee designated by the Warden will give the grievances to the Inmate Grievance Coordinator after the grievance has been entered into the automated system. Upon receipt of a grievance, the Institutional Inmate Grievance Coordinator will, within ten (10) working days, complete the additional text for the grievance into the CRT screen and will then attempt to resolve the matter informally by whatever means are appropriate and/or practical. The time frame for responding to the grievance will begin once the text for the grievance has been entered into the OMS system. This may include interviewing affected employees and inmates (only exceptions are emergency grievances or appeals of disciplinary hearings results) or scheduling appropriate mediation between involved parties. If the problem cannot be resolved by this informal method, the Institutional Inmate Grievance Coordinator will conduct a complete investigation into the situation and will make recommendations to the Warden concerning disposition of the matter. No employee involved or addressed in a grievance will be assigned to conduct any investigation regarding the same. If the Inmate Grievance Coordinator determines that the grievance will not be processed, the IGC will note this on the SCDC Form 10-5, Step 1, under "Action Taken by the IGC," maintain the original for the inmate grievance file, enter "non-grievable" into the automated system, and mail a copy of the SCDC Form 10-5, Step 1, to the inmate in a sealed envelope. *Unprocessed grievances may be appealed, utilizing SCDC Form 19-11, "Inmate Request To Staff Member," to the Branch Chief within ten (10) days of the grievance being returned to the inmate. The inmate can not file a grievance against the IGC for un-processing the grievance. If the inmate has failed to provide necessary information, or has not signed and dated the grievance, s/he will be given five (5) calendar days to re-file a completed grievance; this will be noted on the Step 1 form with a due back dated included. This information will also be entered into the CRT narrative when the grievance is closed as unprocessed. Unprocessed grievances that have been given five (5) days to re-file cannot be appealed to the Branch Chief.* (Amended by Change 1, dated August 2, 2012.)

**13.3** Any grievance which is sent directly to Central Office Headquarters by the grievant will be returned unprocessed by the Inmate Grievance Branch Staff.

13.4 The Warden will respond to the grievant in writing (in the space provided on SCDC Form 10-5, Step 1), indicating in detail the rationale for the decision rendered and any recommended remedies. The grievant will also be informed of his/her rights to appeal to the next level. 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 Institutional Grievance Coordinator (with the exception of a disciplinary hearing appeal, which will be responded to within 30 days). The response will be served by the Institutional Inmate Grievance Coordinator to the grievant, within five (5) working days, and the grievant will sign and date the response acknowledging receipt. The Inmate Grievance Coordinator will maintain the original grievance for the inmate's grievance file and a copy will be given to the inmate.

**13.5 Appeals to the Responsible Official:** If the grievant is not satisfied with the decision of the Warden, the grievant may next appeal to the Division Director of Operations for final resolution of the grievance. Matters under the administrative jurisdiction of the Department Director and which do not come within the scope of authority/responsibility of the Division Director of Operations may be appealed to the appropriate Office Director or Division Director for final review of the grievance. All reviews and/or appeals of any inmate grievance will be allowed automatically without interference from any Department personnel. (4-ACRS-6B-03, 4-ACRS-6C-03, 4-4284)

**13.6 Appeal Process:** The grievant may appeal by completing the SCDC Form 10-5a, Step 2, and submitting this form, as well as the completed copies of Step 1, to the Institutional Inmate Grievance Coordinator within five (5) calendar days of the receipt of the response by the grievant. If an inmate needs additional space to complete their step 2 grievance, only one (1) additional one-sided page will be permitted. The grievant will not write on the back of any Step 1 or Step 2 form. The Institutional Inmate Grievance Coordinator will forward the original Step 2, the original Step 1 grievance, and copies of necessary documentation to the Inmate Grievance Branch within five (5) calendar days. The Inmate Grievance Branch will confirm receipt of the 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 responsible official's decision will be returned to the Institutional Inmate Grievance Coordinator. The Institutional Inmate Grievance Coordinator will then serve the response to the grievant within five (5) working days and have him/her sign and date it acknowledging receipt. The Inmate Grievance Coordinator will maintain the original grievance for the inmate's grievance file and a copy will be given to the inmate. The response of the responsible official will be the Department's final response in the matter. Any action required to implement the Department's final response will require no additional signatures/approval. The Department's final response implies the Department Director's approval.

**13.7 Time Limits:** Refer to Section 11 for time limitations on grievance responses.

**13.8 ADMINISTRATIVE LAW COURT:** As part of the Department's final answer to a grievance, the inmate will be notified that any further appeal must be initiated within 30 days after receipt of the Department's final answer. This appeal must be contained on the South Carolina Administrative Law Court "Notice of Appeal" that will be attached to the Department's final answer and must be sent to the Administrative Law Court. Instructions regarding completion of the form, and information indicating where the form must be sent, will also be provided to the inmate.

**13.9 Exceptions to the 15 day time limit requirement** will be made for grievances concerning policies/procedures. Exceptions may also be made for incident grievances, provided that the inmate can show reasonable cause, i.e., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc.

#### **14. EMERGENCY PROCEDURES:**

**14.1** An emergency will encompass, but is not limited to, situations, actions, or conditions in which any person's health, safety, or welfare is threatened or in serious danger. It is the responsibility of the grievant to demonstrate the factors creating the substantial risk of personal injury or other serious and irreparable harm. The Institutional Inmate Grievance Coordinator will fax a copy of the grievance to the Chief/Designee, Inmate Grievance Branch, to determine if a substantial risk or serious harm is present and warrants the grievance being processed as an "emergency."

14.2 Once it is determined that the grievance is an emergency, it will be forwarded immediately to the Warden if resolution of the issue(s) is within the Warden's capability to provide. The Warden will conduct whatever investigation is deemed necessary and will respond to the inmate within no more than seven (7) days after receipt of the emergency grievance. If an emergency grievance involves the safety of an inmate, the Warden will take immediate steps to implement the appropriate precautions or temporary actions without waiting for an investigation to be conducted.

14.3 If a grievance is determined to be an emergency grievance which is not within the Warden's capability to resolve, it will be faxed without substantive review immediately to the Chief/designee, Inmate Grievance Branch, for review and further forwarding to the responsible official. The responsible official will conduct an investigation and will respond to the inmate within seven (7) days of receipt of the grievance. The response will be faxed by the Chief, Inmate Grievance Branch, to the Institutional Inmate Grievance Coordinator, who will deliver the response to the inmate and have him/her sign it acknowledging receipt.

14.4 If the grievance is determined not to be an emergency, the Institutional Inmate Grievance Coordinator will be notified, who will note in his/her response that the grievance was not deemed to be emergency, and the grievance will then be routinely processed through the system as if it were a normal grievance.

**15. GRIEVANCES ALLEGING CRIMINAL ACTIVITY:** Any grievance which alleges criminal activity will be referred immediately to the Chief/designee, Inmate Grievance Branch. The Inmate Grievance Coordinator will note on the grievance tracking CRT screen that the grievance has been forwarded to the Inmate Grievance Branch for possible investigation by the Division of Investigations and the date on which the grievance was forwarded. The Chief/designee, Inmate Grievance Branch, will consult with the Division of Investigations to determine if a criminal investigation would be appropriate. If deemed appropriate, the grievance will be forwarded to the Division of Investigations, to be handled in accordance with applicable SCDC policies/procedures. The grievance will be held in abeyance until the Division of Investigations completes their review/investigation. If it is determined that a criminal investigation is not required, the grievance will be processed in accordance with the procedures contained herein.

15.1 If it is determined by the Division of Investigations that the grievance will be referred to SLED for review/investigation, the grievant will be notified in a Step 1 Warden's response that the grievance has been forwarded to SLED. As the time frame for SLED to conduct an investigation is out of the control of SCDC, the Institutional Grievance Coordinator will forward the original grievance to the Inmate Grievance Branch and the grievance will be administratively closed until SCDC receives the final report. The grievant will then receive a Step 2 response to the investigation and will be given an opportunity to appeal to the next level if dissatisfied with the response.

**16. ABANDONMENT OF A GRIEVANCE:** A grievance will be considered to be abandoned in the following cases:

16.1 The inmate refuses to sign the grievance form at any level of the process; or

16.2 The inmate refuses to actively participate in the resolution process if the inmate's participation is deemed vital to the process; or

16.3 During the serving of any grievance if the inmate's behavior meets any of the criteria of a disciplinary charge under Agency Policy OP-22.14, "Inmate Disciplinary System," the grievance will be closed and disciplinary action may be imposed.

16.4 The inmate refuses to follow through with the IGC's recommendations within five (5) days after the return of the inmate's unprocessed grievance.

16.5 If an inmate escapes any open grievance will be considered abandoned and will be administratively closed.

**17. MONITORING, EVALUATION, COMPLAINTS:** The Inmate Grievance Branch will serve as monitor to ensure compliance with this policy/procedure. An audit checklist will be conducted by the assigned Inmate

Grievance Administrator for each of their respective institutions on an annual basis. The Chief/designee, Inmate Grievance Branch, will arrange for technical assistance in training and coordinating activities related to the inmate grievance procedure at each institution, at the Central Office, and the Training Academy.

**17.1** In order to provide continuing evaluation of this policy/procedure, the Division of Resource and Information Management will provide monthly reports to the Chief, Inmate Grievance Branch. The format of the reports will be determined by the Chief, Inmate Grievance Branch.

**17.2** Each Inmate Grievance Coordinator will be required to submit to their assigned Inmate Grievance Administrator a monthly report summarizing the number and types of grievances which have been received at their institution during the month. This report will be due by the 5th of each month to the Inmate Grievance Branch Administrator. Prior to submitting the report, the Inmate Grievance Coordinator will ensure their Warden has reviewed the information contained therein.

**17.3** A grievance concerning the performance of any Institutional Inmate Grievance Coordinator/Inmate Grievance Administrator shall be *advanced to the Step 2 level and* referred to the Chief/ Designee, Inmate Grievance Branch, for investigation and response.

#### **18. PROCEDURES FOR INMATES RELEASED/TRANSFERRED:**

**18.1** If an inmate is released from the custody of the SCDC and has an open grievance, the grievance will be terminated. *Please refer to Section 12 for disposition of the grievance file.*

**18.2** If a grievant is transferred from one SCDC institution to another while a grievance is in progress, the Institutional Inmate Grievance Coordinator at the losing institution will forward the inmate's grievance file via confidential, inter-departmental mail to the Institutional Inmate Grievance Coordinator at the gaining institution within five (5) days of the inmate's transfer.

**18.3** All grievances that are transferred from one institution to another to be served to the grievant will retain their original grievance numbers. For clarification and reference purposes, the Institutional Inmate Grievance Coordinator at the gaining institution will add the three (3) or four (4) letter institutional prefix in parentheses at the end of the original grievance number when referring to the grievance in future correspondence, appeals, etc.

**18.4** If a grievant is transferred while the grievance is in the "Informal Resolution" stage, then the grievance will be forwarded to the next level in the procedure and will receive a Warden's response from the losing institution.

**18.5** When an inmate is transferred and wishes to file an incident grievance involving the losing institution, the Institutional Inmate Grievance Coordinator at the gaining institution will forward the completed original grievance form along with pertinent documentation within five (5) working days to the institutional designee at the losing institution to have a number assigned, who will then forward the grievance to the Institutional Grievance Coordinator to process.

**18.6** If it is determined by the Institutional Grievance Coordinator at the gaining institution that the grievance is non-grievable or has violated time frames for filing a grievance, the grievance will be closed, filed as unprocessed and a copy of the grievance returned to the inmate.

**18.7** If a grievant is transferred as a result of a disciplinary hearing and then files a grievance after being convicted, the grievance will be processed by the Institutional Inmate Grievance Coordinator where the disciplinary hearing took place.

**18.8** The serving of any grievance that is filed by a grievant who has been transferred to Gilliam Psychiatric Hospital, an outside hospital, crisis intervention, or any area outside the control of SCDC, (i.e. court appearance or other jurisdiction) will be held in abeyance until the inmate has been returned to their assigned institution. The Institutional Grievance Coordinator will then serve the grievance within five (5) working days and all appeal rights will commence.

18.9 Any condition not referenced above will be referred to the Chief, Inmate Grievance Branch, for resolution.

**19. DEFINITIONS:**

**CRIPA** refers to the Civil Rights of Institutionalized Persons Act.

**Criminal Activity** refers to any illegal activity to include sexual misconduct, staff assaults, transfer of drugs/contraband, etc.

**Days** refers to calendar days, unless otherwise stated.

**Emergency Grievance** refers to any complaint which, if handled according to the regular time limits required by the inmate grievance system, would subject an inmate to substantial risk of personal injury or to other serious and irreparable harm.

**Grievance** refers to a formal complaint limited to matters affecting the complaining inmate and to matters that the Department has the authority to remedy.

**Limitation** refers to a sanction imposed on a grievant found to be abusing or misusing the inmate grievance system. Inmates subjected to a limitation may still utilize the grievance system for processing other legitimate grievances that do not relate to the matter(s) for which the limitation was imposed. Exceptions may be made to a limitation pursuant to Department policy/procedure.

**Misuse/Abuse of the Grievance System** refers to the repetitive filing of grievances on the same matter; filing of grievances that contain vulgar, indecent, or offensively insulting language; filing of grievances that agitate, harass, disrupt, or irritate by petty provocation or are not designed to lead to any practical result; and filing of grievances by grievants who knowingly make false statements to SCDC personnel for the purpose of harming another person.

**State-like item** refers to an item which can be purchased in the institution canteen, or is issued by the commissary.

SIGNATURE ON FILE

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Jon E. Ozmint, Director

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT.

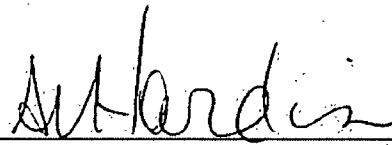
**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

**INMATE GRIEVANCE BRANCH**

**RESPONSE TO INMATE CORRESPONDENCE**

**INMATE:** David Bentley, SCDC#337750  
**INSTITUTION:** Lieber CI  
**FROM:** Angela Hardin, Inmate Grievance Administrator  
**SUBJECT:** LCI-0801-10  
**DATE:** January 7, 2013

A review of the your grievance history shows LCI-0801-10 was filed by you on 7/12/10 regarding a 7/12/10 issue alleging you needed to be transferred back to Oklahoma since there were no law books in SCDC to assist you in fighting your case. The original grievance cannot be located; therefore, by copy of this letter if you wish to pursue this issue, please complete the attached grievance form and return it to my attention in the Inmate Grievance Branch within 15 days from the date of this letter; otherwise this grievance will be closed.

S/   
Angela M. Hardin  
Inmate Grievance Administrator

cc: file-

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: David Bentley  
 SCDC NUMBER: 337750  
 INSTITUTION: Lieber CI  
 HOUSING UNIT: Stono A-01  
 WORK ASSIGNMENT: PE-2

RECEIVED  
 JAN 22 2013  
 INMATE GRIEVANCE

Office Use Only  
 Grievance No. LCI-0801-10  
 Code: General \_\_\_\_\_  
 Policy \_\_\_\_\_  
 Disc. Hear. \_\_\_\_\_  
 Class.  \_\_\_\_\_  
 Date Received \_\_\_\_\_  
 IGC Initials \_\_\_\_\_

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

I was transferred to S.C. from Oklahoma without notice or due process.  
 I object to being housed in S.C.  
 Oklahoma law states I have only 5 years to file a PAR and must be present in the state to file. That date is by June 2014.  
 S.C. does not and refuses to provide Oklahoma State law and cases or 10th Circuit Court of Appeals cases in print media or on computer access and this is a denial of access to the court.

ACTION REQUESTED:

Immediate return to the State of Oklahoma.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Several requests to classification and the law library.

[Signature] 1-15-13  
 Grievant Signature Date

ACTION TAKEN BY IGC:

Fwd to Step 2 level.

[Signature] 1/22/13  
 IGC Signature Date  
 IGA N/A  
 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.

456

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 2

INMATE NAME: David Bentley  
SCDC NUMBER: 337750  
INSTITUTION: LCT  
HOUSING UNIT: \_\_\_\_\_  
WORK ASSIGNMENT: \_\_\_\_\_

Office Use Only  
Grievance No. LCT-0801-10  
Code: General \_\_\_\_\_  
Policy \_\_\_\_\_  
Disc. Hear.  \_\_\_\_\_  
Class. \_\_\_\_\_  
Date Received 1/22/13  
IGC Initials AB  
FGA

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

Due to the time frame of this grievance, it has been forwarded for Step 2 response.

A Hardin 1/22/13  
~~For~~ Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your complaint. You may submit a request to return to Oklahoma through your classification caseworker. The decision for you to return to the State of Oklahoma must be made by the State of Oklahoma. The SCDC will abide by the decision of the State of Oklahoma in this matter in accordance with SC Code 24-11-20.

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.

JL Gaston 5-5-13  
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)

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

David Bentley, #337750,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0456-AP

Grievance No. LCI 0801-10

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DEC - 2 2013

ORDER GENERAL COUNSEL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (Department) pursuant to the Interstate Corrections Compact, S.C. Code Ann. § 24-11-20. Inmate argues that Department Policy GA-01.03 impinges on his constitutional rights, because the Department's policy regarding inmates' access to out of state legal materials is not reasonably related to a legitimate penological interest. Appellant further alleges that Department Policy GA-01.03 violates his equal protection rights and denies him his constitutionally guaranteed access to the courts, because the Department has not provided him with Oklahoma legal reference materials necessary for his use in pursuing his post-conviction relief (PCR) claim. Appellant also contends that he should be returned to Oklahoma because he alleges he was transferred without due process.

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, 361 S.C. 327, 605 S.E.2d 506 (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.

**Constitutional Claims**

Appellant alleges that Department Policy GA-01.03 impinges on his constitutional right to access to the courts and his right to equal protection. The ALC, as part of the executive branch, is without power to pass on a facial challenge to the constitutional validity of a statute,

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regulation, or policy. However, a party must bring an as-applied challenge to a statute before the ALC in order to preserve the issue for any appeal. Travelscape v. S.C. Dept. of Revenue, 391 S.C. 89, 705 S.E.2d 28 (2011). An as-applied challenge is an argument that the statute or regulation is unconstitutional as it has been applied to a specific party or class of individuals. Evans v. State, 344 S.C. 60, 68, 543 S.E.2d 547, 550 (2001). A facial challenge is a claim that a statute is unconstitutional on its face— that is, that it always operates unconstitutionally. Black's Law Dictionary (8<sup>th</sup> ed. 2004) "challenge." This tribunal has no authority to pass upon the constitutionality of a statute or regulation. Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000); however, the ALC does have the duty to determine if a statute is unconstitutional as it is applied to a limited class of persons. See Evans 543 S.E.2d 547 (dismissing action for failure to exhaust administrative remedies where claim that statute was unconstitutional as applied to a limited class of persons was not brought before the ALC). In this case, the policy, as applied to Appellant, is unconstitutional as it denies him access to legal materials required to properly prepare and file his PCR application with the state of Oklahoma.

**Appellant has been denied access to courts**

Appellant claims that by its application of DOC Policy GA-01.03, the Department has denied him meaningful access to the courts. In Bounds v. Smith, 430 U.S. 817, 828, 97 S.Ct. 1491 (1977), the United States Supreme Court held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." To establish a Bounds violation, the inmate must demonstrate that the shortcomings of the prison law library or the legal assistance program caused an "actual injury," meaning that the shortcomings are hindering the inmate's efforts to pursue a non-frivolous legal claim. See Lewis v. Casey, 518 U.S. 343, 349-50, 116 S.Ct. 2174 (1996). The Court has held that state officials could not interfere with an inmate's attempts to prepare legal documents, e.g., Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747 (1969) or the inmate's ability to file those documents e.g., Ex parte Hull, 312 U.S. 546, 61 S.Ct. 640 (1941). In this case, the Department's failure to provide Appellant with relevant Oklahoma legal materials has resulted in Appellant's inability to prepare proper legal pleadings for his PCR application. Appellant has carried his burden to show actual injury as a result of SCDC's law

library holdings. See Hendricks v. SCDC, 385 S.C. 625, 630 686 S.E.2d 191, 194 (2009) (explaining an inmate claiming denial of access to the courts must carry the burden to show that alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim in order to establish a constitutional violation). Appellant's denial of access to relevant Oklahoma legal materials has hindered his efforts to research and complete his PCR application to Oklahoma. Thus, Appellant has demonstrated that the Department's refusal to provide out of state legal materials necessary to file his post-conviction relief petition has resulted in an actual injury hindering his right to file his PCR petition. That refusal is a denial of Appellant's First Amendment right to access to the courts in violation of Bounds.

#### **DOC Policy GA-01.03**

Appellant also asserts that DOC Policy GA-01.03, as it has been applied to him, violates his First Amendment right to access to the courts and his right to equal protection. As discussed above, I agree that the appellant's right to access to the courts has been violated by the Department's application of the policy. SCDC's law library holdings are limited for budgetary reasons to materials related to South Carolina and federal law. Department policy allows inmates to request out of state legal materials by requesting the law library staff for the name and address of a legal aid organization or entity in the other state. After receiving the requested name and address, Appellant may correspond with the given legal aid organization or entity at his own expense. In his brief, Appellant asserts that he attempted to follow the procedures listed in the policy; however, he was instructed by the law librarian to contact the Department's Office of General Counsel. When Appellant did contact the Office of General Counsel, he was told that materials would not be provided to him. It was at this time that Appellant filed his Step 1 Grievance. In its brief, the Department did not dispute Appellant's claims that he followed the policy and instructions set forth by the Department.

When a prison regulation impinges on inmates' constitutional rights, the regulation is valid only if it is reasonably related to legitimate penological interests. Turner v. Safley, 482 U.S. 78, 107 S.Ct. 2254 (1987). The Department's actions in refusing to provide the requested legal materials in this case are not reasonably related to a legitimate penological interest. While there will undoubtedly be some expense involved in providing the requested materials, that expense appears to be minimal. Appellant estimates that the cost to provide the requested materials would be less than \$100 and Respondent has not disputed that estimate. Therefore, I find that SCDC's


application of Policy GA-01.03 in this case to refuse the requested out-of-state legal materials cannot be upheld.

Moreover, the Interstate Corrections Compact overrides the Department's policy. S.C. Code Ann. § 24-11-20 Art. IV(e) (2007) states, "[t]he fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which the inmate would have had if confined in an appropriate institution of the sending state." Clearly, if Appellant remained confined in the state of Oklahoma he would have unfettered access to legal materials with relevant Oklahoma law to complete his PCR application in a timely fashion.

**Transfer to South Carolina under the Interstate Corrections Compact**

Appellant's challenge to his confinement at SCDC should be denied for two reasons. First, the decision of the state of Oklahoma to house appellant within SCDC pursuant to the Interstate Corrections Compact is not reviewable by this Court. See S.C. Code § 24-11-20 Art. V(a) (2007) ("Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state[.]"). Second, contrary to Appellant's argument, his transfer to SCDC did not implicate a state-created liberty interest. See *Olim v. Wakinekona*, 461 U.S. 238, 248, 103 S.Ct. 1741 (1983) ("[A]n interstate prison transfer...does not deprive an inmate of any liberty interest protected by the Due Process Clause in and of itself.").

Therefore, for the foregoing reasons, the Department's decision denying a review of the decision to transfer Appellant to South Carolina is **AFFIRMED**. The decision denying Appellant's grievance requesting the legal materials necessary to prepare and file his Oklahoma post-conviction relief petition is **REVERSED**.

  
Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

November 26, 2013  
Columbia, South Carolina

CERTIFICATE OF SERVICE  
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Emergency Mail Service addressed to the party(ies) or their attorney(s).  
This 26<sup>th</sup> day of November 2013  
By: R. S. Co  
Judicial Law Clerk

**FILED**

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SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D. McLeod

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Case No. 13-ALJ-04-0456-AP

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David Bentley, # 337750,.....Respondent,

v.

South Carolina Department of Corrections.....Appellant.

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have served the foregoing Record on Appeal by depositing a copy of same in the United States Mail, postage prepaid, on February 9, 2015, addressed as follows:

David Bentley, # 337750  
Lieber Correctional Institution  
P.O. Box 205  
Ridgeville, SC 29472



Daniel J. Crooks III  
Staff Attorney  
Office of General Counsel  
S.C. Department of Corrections  
4444 Broad River Road  
Columbia, South Carolina 29221  
(803) 896-1355

DATED: February 9, 2015

**RECEIVED**

FEB 10 2015

SC Court of Appeals