

## **Administrative Remedy Process**

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*Description of system available for inmates who want to seek formal review for problems related to their confinement.*

Understanding the administrative remedy process could help inmates who were experiencing problem within the Bureau of Prisons. Unfortunately, new inmates did not know how to begin the process. Consequently, they suffered without knowing how to correct the problem.

Ken was an excellent example of someone who suffered needlessly as a consequence of his not knowing how to begin the administrative remedy process. He was confined with me at Fort Dix, in New Jersey. FCI Fort Dix was a low-security prison, but Ken understood that he had been categorized as a minimum-security inmate. A staff mix-up during Ken's admittance to Fort Dix resulted in his being sent to the secure prison rather than the camp.

Ken told every staff member who would listen that he was supposed to be serving his sentence at the camp. No one wanted to hear it. Ken spent seven months inside the fences at Fort Dix. Had he understood how to launch a formal review of his grievance through administrative remedy, he could have resolved his dispute much sooner. Instead, Ken simply expressed his concerns verbally. Yet prisons being total institutions, the filing of formal paperwork and the creation of a written record represent the appropriate method to challenge issues that relate to any aspect of confinement.

### **Informal Resolution**

The administrative remedy process begins with the inmate's attempt at an informal resolution. In Ken's case, he told his counselor and his case manager and the unit officer and the intake officers that he was supposed to be confined at the camp. Those staff members told Ken

that he was wrong and that the files available to staff indicated that he was appropriately designated to the low-security prison. What Ken should have done was ask for an informal resolution form so that he could launch the administrative remedy process.

In the BOP, the inmate counselor was responsible for distributing administrative remedy forms. Had Ken asked his counselor for the appropriate form, he would have given notice that he was challenging authority. His was a legitimate request, however, and the counselor would not have given him too much grief for launching the process. After we met and Ken explained his problem to me, I suggested that he obtain the form from his counselor so that we could attempt to resolve his problem. He should have filed the forms at the outset. Like most new inmates, however, Ken did not understand the process when he began serving his term.

The informal resolution form is really quite simple. It asks the inmate to state his grievance as succinctly as possible. When I helped Ken fill out his form, we wrote that according to the custody and classification manual, Ken was deserving of a minimum-security rating. Accordingly, he should have been held in a camp rather than a secure prison.

Ken was supposed to turn his informal resolution form in to the counselor. The counselor was then supposed to route the grievance to the appropriate personnel. In Ken's situation, the case manager was responsible for his security classification. Yet frequently in prison, bureaucrats will not second guess a decision that has already been made. When the counselor contacted Ken's case manager, the case manager indicated that she had checked Ken's file and that he was appropriately classified as a low-security inmate.

## **BP-9 Form**

Ken was serving a three-year sentence for mail fraud. He had no history of violence and no prior criminal record. According to our calculations, Ken was clearly camp eligible. Since we were not content with the staff response to the attempt at informal resolution, I suggested that Ken take his grievance to the next level.

The second level of administrative remedy was the BP-9. The counselor provided Ken with the appropriate form and I helped him fill it out. On the form we explained that we believed Ken should have had a minimum-security classification. We explained the reasons why we disagreed with staff who had classified Ken as a low-security inmate. Then we submitted the BP-9 form together with a copy of Ken's informal-resolution form to verify that he had tried to resolve the matter with lower level staff.

Wardens or their appointed designees respond to BP-9 forms. In Ken's case, the warden asked the case manager coordinator to review Ken's classification scoring. Upon doing so, the case manager coordinator recognized the error. Ken was then reclassified as a minimum-security inmate. The warden then ordered that Ken be removed from the low-security prison and transferred to the adjacent minimum-security camp. Had Ken not launched his request for administrative remedy, he may have served his entire sentence under the harsher conditions of a low-security prison. As it was, he served seven months inside before he was successful in persuading administrators that an error had been made in his case.

### **BP-10 Form**

Had the Warden refused to grant relief to Ken, the next step would have been to appeal the warden's decision. Ken could have done that by filing the next form of administrative remedy, which was called a BP-10. We would have detailed the reasons we disagreed with the warden's decision, then submitted the BP-10 appeal to the regional director for the Northeast region of the Bureau of Prison, in Philadelphia. The regional director or his representative then would have made a decision. When the regional director returned his written decision to Ken, we would have evaluated it. If the regional director's decision was inconsistent with our interpretation, we would have appealed his decision to the next level.

## **BP-11 Form**

The final stage of the administrative remedy process was the BP-11. Had Ken not received relief from the regional director, we would have appealed his case to the BOP's central office in Washington, DC. We would have filed that appeal on the appropriate form that Ken's counselor would have provided, and sent it along with a complete record. That record would have included a copy of Ken's informal resolution form; a copy of Ken's BP-9 form with the warden's response; a copy of Ken's BP-10 form with the regional director's response. With all of those forms filed, the administrative remedy coordinator at the BOP central office would have made a final decision at the administrative level. That approach would have exhausted Ken's efforts at administrative remedy.

Fortunately, Ken was successful at the BP-9 stage of the administrative remedy. Because the warden granted his request, Ken was transferred to the camp and the matter was put to rest.

## **Exhaustion of Administrative Remedy Proceedings**

For inmates who do not receive acceptable relief through the administrative remedy process, they may seek redress by filing a petition for relief through habeas corpus in the federal court (provided they are federal inmates; inmates of state prisons must first file in state court). Unless the issue is of a Constitutional magnitude, like wrongful imprisonment or something serious, the courts will not consider an issue pertaining to a prisoner unless the inmate can show that he has exhausted his efforts at administrative remedy. Courts require that inmates give administrators an opportunity to correct their own errors. Inmates who file in court before exhausting their administrative remedy efforts may find themselves thrown out of court and penalized as a nuisance.

The habeas corpus proceeding is a legal process that is much more complicated than efforts to resolve a dispute through administrative remedy. In most cases, someone with

knowledge of the courts or a lawyer is more suitable for filing habeas corpus petitions. In the courts, however, the inmate will benefit with access to the rules for civil procedure. That means decisions may not be rubber stamped, as they frequently are through the administrative remedy process. Inmates who serve time in federal custody will find a few books in the law library that describe the complicated proceedings of a habeas corpus. Those who consider launching a habeas corpus proceeding should consult those books if they cannot persuade a lawyer to represent them.

## **Time Lines**

Besides requiring inmates to submit copies from every level of the administrative remedy process, those reviewing the disputed issues also require inmates to abide by the appropriate time lines.

The deadline for completion of informal resolution and submission of a formal written administrative remedy request on the BP-9 Form is 20 calendar days following the date on which the basis for the request occurred.

An inmate who is not satisfied with the warden's response may submit an appeal on the BP-10 to the appropriate regional director within 20 calendar days of the date the warden signed the response.

An inmate who is not satisfied with the regional director's response may submit an appeal on the BP-11 Form to the general counsel at BOP headquarters within 30 calendar days of the date the regional director signed the response. .

When the inmate shows a valid reason for delay, those time limits may be extended.

## **Final Word**

During the course of a prisoner's confinement, he may find many decisions that he deems inappropriate. When he does, the answer is not to complain verbally, as that rarely brings any

resolution. Had my friend Ken continued to complain verbally, he may have served his entire sentence inside fences. Prisoners who have valid grievances should understand the administrative remedy process and then launch the procedure at the earliest possible time. Some inmates have used the administrative remedy procedure effectively to challenge their custody and classification scoring, to appeal their denials for transfer, to appeal their qualification for participation in the RDAP program, to appeal the calculation of their good time. Inmates who are found guilty of committing disciplinary infractions must use the administrative remedy process if they want to challenge their finding of guilt or the sanctions imposed.

For more detailed information on the administrative remedy process, I advise inmates to review the *Code of Federal Regulations, Title 28, Section 542.10*.