

Adopt Cor 311, cited and to read as follows:

CHAPTER Cor 300 OPERATION AND MANAGEMENT OF CORRECTIONS DEPARTMENT
ACTIVITIES

PART Cor 311 DISCIPLINARY HEARINGS

Cor 311.01 Disciplinary Hearings.

- (a) Disciplinary hearings shall be scheduled within 7 days of receiving a disciplinary report at the disciplinary hearings office, excluding weekends and holidays.
- (b) Disciplinary hearing officers may postpone or grant a continuance of a hearing for no more than 14 days for good cause.
- (c) The PUDC shall be notified of the date and time of the hearing in writing and at least 24 hours before the hearing is held. Such notice shall include a copy of the disciplinary report.
- (d) PUDC are responsible for providing the hearings office with a list of requested witnesses at least twenty-four hours in advance of the hearing.
- (e) Disciplinary hearings will be conducted before a one-officer board.
- (f) The prosecutor at major disciplinary hearings shall be an investigator from the Department of Corrections or a staff member with the rank of lieutenant or above.
- (g) PUDC shall be permitted to make statements and present evidence.
- (h) PUDC shall be allowed to examine witnesses, except in circumstances where a witness's testimony was given in camera.
- (i) Witnesses who testify against the PUDC shall be cross-examined by the PUDC through the hearings officer.
- (j) The disciplinary hearing officer shall not consider testimony or accept evidence that is irrelevant, unnecessary, cumulative, or untimely.
- (k) The disciplinary hearings officer shall rule as to whether or not to accept testimony or evidence.
- (l) The reason(s) for denying testimony or evidence shall be stated in writing and on the record.
- (m) The reason(s) for denying witnesses shall be stated in writing and on the record.
- (n) The hearings officer may require offers of proof of testimony and can accept offers of proof as evidence.
- (o) The accused shall be present during the hearing unless their conduct justifies exclusion or they refuse to be present or waive that right in writing.
- (p) PUDC will be excluded during testimony of any witness whose testimony must be given in

confidence. The reason for the exclusion or absence will be recorded in the proceedings record.

(q) When a disciplinary decision is based on confidential informant information, the hearings officer shall document in the hearings report, the finding as to the reliability of each confidential informant relied on and the factual basis for that finding.

(r) Reliability factors include

- (1) Frequency with which the informant has provided information in the past;
- (2) The length of time over which the informant has provided information;
- (3) The informant's record for accuracy and reputation for honesty; and
- (4) Other facts that tend to show truth.

(s) When it appears that this documentation in the report would reveal the confidential informant's identity, the information shall be made part of the hearing record in a separate report and not available to the PUDC.

(t) The hearings officer shall interrupt the hearing to obtain additional data, evidence, testimony or other material if needed to ensure that fundamental fairness is achieved.

(u) A PUDC shall be permitted to request that an attorney attend the disciplinary hearing. Such requests must be in writing to the hearings officer and received at least twenty-four (24) hours prior to the hearing.

(v) The PUDC attorney shall act only as an observer and may not speak during the hearing.

(w) A staff member shall be appointed by the warden or director to assist PUDC at disciplinary hearings if the PUDC is not capable of preparing for their own defense and presenting evidence effectively on his or her own behalf. In the event the PUDC has an appointed guardian, the guardian will be apprised of the hearing and activities related to the disciplinary process. This will be documented in the hearings report.

(x) The hearings officer will elicit all relevant facts and law, and provide a record of the proceedings. The record should reflect the decision and the reasons behind the decision.

(y) Disciplinary hearings involving "A" level offenses will be recorded. A failure of the recording shall not invalidate the hearing results.

(z) A taped recording will be maintained for at least six (6) months.

(aa) The disciplinary hearing officer's decision shall be based solely upon information obtained in the hearing process that may include staff reports, the statements of the PUDC charged and evidence derived from witnesses and documents.

(bb) At the conclusion of the hearing, the hearings officer shall render a decision.

(cc) The Hearings Officer may lower the severity of the charge if the evidence presented does not support the original charge.

(dd) The written decision of the hearings officer shall state the evidence relied upon.

(ee) If the finding is guilty, the PUDC shall be informed of the decision and shall be allowed to present matters of extenuation or mitigation before being sanctioned.

(ff) The hearings officer may drop the disciplinary report to an Incident Report, file the report without prejudice (FWOP) or find the PUDC not guilty based upon the facts presented at the hearing.

(gg) Reports that are filed without prejudice may be reintroduced up to 60 days after the filing.

(hh) The written record of a guilty finding will be maintained in the PUDC client record.

(ii) PUDCs shall have the right to obtain a digital audio copy of the recorded major disciplinary proceedings for a period of 6 months post the hearing proceeding.

(1) The PUDC must provide the mechanism in which the audio is to be sent by the hearings office to an outside source.

(2) The hearings office will make a copy and see that it is delivered to the PUDC.

(3) A fee of \$5.00 will be charged for this service.

(jj) All disciplinary hearings will be reviewed by the warden, director or designee to assure conformity with policy and procedures. They may approve the findings and sentence in whole or part. They may not increase the punishment awarded by the hearings officer but may reduce or substitute punishments of equal or lower value.

Appendix

RULE NUMBER	STATUTE IMPLEMENTED
Cor 311	RSA 21-H:13, I, II, II-a, and RSA 541-A:16, I(b)(2)