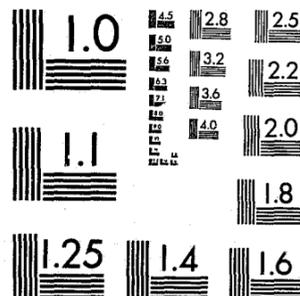


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National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

5-13-82

SCDC
ADJUSTMENT
COMMITTEE
GUIDE



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Headquarters at
Wood River Road, Columbia, South Carolina

81759

Mf-1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

M E M O R A N D U M

TO: SEE DISTRIBUTION
FROM: William D. Leeke, Commissioner
SUBJ: SCDC ADJUSTMENT COMMITTEE GUIDE CHANGES
DATE: August 10, 1979

1. You are to bring the following to the attention of all employees holding copies of the SCDC Adjustment Committee Guide and ensure that copies of this memorandum are disseminated along with the Guide in the future.

2. Changes:

a. On page 18 of the January 1979 edition of the SCDC Adjustment Committee Guide, paragraph G. should be changed to read:

G. Lock-Up Notice: Depending upon the seriousness of the alleged violation, the inmate may have been placed in Administrative Segregation prior to the hearing. In such cases, the inmate will be advised in writing within 48 hours as to the nature of his offense (i.e., why he was locked up). If this notice is not given within 48 hours of lock-up, the inmate cannot be charged with the offense or brought before the Committee for the offense. Also, charges (Report of Rules Violation) will be presented to the inmate within 30 days after he is locked up. In cases of unusual circumstances where additional investigation is needed for a fair hearing, the inmate must have been notified of the continuance of his Administrative Segregation. If convicted by the Adjustment Committee, the inmate will be given credit for all time served on lock-up prior to the hearing.

b. On page 4 of the January 1979 edition of the SCDC Adjustment Committee Guide, the following paragraph should be added to the end of paragraph F:

If he finds the inmate has been improperly charged after taking evidence or testimony, he shall dismiss the hearing and make a complete record of his action and reasons for so doing. Amendment of the charge and subsequent hearing of the proper charge can only be done upon a finding of excusable neglect on the part of the Committee by the Assistant Deputy Commissioner of Institutions.

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SCDC Adjustment Committee Guide Changes
August 10, 1979
Page Two

c. On page 13 of the January 1979 edition of the SCDC Adjustment Committee Guide, the quotation from the Inmate Guide, Chapter 3.11, should be changed to read:

If you note discrepancies (errors) in the procedures of the committee, you, on your own, may appeal the Adjustment Committee decision to the following individuals and in the following order: First to the Warden/Superintendent of your institution/center. He must answer within 30 days of receiving your appeal. If the appeal is denied, then secondly to the Regional Administrator (if you are housed in a region), who must reply within 20 days. If this appeal is denied, then thirdly to the Assistant Deputy Commissioner of Institutions who must reply within 15 days. If this appeal is denied, then and finally to the Commissioner of the SCDC who has 10 days to reply. Your appeal or intent to appeal must be filed within 15 days after notification of the decision or you forfeit all rights to appeal.

NOTE: Inmate Representatives are not required to assist you on your appeal. It is your responsibility to initiate the written appeal to the proper officials as to which errors were made during the hearing process.

3. These changes are to be included in the next edition of the SCDC Adjustment Committee Guide.


William D. Leeke

**U.S. Department of Justice
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DATE OF PUBLICATION — January 1979

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ACQUISITIONS

CHAPTER I

ADJUSTMENT COMMITTEE

PURPOSE: The Adjustment Committee is an institutional or regional committee composed of five members whose responsibility is to:

1. Review evidence for and against an inmate who has been properly accused of an institutional rule violation.
2. Decide upon the guilt or innocence of the inmate (s) accused.
3. Determine the means of punishment to be administered to those found guilty.

I. Adjustment Committee Jurisdiction:

The Adjustment Committee of a region or an institution shall exercise jurisdiction over all inmates accused of Rule Violations while assigned to that region or institution.

Regional Committee — The regional Adjustment Committee shall exercise jurisdiction over all cases which occur within the institutions of that Region. The case may not be transferred to another institutional or regional committee.

Institutional Committee — In cases occurring in institutions which are not assigned to a region, an institutional adjustment committee shall exercise jurisdiction over all cases which occur within that institution.

Exception — If a major infraction occurs, where it is necessary for the accused inmate (s) to be transferred immediately to another institution, for the inmates personal safety or for institutional security, the case may be heard and a decision rendered by the committee of the receiving institution provided witnesses from the institution of original jurisdiction

are available to the receiving institutional committee. Any question regarding the appropriate jurisdiction of a case, will be decided by the Director of Regional Operations. Any other request for transfer of an adjustment hearing must be approved by the Director of Regional Operations.

CHAPTER II

COMPOSITION OF THE COMMITTEE

The Adjustment action Committee shall be composed of five (5) voting members, including the chairman.

The hearing will be chaired by an official from the Regional Administration or Warden's immediate Staff, i.e., a Deputy Warden or Administrative Assistant. No more than one member (the Chairman) shall be from the security administration. Regional Coordinators of Operations, Deputy Wardens, Administrative Assistants, Correctional Supervisors, etc. are considered members of the security administration.

To complete the committee of five (5) members, employees from Prison Industry, Classification, Treatment Services, and Support Services shall be chosen.

An employee of the Youthful Offender Division shall be present as a voting member of the hearing whenever a Youthful Offender is involved. He also may be one of the five (5) members required on other cases.

If a hearing is conducted on a Youthful Offender without a Youthful Offender Representative present, such an error shall be used by the Director of Regional Operations as grounds for dismissal of the case.

The Committee composite will have minority representation of at least two nonwhite members.

CHAPTER III

DUTIES OF THE CHAIRMAN OF THE ADJUSTMENT COMMITTEE

1. The Chairman sits as the Administrator in hearing an allegation of institutional misconduct. All questions of procedure must be decided by him and his decision is binding upon the inmate and the other members of the committee, subject to review upon appeal.
2. The Chairman's acts and very words will be subjected to review by other committees, agency officials, and the courts. Because no one enjoys having so many others made aware of his mistakes, it is assumed that this fact alone will supply the needed incentive for a committee and the chairman to be aware of its responsibilities.
3. The chairman has the following duties and responsibilities:
 - A. He shall conduct the hearing, be responsible for pre-hearing arrangements as well as post-hearing procedures.
 - B. He shall determine that each inmate is allowed at least 48 hours to prepare his case after receiving the copy of the charges.
 - C. He shall determine that each member of the committee is qualified to serve. A member is qualified to serve if he is not a member of the security administration, he is employed at the institution, or region if it is a regional adjustment committee, and is aware of the responsibilities he is to fulfill in the committee. If challenge is made to the lack of impartiality of himself or any member, he must determine the issue and make a sufficient record to justify his action. The test of impartiality goes to lack of involvement in the incident. Those with direct involvement in the case will not serve as a committee member.
 - D. He shall make certain that all rules of the Department of Corrections and the institutions

are followed without exception. Further, that any changes to the rules are immediately explained to the committee members, and incorporated into the procedures here outlined.

- E. He shall insure that the inmate is aware of the nature of the proceedings. He shall determine whether or not the inmate is capable of defending himself at the disciplinary hearing, and if the inmate is not capable, to appoint an inmate representative to assist.
- F. He shall determine if the inmate has been properly charged. A proper charge must contain:
 - (1) The specific rule that was violated.
 - (2) A sufficient statement of facts which, if true, would prove this inmate did violate the rule.If he finds the inmate has been improperly charged, he shall dismiss the charges before any evidence or testimony is received by the committee, and he shall make a complete record of his action and his reasons for so doing, and inform the arresting officer of his/her action and reasons. The arresting officer may properly re-write the charge.
- G. He shall cause a tape recording of the proceeding to be made, and insure that all written statements and exhibits are presented to the committee and properly preserved for later review.
- H. He shall make certain that the decision of the Adjustment Committee is accurately recorded on the report, signed by the chairman of the committee and promptly forwarded to the reviewing body.
- I. The Chairman/Chairwomen shall be responsible for notifying the arresting officer to be present at the hearing if requested by the accused.

CHAPTER IV

DUTIES OF COMMITTEE MEMBERS

It is important that each member understand his responsibility and be aware of Adjustment Committee procedures.

The Adjustment Committee convenes due to the requirement that there be a factual connection between the violation of the rule and the inmate to be punished. The facts must be rationally determined.

The basic responsibility of a member of the Adjustment Committee is that he/she determine guilt or innocence. This is to be an independent decision on the part of each member who then votes according to his personal determination.

It must be remembered the inmate is innocent until proven guilty. The burden of proof is on the inmate's accuser. However, guilt is established in an Adjustment Committee by a preponderance of the evidence. The determination is to be based solely on the evidence presented at the hearing.

The members also must set a sentence for an inmate who is found guilty. Each member of the committee has one vote, of equal weight, with the majority ruling. The committee must follow the minimum - maximum standards set out in the inmate Guide. Each rule can be violated with varying degree of seriousness and members of the Committee should guard against disproportionate sentences.

Members of the Committee should take care to maintain a serious atmosphere and display an objective demeanor.

CHAPTER V

DUTIES OF INMATE REPRESENTATIVE

The duties of the inmate representative or an

employee assigned as inmate representative is to identify facts and information related to the case and represent the accused during the Adjustment Action Hearing.

1. To review the Report of Rules Violation.
2. To interview the inmate and any witnesses, other inmates or employees who may be able to provide facts relevant to the case.
3. To advise the inmate regarding the adjustment action process and his/her role, responsibilities, and rights.
4. To speak on behalf of the inmate during the hearing.
5. To question witnesses during the hearing on behalf of the accused inmate.
6. To generally assist the inmate in preparing his/her case.

CHAPTER VI

HEARING PROCEDURE

- A. Date, time, and frequency of Hearings
The date, time, and frequency of Adjustment Committee Hearings will be set by the Regional or Institutional Administrators and will be held on a regular schedule.
- B. The total membership of the committee (five (5) members) must be present for the hearing to convene and must remain present for the total proceedings. If one or more members are absent, the proceedings must not begin until he/she arrives or a comparable replacement is obtained.
- C. Each member of the committee must be provided a copy of the report of the Rules Violation at the beginning of the hearing.

D. Initial proceedings —

1. Hearings shall be taped and tapes maintained on file for five (5) years. The date, time, and names of the members of the committee must be entered in the record.
2. If the accused inmate has requested an inmate representative and/or his/her accuser to be present, the inmate should not be brought into the hearing room until one/or both are available. Both must be available the date of the hearing if requested by the inmate.
3. When the inmate and the representative enter the hearing, the committee chairman must verify the following before the total committee by asking the accused:
 - a. Ask him/her to state his/her name and number
 - b. The chairman will next read the charges from the Adjustment Action Report.

Sample: Jerry Smith you are charged with violation Sec. I, Para. 5 - Having in excess of \$35.00 in your possession on March 1, 1977, at approximately 2:00 P.M. in Dorm 4. The arresting officer is Officer W.B. Black.

Sample: Jerry Smith, you are charged with violating Sec. II, Para. C. Rule b - Assault with Weapon upon Inmate, Bobby Jones on March 1, 1977, at 2:00 P.M. in Dorm 4. The arresting officer is Officer W.B. Black.

- c. Were you provided a written copy of the charges against you at least 48 hours before this hearing?
- d. Did you sign the report?

If not, the committee chairman will be sure the inmate fully appreciates what his signature would and would not mean. By signing the report the inmate is merely indicating he did

receive a copy, whether or not he wishes to have the assistance of an Inmate Representative and whether or not he desires to have his accuser present. It must be made clear to the inmate that by signing the report he is in no way whatsoever admitting guilt. If the inmate, understanding the above, refuses to sign the report he gives up the rights to an Inmate Representative and having his accuser present.

- e. Did you request the assistance of an inmate representative to assist you with this case?
- f. If answer to 3-e is yes; have you had the opportunity to discuss the case with the representative prior to this hearing?

If the inmate says "No" the case will be delayed or continued whichever is necessary to give the inmate an opportunity to organize his defense with his Inmate Representative.

- g. Did you request that your accuser be present?
- h. If response to 3-g is "YES", - the accuser must be present in the hearing.
- i. Advise accused that if found guilty by committee or by a guilty plea, he/she will automatically not earn 30 days meritorious good time for a 6 month period nor 15 days statutory good time for the month involved.

4. The chairman must then read the statement of the accusing officer as it appears on the report of rules violations.
5. The chairman will then ask the accused if he/she pleads guilty or not guilty.

if accused pleads guilty the chairman must —

- a. Be sure the accused understands what he/she is pleading guilty to and the consequences of

the plea. Consequences being that the inmate will be sentenced by the guidelines laid out in the Inmate Guide and documentation of the proceeding will be entered into his personal record. In the case of a YOA, he/she may be subject to an extension of the sentence.

- b. Verify that the accused has not been pressured, threatened, or promised any special considerations for a guilty plea.

These steps are omitted if the plea is not guilty. Then the accused and/or his or her representative may make any statements they wish pertaining to the charge, the plea, or to the decision of the committee. The inmate representative, or the inmate if he is representing himself, may question the accuser and witnesses that have been approved by the chairman, may be called at this time.

At this point the members of the Adjustment Committee may ask questions they wish of the accuser, accused, or witness, provided the questions are related to the charges. This questioning must be of a serious nature and conducted in such a manner as to earnestly search for the truth and not in a joking humorous manner belittling the accused or the atmosphere of the hearing. To the inmate, this is a very serious situation. The accused and inmate representative are given an opportunity for any closing remarks. The accused, the inmate representative, the accusing officer, and witness if present, are then excused from the Hearing Room.

6. Committee Deliberation

The Committee must now review the evidence and testimony and decide upon the disposition of the case, based solely on the evidence presented. The Committee will deliberate alone and only among members. The inmate is presumed innocent unless the committee is convinced of his guilt based upon

a preponderance of the evidence.

a. Decision of guilt or innocence

If accused pleads not guilty the committee must first decide guilt or innocence by a vote of the members. A majority vote carries the committee. The vote will be by secret ballot.

The chairman may not override the vote of a member or members. Nor shall he/she attempt to sway the vote. He has one vote and it will have the same weight as a member's vote.

Total vote must be recorded in the minutes of the hearing exactly as it occurs.

(Ex. Guilty-5 or Guilty-3; Not Guilty-2)

A minority statement or report must be placed in the minutes if the minority request such.

b. Decision of the Disposition of the case

Once the guilt or innocence of the accused has been determined either by vote or by plea, a disposition of the case must be decided for those determined guilty. This will be done by weighing the evidence to determine the seriousness of this particular violation as well as a consideration of Correctional goals.

The disposition will be determined by a majority vote of the members. The actual vote must be recorded in the minutes and a minority statement or report may be submitted and recorded.

The committee may take one or more of the following actions: (Inmate Guide - Chapter 3.9)

1. Dismissal of some or all charges (drops some or all charges).
2. Reductions of the charges (reduce to a lesser charge).

3. Refer the report back to the institution center to handle.
4. Counseling (inform inmate on ways to prevent similar incidents from reoccurring).
5. Reprimand (written warning about the incident and the inmate's future conduct).
6. Loss of privileges (should be used when the offense is violation of the regulation relating to the privilege. The length and degree of the restriction should be determined by the reviewing official).
7. Suspended sentence (the suspension should be for a specific period requiring future good conduct). The period of suspension will be determined by the maximum amount of Administrative Segregation that could be imposed for the violation, as dictated by the Inmate Guide. The Adjustment Committee may suspend all or any portion of the disposition. the suspended portion of the disposition may be reimposed by the Adjustment Committee at a later date upon additional violations, if they occur within the period of suspension.
8. Extra duty and/or the option of Administrative Segregation. (Productive labor around the institution or center not to exceed 40 hours.) No more than four (4) hours shall be performed on any working day and no more than eight (8) hours on other days. The total period for extra duty should not exceed 30 days.
9. Reduction in custody (may require a transfer to a more secure institution).
10. Restitution for damaged property and/or resitution for goods or services obtained by fraudulent means (the inmate pays for

the items damaged or abused).

11. Administrative Segregation (the lock - up sentence will, in all cases, be for a specific period of time). After completion of two-thirds or a segregation sentence the inmate will be reviewed for return to a lesser restrictive housing unit by a Classification Committee or Chief Correctional Supervisor.
12. Recommend the taking of part or all accrued Good Time to the Commissioner, in accordance with the prescribed minimum-maximum penalty.

In addition, in all Adjustment Committee cases in which the inmate is found guilty, he/she will not earn the thirty (30) days of meritorious Good Time during that six (6) month period.

If the disposition included Administrative Segregation and/or loss of Good Time, it must be within the established limits for the offense as stated in the inmate guide (Chapter 4).

7. Sentencing

The accused and the inmate representative return to hearing.

The chairman then reads the committee's decision and disposition to the accused.

Sample: Jerry Smith, this Committee has found you guilty as charged by a vote of (state vote) and has sentenced you to (state punishment).

The chairman must then inform the inmate of his/her right to appeal and the procedure to follow.

The chairman must then inform the inmate of his/her right to appeal and the procedure to follow if he/she desires to make an appeal. The chairman can quote the Inmate Guide, Chapter 3.11, which says;

"If you note discrepancies (errors) in the procedures of the committee, you on your own may appeal the Adjustment Committee decision to the following individuals and in the following order:

First to the Warden/Superintendent of your institution/center. If the appeal is denied then secondly to the Regional Administrator (if you are housed in a region). If this appeal is denied then thirdly to the Director, Division of Regional Operations. If this appeal is denied then fourthly to the Deputy Commissioner of Operations. If this appeal is denied then and finally to the Commissioner of the SCDC. Your appeal or intent to appeal must be filed within 15 days after notification of the decision or you forfeit all rights to appeal.

NOTE: Inmate Representatives are not required to assist you on your appeal. It is your responsibility to initiate the written appeal to the proper officials as to which errors were made during the hearing process."

The hearing in concluded. The chairman should refrain from making additional comments to the inmate, especially those in the tone of a lecture.

CHAPTER VII

RULES OF EVIDENCE

The Adjustment Committee shall admit evidence which is reliable testimony about the facts of the incident from which the charges arise. All evidence must be given in the presence of the accused.

1. The adjustment hearing is not a court proceeding, and the strict and complex rules of evidence are not required at these hearings. Heresay evidence is permissible, but the members of the committee should be aware of its decreased reliability. An unidentified inmate informant's testimony may be received, but the committee must be aware of the obvious potential for unreliability.

2. If the inmate does not wish assistance from an inmate representative it is the duty of the chairman to make a determination as to whether or not the accused inmate is capable of defending himself against the charges under consideration.
3. The courts have determined that an inmate is not entitled to have a lawyer present at the hearing. However, it is clear that if the inmate does not speak English, is severely retarded, is deaf, or has some other equally serious handicap, then someone must assist him, not only during the hearing, but also during the investigation and preparatory stages of the proceedings.

If an inmate had indicated he did not wish assistance from an inmate representative and the inmate changes his mind, then requests assistance and it is allowed, it may be advisable to grant a delay in the hearing. If so, make a good record to relied upon.

4. The accused inmate must be allowed to defend himself and to include the presentation of favorable testimony.

The proven policy is to require employee and inmate witnesses to testify orally before the committee so that they may be questioned by the committee. Inmates are not allowed to ask questions of a witness if they (inmates) have a representative, but may do so if they are representing themselves. Any written statements the accused may wish to present should be read into the record and accepted. Of course each member may assign any weight he wishes to evidence when he is deciding the case.

The inmate has the right to call witnesses in his own behalf if they have pertinent and relevant information concerning the alleged violation. However, a signed statement pertaining to the case by the prospective witness must be submitted to the Chairman prior to the hearing. The only grounds for not allowing the witness to appear are:

- A. The testimony would be immaterial
- B. The testimony would be redundant (i.e. other witnesses are testifying to essentially the same thing)
- C. The appearance of the witness would endanger his personal safety or be a treat to institutional security.

If circumstances preclude oral testimony, then signed statements should be prepared prior to the hearing and read into the record.

Inmate testimony can present many very real problems to the institution as well as to the chairman. However, the final decision to call or not to call inmate witnesses must remain with the chairman and his ability to articulate his reasons for the record will become most apparent.

The most perplexing problem will arise when the inmate demands the committee to hear a certain witness and the chairman has no advance knowledge of this request.

The following are some suggestions:

- A. Require the inmate to tell the committee what he thinks the witness will say if he is called. If it is merely repetitive or has no materiality, then tell the inmate that you decline to call the witness, and state the reasons for the record.
- B. If you deem the testimony to be of some value, call a short recess (or hear the next case) and order the witness brought before the committee.
- C. If the suggestion in B above is not possible, the chairman may continue the hearing to the next earliest possible time. This procedure would require the accused inmate to agree.
- D. The request may be denied as being untimely if the chairman believes the late request was made in bad faith.

- E. There will be occasions when the testimony of an informant is necessary to properly dispose of an allegation.

It is suggested that this type of testimony could be presented to the committee in the following manner:

- A. Have the Chief Supervisor or some other officer interview the witness and write a full and complete statement which is the verbatim account he has received from the inmate. This officer should sign the report, and it should become part of the record. The identity of the informant should not be revealed; however, the officer taking the statement must be prepared to state in this report that this informant is reliable, that he has supplied the institution with reliable information before, and that the officer now believes the inmate is telling the truth.
- B. In those exceptional cases where providing the statement will compromise the identity of the informant, the statement may be withheld by the chairman.

The chairman must read into the record his reasons for keeping the identity of the inmate informant secret.

If an inmate is brought before the adjustment committee on the basis of statements from other inmates, the accused will be given copies of any and all such statements prior to the hearing.

- 6. The Warden/Superintendent may, at his discretion, coordinate with the officials at SLED concerning the use of a polygraph (lie detector) as an investigative aid. The results of the polygraph examination may be entered into evidence at the hearing but can not be used as the sole evidence of guilt. The fact that an inmate has refused to take a polygraph test will not become a portion of the evidence.

7. Any time the accused is questioned during the Adjustment Committee hearing, the inmate representative must be present if representation was requested.

CHAPTER VIII

DUE PROCESS

- I. The following must be complied with in every instance of rule violation by an inmate.
 - A. Advance written Notice - The inmate must be provided written notice of the rule violation in advance of hearing. He must be allowed a minimum of 48 hours to prepare a defense. He may waive that right, but should do so in writing and orally before the committee.
 - B. Evidence - The investigating officer or arresting officer must prepare a written statement of all the facts and evidence to be presented to the adjustment Committee in substantiation of the charge. A copy of this information must be provided to the inmate at least 48 hours before the hearing.
 - C. Documentary Evidence - The inmate must be allowed to present any evidence, written statements or documents he possesses as a part of his defense. Of course, each member will assign whatever weight he wishes to evidence when deciding the case.
 - D. Cross Examination - The inmate representative, or the inmate if he is representing himself, will be allowed to confront or cross examine any witness.
 - E. Counsel - The inmate does not have a right to retained or appointed counsel. An Inmate Representative will be assigned to represent the inmate if he/she request such.
 - F. Adjustment Committee - Membership on committees should never include a person or

persons involved in bringing charges. The committee should always be chaired by an Administrative Staff Member knowledgeable in procedure and rules of conduct and evidence.

- G. Lock-Up Notice - Depending upon the seriousness of the alleged violation, the inmate may have been placed in Administrative Segregation prior to the hearing. In such cases the inmate will be advised in writing, within 24 hours as to the nature of his offense. (i.e. why he was locked up). Also, charges (Report of Rules Violation) will be presented to the inmate within 30 days after he is locked up. In cases of unusual circumstances where additional investigation is necessary for a fair hearing, the inmate must have been notified of the continuance of his Administrative Segregation. If convicted by the Adjustment Committee the inmate will be given credit for all time served on lock-up prior to the hearing.
- II. It is the responsibility of the Adjustment Committee Chairman to guide the hearing in such a manner as to guarantee a full and complete record of the hearing. It further falls within his area of responsibility to guarantee due process and protection of the accused's rights. In this connection, the chairman must:
 - A. Examine the Report of Rules Violations to verify that the inmate had at least 48 hours to prepare of his appearance before the hearing panel.
 - B. Read into the record reason (s) for excluding witness (es) requested by the accused.
 - C. Read written/documentary evidence, presented by the accused into the record.
 - D. State reasons for disqualifying any member of the hearing committee from sitting should it be necessary to make such a decision.
 - E. Insure that the accused is present during the

complete hearing process except during deliberations of the hearing committee. Where an informant whose identity should be kept secret is to appear, it would be advisable to use a sworn, written statement of the informant. The content of the statement should not contain information that would lead to the identification of the informant.

- F. The Chairman, in advising the inmate of a determination of guilt, should inform the inmate and enter into the record what the vote was (i.e. 4-1, 5-0).
- G. The chairman must cause an entry into the record concerning the basis upon which the committee made its decision of guilt.

END