

§ 542.17

no person may submit a Request or Appeal on the inmate's behalf, and obtaining assistance will not be considered a valid reason for exceeding a time limit for submission unless the delay was caused by staff.

(b) Wardens shall ensure that assistance is available for inmates who are illiterate, disabled, or who are not functionally literate in English. Such assistance includes provision of reasonable accommodation in order for an inmate with a disability to prepare and process a Request or an Appeal.

§ 542.17 Resubmission.

(a) *Rejections.* The Coordinator at any level (CCM, institution, region, Central Office) may reject and return to the inmate without response a Request or an Appeal that is written by an inmate in a manner that is obscene or abusive, or does not meet any other requirement of this part.

(b) *Notice.* When a submission is rejected, the inmate shall be provided a written notice, signed by the Administrative Remedy Coordinator, explaining the reason for rejection. If the defect on which the rejection is based is correctable, the notice shall inform the inmate of a reasonable time extension within which to correct the defect and resubmit the Request or Appeal.

(c) *Appeal of rejections.* When a Request or Appeal is rejected and the inmate is not given an opportunity to correct the defect and resubmit, the inmate may appeal the rejection, including a rejection on the basis of an exception as described in § 542.14(d), to the next appeal level. The Coordinator at that level may affirm the rejection, may direct that the submission be accepted at the lower level (either upon the inmate's resubmission or direct return to that lower level), or may accept the submission for filing. The inmate shall be informed of the decision by delivery of either a receipt or rejection notice.

§ 542.18 Response time.

If accepted, a Request or Appeal is considered filed on the date it is logged into the Administrative Remedy Index as received. Once filed, response shall be made by the Warden or CCM within 20 calendar days; by the Regional Di-

28 CFR Ch. V (7-1-99 Edition)

rector within 30 calendar days; and by the General Counsel within 40 calendar days. If the Request is determined to be of an emergency nature which threatens the inmate's immediate health or welfare, the Warden shall respond not later than the third calendar day after filing. If the time period for response to a Request or Appeal is insufficient to make an appropriate decision, the time for response may be extended once by 20 days at the institution level, 30 days at the regional level, or 20 days at the Central Office level. Staff shall inform the inmate of this extension in writing. Staff shall respond in writing to all filed Requests or Appeals. If the inmate does not receive a response within the time allotted for reply, including extension, the inmate may consider the absence of a response to be a denial at that level.

§ 542.19 Access to indexes and responses.

Inmates and members of the public may request access to Administrative Remedy indexes and responses, for which inmate names and Register Numbers have been removed, as indicated below. Each institution shall make available its index, and the indexes of its regional office and the Central Office. Each regional office shall make available its index, the indexes of all institutions in its region, and the index of the Central Office. The Central Office shall make available its index and the indexes of all institutions and regional offices. Responses may be requested from the location where they are maintained and must be identified by Remedy ID number as indicated on an index. Copies of indexes or responses may be inspected during regular office hours at the locations indicated above, or may be purchased in accordance with the regular fees established for copies furnished under the Freedom of Information Act (FOIA).

PART 543—LEGAL MATTERS

Subpart A [Reserved]

Subpart B—Inmate Legal Activities

Sec. 543.10 Purpose and scope.

Bureau of Prisons, Justice

§ 543.11

- 543.11 Legal research and preparation of legal documents.
- 543.12 Retention of attorneys.
- 543.13 Visits by attorneys.
- 543.14 Limitation or denial of attorney visits and correspondence.
- 543.15 Legal aid program.
- 543.16 Other paralegals, clerks, and legal assistants.

Subpart C—Claims Under the Federal Tort Claims Act

- 543.30 Purpose and scope.
- 543.31 Procedures.
- 543.32 Appreciation and depreciation.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to Offenses committed after that date), 5039; 28 U.S.C. 509, 510, 1346(b), 2671-80; 28 CFR 0.95-0.99, 0.172, 14.1-11.

Subpart A [Reserved]

Subpart B—Inmate Legal Activities

SOURCE: 44 FR 38263, June 29, 1979, unless otherwise noted.

§ 543.10 Purpose and scope.

The Bureau of Prisons affords an inmate reasonable access to legal materials and counsel, and reasonable opportunity to prepare legal documents. The Warden shall establish an inmate law library, and procedures for access to legal reference materials and to legal counsel, and for preparation of legal documents.

[46 FR 59509, Dec. 4, 1981]

§ 543.11 Legal research and preparation of legal documents.

(a) The Warden shall make materials in the inmate law library available whenever practical, including evening and weekend hours. The Warden shall allow an inmate a reasonable amount of time, ordinarily during the inmate's leisure time (that is, when the inmate is not participating in a scheduled program or work assignment), to do legal research and to prepare legal documents. Where practical, the Warden shall allow preparation of documents in living quarters during an inmate's leisure time.

(b) The Warden shall periodically ensure that materials in each inmate law library are kept intact and that lost or damaged materials are replaced.

(c) Staff shall advise an inmate of rules and local procedures governing use of the inmate law library. Unauthorized possession of library materials by an inmate constitutes a prohibited act, generally warranting disciplinary action (see part 541 of this chapter).

(d) An inmate's legal materials include but are not limited to the inmate's pleadings and documents (such as a presentence report) that have been filed in court or with another judicial or administrative body, drafts of pleadings to be submitted by the inmate to a court or with other judicial or administrative body which contain the inmate's name and/or case caption prominently displayed on the first page, documents pertaining to an inmate's administrative case, photocopies of legal reference materials, and legal reference materials which are not available in the institution main law library (or basic law library in a satellite camp).

(1) An inmate may solicit or purchase legal materials from outside the institution. The inmate may receive the legal materials in accordance with the provisions on incoming publications or correspondence (see 28 CFR part 540, subparts B and F) or through an authorized attorney visit from a retained attorney. The legal materials are subject to inspection and may be read or copied unless they are received through an authorized attorney visit from a retained attorney or are properly sent as special mail (for example, mail from a court or from an attorney), in which case they may be inspected for contraband or for the purpose of verifying that the mail qualifies as special mail.

(2) Staff may allow an inmate to possess those legal materials which are necessary for the inmate's own legal actions. Staff may also allow an inmate to possess the legal materials of another inmate subject to the limitations of paragraph (f)(2) of this section. The Warden may limit the amount of legal materials an inmate may accumulate for security or housekeeping reasons.

(e) An inmate is responsible for submitting his documents to court. Institution staff who are authorized to administer oaths shall be available to provide necessary witnessing of these documents, as requested by inmates and at times scheduled by staff.

(f)(1) Except as provided for in paragraph (f)(4) of this section, an inmate may assist another inmate in the same institution during his or her leisure time (as defined in paragraph (a) of this section) with legal research and the preparation of legal documents for submission to a court or other judicial body.

(2) Except as provided for in paragraph (f)(4) of this section, an inmate may possess another inmate's legal materials while assisting the other inmate in the institution's main law library and in another location if the Warden so designates.

(i) The assisting inmate may not remove another inmate's legal materials, including copies of the legal materials, from the law library or other designated location. An assisting inmate is permitted to make handwritten notes and to remove those notes from the library or other designated location if the notes do not contain a case caption or document title or the name(s) of any inmate(s). The assisting inmate may also develop and possess handwritten drafts of pleadings, so long as the draft pleadings do not contain a case caption or document title or the name(s) of any inmate(s). These notes and drafts are not considered to be the assisting inmate's legal property, and when the assisting inmate has these documents outside the law library or other designated location, they are subject to the property limitations in § 553.11(a) of this chapter.

(ii) Although the inmate being assisted need not remain present in the law library or other designated location while the assistance is being rendered, that inmate is responsible for providing and retrieving his or her legal materials from the library or other designated location. Ordinarily, the inmate must provide and retrieve his or her legal materials during his or her leisure time. An inmate with an imminent court deadline may request a brief absence from a scheduled program

or work assignment in order to provide or retrieve legal materials from an assisting inmate.

(3) The Warden may give special consideration to the legal needs of inmates in mental health seclusion status in federal medical centers or to inmates in controlled housing.

(4) The Warden at any institution may impose limitations on an inmate's assistance to another inmate in the interest of institution security, good order, or discipline.

(g) The institution staff shall, upon an inmate's request and at times scheduled by staff, duplicate legal documents if the inmate demonstrates that more than one copy must be submitted to court and that the duplication cannot be accomplished by use of carbon paper. The inmate shall bear the cost, and the duplication shall be done so as not to interfere with regular institution operations. Staff may waive the cost if the inmate is without funds or if the material to be duplicated is minimal, and the inmate's requests for duplication are not large or excessive.

(h) Unless clearly impractical, the Warden shall allow an inmate preparing legal documents to use a typewriter, or, if the inmate cannot type, to have another inmate type his documents. The Warden may allow the inmate to hire a public stenographer to type documents outside the institution, but the institution may not assume the expense of hiring the public stenographer. Staff shall advise the inmate of any delay in the typing of which they have received notice from the stenographer.

(i) The Warden shall give special time allowance for research and preparation of documents to an inmate who demonstrates a requirement to meet an imminent court deadline. Otherwise, each inmate shall continue his regular institutional activities without undue disruption by legal activities.

(j) With consideration of the needs of other inmates and the availability of staff and other resources, the Warden shall provide an inmate confined in disciplinary segregation or administrative detention a means of access to legal materials, along with an opportunity

to prepare legal documents. The Warden shall allow an inmate in segregation or detention a reasonable amount of personal legal materials. In no case shall the amount of personal legal materials be such as to pose a fire, sanitation, security, or housekeeping hazard.

[44 FR 38263, June 29, 1979, as amended at 62 FR 4893, Jan. 31, 1997]

§ 543.12 Retention of attorneys.

(a) The Warden shall allow an inmate to contact and retain attorneys. With the written consent of the inmate, staff may advise an attorney of the inmate's available funds. Staff may not interfere with selection and retention of attorneys if the inmate has attained majority and is mentally competent. If the inmate is a mental incompetent or a minor, the Warden shall refer to the inmate's guardian or to the appropriate court all matters concerning the retention and payment of attorneys.

(b) The Bureau of Prisons may not act as guarantor or collector of fees. As to correspondence with attorneys and telephone calls to attorneys, see part 540 of this chapter.

§ 543.13 Visits by attorneys.

(a) The Warden shall, under the conditions of this section, permit visits by the retained, appointed, or prospective attorney of an inmate or by an attorney who wishes to interview an inmate as a witness.

(b) The Warden generally may not limit the frequency of attorney visits since the number of visits necessary is dependent upon the nature and urgency of the legal problems involved. The Warden shall set the time and place for visits, which ordinarily take place during regular visiting hours. Attorney visits shall take place in a private conference room, if available, or in a regular visiting room in an area and at a time designed to allow a degree of privacy. The Warden may make exceptions according to local conditions or for an emergency situation demonstrated by the inmate or visiting attorney.

(c) The attorney shall make an advance appointment for the visit through the Warden prior to each visit; however, the Warden shall make every

effort to arrange for a visit when prior notification is not practical.

(d) The Warden may require an attorney to indicate where he is licensed as an attorney and how that fact may be verified. Prior to each appointment or visit, the Warden shall require each attorney to identify himself and to confirm that he wishes to visit an inmate who has requested his visit or whom he represents or whom he wishes to interview as a witness. The Warden may not ask the attorney to state the subject matter of the law suit or interview. If there is any question about the identity of the visitor or his qualification as an attorney in good standing, the Warden shall refer the matter to the Regional Counsel.

(e) Staff may not subject visits between an attorney and an inmate to auditory supervision. The Warden may permit tape recordings to be used by an attorney during the course of a visit only if the attorney states in writing in advance of the interview that the sole purpose of the recording is to facilitate the attorney-client or attorney-witness relationship.

(f) The Warden may, at any time, subject an attorney to a search of his person and belongings for the purpose of ascertaining if contraband is present, as a condition of visiting an inmate.

§ 543.14 Limitation or denial of attorney visits and correspondence.

(a) An act by an attorney which violates Bureau regulations or institution guidelines and which threatens the security, good order, or discipline of the institution is grounds for limitation or denial by the Warden of the attorney's privileged visitation and correspondence rights. Acts by an attorney which may warrant such limitation or denial include, for example the following:

(1) A false statement as to the attorney's identity or qualifications;

(2) A plan, attempt, or act to introduce contraband into the institution;

(3) A conspiracy to commit, an attempt to commit, or the actual commission of an act of violence within an institution; and

(4) Encouraging an inmate to violate the law, Bureau of Prisons rules, or local implementing guidelines.

(b) Unless the breach of regulations is extreme or repeated, limitation rather than a denial of visitation or correspondence rights is proper, especially where the inmate is represented by the attorney and is confronted with a court deadline. For example, the Warden may subject an attorney to a search of his person and belongings or may permit the attorney only non-privileged correspondence. The Warden shall also consider referral of the matter to the state agency regulating the attorney's professional conduct.

(c) An act by an inmate in violation of Bureau regulations or institution guidelines warrants a limitation by the Warden of the inmate's correspondence or visiting rights with attorneys only if necessary to protect institution security, good order, or discipline. The Warden may not deny correspondence or visiting rights with attorneys generally.

(d) The attorney may appeal any limitation or denial by the Warden of attorney visits or correspondence rights to the Regional Director. The inmate affected may appeal through the Administrative Remedy Procedures.

§ 543.15 Legal aid program.

(a) A legal aid program which is funded or approved by the Bureau is expected to provide a broad range of legal assistance to inmates. Staff shall allow these programs generally to operate with the same independence as privately retained attorneys. The Warden shall refer a request or decision to terminate or restrict a program, or individual participants in a program, to the Regional Counsel.

(b) In order to promote the inmate-program relationship, the Warden shall give those students or legal assistants working in legal aid programs the same status as attorneys with respect to visiting and correspondence except where specific exceptions are made in this section and in part 540 of this chapter.

(c) An attorney or law school professor shall supervise students and legal assistants participating in the program. The supervisor shall provide the Warden with a signed statement accepting professional responsibility for acts of each student or legal assistant affecting the institution. The War-

den may require each student or legal assistant to complete and sign a personal history statement and a pledge to abide by Bureau regulations and institution guidelines. If necessary to maintain security or good order in the institution, the Warden may prohibit a student or legal assistant from visiting or corresponding with an inmate.

§ 543.16 Other paralegals, clerks, and legal assistants.

(a) The Bureau of Prisons recognizes the use of assistants by attorneys to perform legal tasks and, with proper controls and exceptions enumerated in this section and in part 540 of this chapter, accords such assistants the same status as attorneys with respect to visiting and correspondence.

(b) The attorney who employs an assistant and who wishes the assistant to visit or correspond with an inmate on legal matters shall provide the Warden with a signed statement including:

(1) Certification of the assistant's ability to perform in this role and awareness of the responsibility of this position;

(2) A pledge to supervise the assistant's activities; and

(3) Acceptance of personal and professional responsibility for all acts of the assistant which may affect the institution, its inmates, and staff. The Warden may require each assistant to fill out and sign a personal history statement and a pledge to abide by Bureau regulations and institution guidelines. If necessary to maintain security or good order in the institution, the Warden may prohibit a legal assistant from visiting or corresponding with an inmate.

Subpart C—Claims Under the Federal Tort Claims Act

SOURCE: 57 FR 62460, Dec. 30, 1992, unless otherwise noted.

§ 543.30 Purpose and scope.

The Bureau of Prisons shall consider administrative claims asserted under the Federal Tort Claims Act in accordance with the provisions of 28 CFR part 14. The Director of the Bureau of Prisons is delegated authority by 28 CFR

0.96 and 0.172 to consider, adjust, determine, compromise, settle, and pay federal tort claims if the amount of a proposed adjustment, compromise, settlement, or award does not exceed the amount specified in 28 CFR 0.172. Pursuant to 28 CFR 0.97, this authority is redelegated to the General Counsel and to Regional Counsel in accordance with the provisions of this subpart.

§ 543.31 Procedures.

(a) Staff shall provide the necessary forms to an individual who wishes to file a claim.

(b) Claims are to be submitted first to the Regional Office in the region where the basis for the claim occurred (see 28 CFR part 503 for the addresses of Regional Offices).

(c) Claims are ordinarily referred by the Regional Office to the appropriate institution for investigation. The Warden shall designate a staff member to investigate and prepare a report on the claim. The report, with the Warden's recommendations, shall be forwarded to Regional Counsel.

(d) The Regional Counsel shall consider the merits of the tort claim. The Regional Counsel may deny the claim, propose to the claimant a settlement (up to an amount established by the director, Bureau of Prisons), or forward the claim with recommendations to the Office of General Counsel, Central Office.

(e) The General Counsel shall consider the merits of a tort claim not denied or settled by Regional Counsel, and may deny the claim, propose a settlement to the claimant (up to an amount established by the Director, Bureau of Prisons), or otherwise dispose of the claim.

(f) The denial of a claim constitutes a final administrative action. Either the Regional Counsel or General Counsel may deny any claim filed under the Federal Tort Claims Act, regardless of the amount.

(g) Staff shall attempt to make a claim determination within six months from the date of filing. If a final disposition is not made within the six-month period, the claimant may assume that the claim is denied. An individual whose claim is denied may elect

to institute a suit upon denial of that claim.

§ 543.32 Appreciation and depreciation.

Staff may take appreciation or depreciation into account in settling a claim filed under the Federal Tort Claims Act involving loss of or damage to personal property.

PART 544—EDUCATION

Subparts A–B [Reserved]

Subpart C—Postsecondary Education Programs for Inmates

Sec.

- 544.20 Purpose and scope.
- 544.21 Definition.
- 544.22 Enrollment requirements.
- 544.23 Procedures.

Subpart D—Inmate Recreation Programs

- 544.30 Purpose and scope.
- 544.31 Definitions.
- 544.32 Goals.
- 544.33 Movies.
- 544.34 Inmate running events.
- 544.35 Art and hobbycraft.

Subpart E—Mandatory English-as-a-Second Language Program (ESL)

- 544.40 Purpose and scope.
- 544.41 Applicability: Who must attend the ESL program.
- 544.42 Procedures.
- 544.43 Incentives.
- 544.44 Disciplinary action.

Subpart F—Occupational Education Programs

- 544.50 Purpose and scope.
- 544.51 Types of occupational education programs.
- 544.52 Vocational training.
- 544.53 On-the-job-training.
- 544.54 Apprentice training.
- 544.55 Procedures for occupational education programs.
- 544.56 Exploratory training.

Subpart G [Reserved]

Subpart H—Literacy Program

- 544.70 Purpose and scope.
- 544.71 Exceptions to required literacy program participation.
- 544.72 Incentives.
- 544.73 Program participation.
- 544.74 Work assignment limitations.