

SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE

**Pilot Project for Correctional Facility Disciplinary
Action Review—Lincoln County District Court Only**

This Directive is issued to permit a pilot project in Lincoln County District Court for handling judicial review of correctional facility disciplinary action matters. As to the Lincoln County District Court only, C.R.C.P. 106(a)(4) shall be deemed amended to provide a new C.R.C.P. 106(a)(4.1) as follows:

(I) Scope

This pilot project rule applies to every action brought on or after July 1, 2005, by an inmate under C.R.C.P. 106(a)(4) to review a decision of the Limon Correctional facility imposing any penalty on the inmate for events that occurred at the facility. To the extent that this pilot project rule does not cover procedure in such cases, the parties shall follow C.R.C.P. 106(a)(4).

(II) Designation of Defendant

Only the warden of the Limon Correctional facility shall be named as a Defendant, and shall be listed as “Warden, Limon Correctional Facility.” The District Court shall dismiss any other Defendant.

(III) Venue

All actions under this rule shall be filed in the Lincoln County District Court, even if the inmate is no longer assigned to the Limon Correctional Facility at the time the complaint is filed.

(IV) Service of Process

(A) If the inmate does not qualify for *in forma pauperis* status, the rules relating to service of process set forth C.R.C.P. 4(e)(10) shall apply, but only the Warden of the Limon Correctional Facility, the Executive Director of the Department of Corrections and the Attorney General shall be served.

(B) If the inmate files a motion to proceed *in forma pauperis* and that motion is granted, service of process shall be accomplished in the following manner: The clerk of the District Court shall scan the complaint and serve it by electronic means on the Attorney General, the Executive Director of the Department of Corrections, and the Warden of the Limon Correctional Facility (or the designee of each of these officials),

along with a notice indicating the fact and date of filing. For purposes of this Rule, the “date of filing” shall, as contemplated by C.R.C.P. 5(f), be the date the complaint was deposited in the correctional facility’s internal mailing system. Each person notified shall send an acknowledgement by electronic means indicating that the specified official has received the electronic notice and the scanned copy of the complaint.

(V) Response of Defendant

Within 20 days after the date on which the Attorney General’s office sends acknowledgement that it has received the notice and complaint form the Clerk of the District Court, the Defendant shall file either (1) an answer to the complaint and a certified copy of the record as explained below, or (2) a motion in response to the complaint.

(VI) Notice to Submit Record

The Attorney General’s office shall notify the Warden that the certified record and affidavit of certification must be filed by the facility directly to the Court no later than the deadline to file an answer or motion as indicated above. This obligation to submit the record does not apply if the Attorney General’s office notifies the Warden within 10 days of the electronic service that it will file a motion to dismiss the complaint for lack of subject matter jurisdiction, in which event the filing of the record shall be suspended pending disposition of the motion.

(VII) Contents of the Record

The certified record submitted by the Warden to the District Court shall contain all material related to the proceeding at the facility to permit the Court to address the issues raised in the complaint. The record shall include the Notice of Charges, the Disposition of Charges, the Offender Appeal Form, and the current applicable version of the Code of Penal Discipline. If any part of the proceeding was recorded, a copy of the recording shall be provided.

(VIII) Cost of the Record

The cost of preparation of the record shall initially be paid by the Warden but, upon the filing of the certified record with the Court, the Warden shall immediately deduct the cost of preparation of the record, including the recording, from the inmate’s account or, if there are insufficient funds in that account, apply a charge to that account.

(IX) Briefs

(A) If the Attorney General’s office files a motion to dismiss, the inmate shall have 15 days after service of the motion to file a response brief, and the Attorney General’s office shall have 10 days after the service of the response to file a reply.

(B) If the Attorney General's office files an answer and the Warden files the certified record, the inmate shall have 40 days following notice of filing of the record in which to file a brief. In this event, the brief shall set forth the reasons why the inmate believes that the District Court should rule that the Warden has exceeded his or her jurisdiction or abused his or her discretion. The inmate must set forth in the brief specific references to documents or pages of the record that support the inmate's position. The Attorney General's office shall have 30 days after service of the brief to file a response and the inmate shall have 15 days after service of the response to file a reply.

(X) Time Periods

The parties shall follow the time periods set forth above unless the Court, on motion and good cause shown, enters an order altering those time periods.

(XI) Posting of Directive

A copy of this Directive shall be posted in the law library of every facility operated by the Department of Corrections and every private prison in Colorado.

Done at Denver, Colorado this 23rd day of June, 2005.

/s/

Mary J. Mullarkey, Chief Justice