PRISONERS' GUIDE TO PRISON DISCIPLINE

Prepared by:

Legal Assistance to Institutionalized Persons Project (LAIP)
Frank J. Remington Center
University of Wisconsin Law School
975 Bascom Mall
Madison, WI
53706

Revised 2015
# PRISONERS’ GUIDE TO PRISON DISCIPLINE

## Table of Contents

I. Introduction ..........................................................................................................................7

II. The Prison Disciplinary Process ..........................................................................................9

   A. Introduction ..................................................................................................................9

   B. Conduct Reports and Hearings .......................................................................................9

      1. Conduct Reports .......................................................................................................9

      2. Procedural Rights of Inmates Charged with Minor Offenses ........................................11

         a. “Summary” or Uncontested Disposition of Minor Offenses ................................11

         b. Contested Minor Disposition .................................................................................12

      3. Procedural Rights of Inmates Charged with Major Offenses .......................................13

         a. Uncontested Major Dispositions ...........................................................................13

         b. Contested Major Dispositions – Due Process Hearing ..........................................14

         c. Contested Major Dispositions – Waiver of Due Process Hearing .........................19

      4. Preparing for a Due Process Hearing ...........................................................................20

         a. Witnesses ................................................................................................................20

         b. Write out a Statement .............................................................................................20

         c. Investigate .............................................................................................................21

         d. Keep Your Papers ..................................................................................................21

         e. Object as Necessary ..............................................................................................21

         f. Make a Good Written Record .................................................................................21

         g. Appeal a Guilty Finding to the Warden ....................................................................21

   C. Administrative Challenge to Disciplinary Decisions .........................................................21

      1. Appeal to Warden under Wis. Admin. Code Chapter DOC 303 ................................21


         a. Complaint to the Institution Complaint Examiner (ICE) ......................................23

         b. Appeal to the “Appropriate Reviewing Authority” (ARA) .....................................25

         c. Appeal to the Corrections Complaint Examiner (CCE) .........................................25

         d. Decision of the DOC Secretary ...............................................................................26

         e. Checklist/Timeline for Administrative Appeals of Inmate Complaints ..................27

   D. Harmless Error for Procedural Claims ............................................................................28

   E. Concluding Reminder .....................................................................................................28
III. Judicial Review of Decisions Regarding Your Prison Discipline .................................31

A. An Overview of Certiorari Review ..............................................................31
   1. Certiorari Process ...................................................................................31
   2. Evidence in a Certiorari Proceeding ......................................................32
   3. Limits on Judge’s Review in a Certiorari Proceeding .........................33

B. The Prisoner Litigation Reform Act (PLRA) .................................................34
   1. Overview of the PLRA .........................................................................34
   2. Specific Requirements of the PLRA ......................................................35
      a. Statute of Limitations, Wis. Stat. § 893.735 ..................................35
      b. Exhaustion Requirement ..................................................................35
      c. Fee Requirements ...........................................................................35
      d. “Three Strikes” Rule .......................................................................36
      e. Penalty for Filing a False or Malicious Civil Action .......................37
   3. Avoiding the Requirements of the PLRA ..............................................37

C. Procedural Requirements for Certiorari Petitions .......................................37
   1. Where to File (Venue) .........................................................................37
   2. Venue v. Service ...................................................................................38
   3. When to File ..........................................................................................38

D. Instructions for Pleadings ..........................................................................40
   1. General Instructions ............................................................................40
   2. PLRA Forms .......................................................................................41
   3. The Certiorari Petition .........................................................................43
      a. Caption ..........................................................................................44
      b. Petition Form ................................................................................44
      c. Date and Signature .........................................................................44
   4. The Proposed Writ of Certiorari ..........................................................47
   5. Other Documents to Include with Your Certiorari Forms ....................48
   6. Checklist of Documents to Send to Court .........................................48

E. The Judge’s Initial Rulings .........................................................................49

F. What to Do with the Papers the Court Sends You .......................................50
   1. Service on the DOC Secretary ...............................................................50
   2. Service on the Warden ........................................................................51

G. How to Use These Forms if You Did Not File an ICRS Complaint ...........51
   1. PLRA Requirements ..........................................................................52
   2. Captions ............................................................................................52
   3. Certiorari Petition ................................................................................52
   4. Proposed Writ of Certiorari .................................................................52
   5. Copies for Filing ................................................................................52
   6. Service ...............................................................................................53
H. What Happens Next? ...........................................................................................................53

IV. Conclusion .........................................................................................................................55

V. Sample Forms for Filing a Certiorari Petition ..................................................................57
This manual has two purposes. First, this manual describes the procedures for prison disciplinary hearings and how to appeal them. The procedures for handling disciplinary matters within the prisons changed as of January 1, 2015, so you should follow the guidance set forth below, not past practice.

Second, this manual explains how you can get into court to have a court review a decision by the Department of Corrections (DOC) on your disciplinary proceeding. In order to get a judge to review DOC decisions, you must file a petition for writ of certiorari, also known as a “certiorari petition.”

The Frank J. Remington Center’s LAIP project does not assist inmates in challenging prison disciplinary decisions. Furthermore, there are very few lawyers who are available or willing to help prisoners obtain judicial review of these DOC decisions.

Therefore, this manual is designed to help inmates obtain court review without the help of a lawyer. It includes forms for you to use if you decide to proceed to court. We suggest that you read this entire manual before filing a certiorari petition.

This manual is designed only for inmate challenges to prison disciplinary decisions. Inmate complaints about other kinds of issues are not addressed in this manual. If you want to raise a complaint about other conditions of confinement, please refer to the Prisoners’ Guide to the Inmate Complaint Review System in Chapter 7 of the LAIP Desk Book.

If you do proceed to court, remember that in doing any legal work, it is very important to do careful and thorough work in preparing papers for a court. Unfortunately, courts generally do not view prisoners who represent themselves as having the same credibility as lawyers. If you make a careful and thorough presentation, you have a better chance of getting an unbiased review of your petition by the court.

**WARNING:** The forms provided here, especially the form for the certiorari petition, must be tailored to your individual case. **You will need to modify the forms to include the specific facts and legal issues in your case.**

The court forms do not include all the possible motions or other forms you could use in asking a court to review a DOC decision. Even the careful use of these forms will not guarantee that a court will decide in your favor on the merits.

**These forms are intended only to be a guide in pursuing your own case.** It is impossible to anticipate all of the variations in all cases. Therefore, you must do your own reading of the law to be sure you are correctly following procedure.
In addition, Wisconsin law requires that motions must “state *with particularity* the grounds therefor and set forth the relief or order sought.” Wis. Stat. § 802.01(2)(a) (emphasis added). This means that **you will have to be specific about exactly why you think you are entitled to relief, and tell the court exactly what kind of relief you want.**

If, after reading this manual, you still have a **procedural** question about filing a certiorari petition in the Dane County Circuit Court, you can write to:

Prisoner Litigation Staff Attorney  
Dane County Circuit Court  
215 South Hamilton Street  
Madison, WI 53703

The circuit court’s Prisoner Litigation Staff Attorney may be able to provide you with information about filing a certiorari petition. **However, the Staff Attorney can provide information only on procedures, not on the legal issues rased in your certiorari petition.**

Finally, LAIP gives permission for anyone to reproduce or photocopy any portion of this manual for non-commercial use by prisoners.
II. THE PRISON DISCIPLINARY PROCESS

A. Introduction

Many inmates find themselves in the position of being found guilty of a conduct report or “ticket.” If you want to challenge a disciplinary decision, you must follow the procedures outlined in Chapters 303 and 310 of the Department of Corrections (DOC) Administrative Code. If your administrative appeal is not successful, you may challenge the disciplinary decision in circuit court by filing a petition for writ of certiorari.

This manual cites to chapters or sections of the Administrative Code as “Ch. DOC_____” or “§ DOC ____.” You should have access to the Administrative Code in your prison law library.

The Administrative Code sets up a series of steps and deadlines for the DOC to discipline an inmate, and for the inmate to challenge prison discipline.

If there are documents that you want to have included in the record for any future judicial review, the documents must be included in the record of your disciplinary proceeding from the very beginning.

Finally, as you review the procedures outlined below, it is important to understand the difference between “calendar days” and “working days.” The term “calendar days” refers to days in the ordinary way—that is, each day is a new calendar day. § DOC 310.03(3). However, the term “working days” refers to all days except Saturdays, Sundays, and legal holidays. § DOC 310.03(18).

B. Conduct Reports and Hearings

1. Conduct Reports

When you entered the Wisconsin prison system, you should have received a copy of a manual listing the DOC disciplinary rules. Each institution is also supposed to make available to every inmate any published changes in the rules. § DOC 303.08.

In addition to discipline imposed for violating the general DOC rules outlined in Ch. DOC 303, you can also be disciplined for violating specific institution policies or procedures. § DOC 303.07(1). Each institution must maintain at least one official method (e.g. a bulletin board) for notifying inmates of its policies. § DOC 303.07(2).

Under Ch. DOC 303, there are two classes of offenses: major and minor. The institution may deal with an alleged violation of a rule in a variety of ways.

* If a staff member determines that a conduct report is not required, the staff member may counsel and warn the inmate. §§ DOC 303.65(1) and 303.66.
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

- The staff member may dispose of minor violations through the contested or uncontested minor disposition procedures (for these procedures, see next section).

- Employees may refer any violation to the security director by writing a conduct report, or incident report if additional investigation is needed.

§ DOC 303.65(1)-(3).

When a conduct report is issued, it must include the following information:

- A description of the facts in detail; and

- All rules which were allegedly violated, even if they overlap.

§ DOC 303.67(2).

When a conduct report or incident report is referred to the security director, the security director may deal with it as follows:

- Dismiss, alter or correct the conduct report;

- If the security director determines that the violation is minor, refer the matter to a supervisor to be disposed of under the procedures for an uncontested or a contested minor disposition (for these procedures, see next section); or

- If the security director determines that the violation is major, refer the matter to a hearing officer to be disposed under the rules for an uncontested major disposition, contested major disposition, or contested major disposition, waiver of due process hearing.

§ DOC 303.65(3)

With the exception of certain violations that must be treated as major under § DOC 303.71(2), the security director determines whether the alleged violation will be treated as major or minor. § DOC 303.71(3). In deciding whether to treat an alleged violation as major or minor, the security director must consider the following factors:

- Your prior prison record; for example, whether you have been found guilty of the same or similar offenses—and, if so, how recently and how often;

- Whether you had recently been warned about the conduct;

- Whether the alleged violation created a risk of serious disruption;

- Whether the alleged violation created a risk of serious disruption at the institution or in the community;
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

- Whether the alleged violation created a risk of serious injury;
- The value of the property involved;
- Whether the alleged violation created a risk of serious financial impact; and
- Psychological services input for seriously mentally ill inmates.

§ DOC 303.68(1)(e).

Major offenses can be punished with either major or minor penalties. § DOC 303.85(2). However, if the security director treats an offense as a minor offense, a major penalty cannot be imposed for the offense. § DOC 303.70.

All conduct reports referred to the security director must be review within 5 working days. § DOC 303.68(1).

2. Procedural Rights of Inmates Charged with Minor Offenses

a. “Summary” Disposition of Minor Offenses

Minor offenses can be handled “summarily.” The summary procedure can be used only if you agree to it, and only with the approval of a shift supervisor. DOC §§ 303.76(2) and (3).

Before you can be found guilty and punished “summarily” for a minor rule infraction, the staff member must:

- Inform you of the nature of the alleged infraction and the contemplated disposition;
- Inform you that a supervisor shall review the contemplated disposition, and may impose a different disposition;
- Inform you that the alleged incident may be handled under the procedures for “contested minor disposition”;
- Inform you that a “summary” disposition must be agreed to and is not appealable.

§ DOC 303.76(2).

If you agree to “summary” disposition, the staff shall submit the contemplated disposition to the supervisor for review. This review can have several different outcomes:

- The supervisor approves the disposition; you will then be notified and must sign the conduct report agreeing to the disposition;
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

- **If the supervisor disapproves of the disposition**, the supervisor may do one of the following:
  - Recommend a different disposition;
  - Refer the alleged infraction for review by the security officer.

- **If the supervisor approves a different disposition**, the staff must inform you of the supervisor’s recommendation. If you agree with the recommendation, you must sign the conduct report. If you disagree with the recommendation, the conduct report will be handled as a contested minor disposition.

  § DOC 303.76(3).

  The DOC staff member has to make a written record of the summary disposition, showing that it has been made and approved by the supervisor. § DOC 303.76(5).

  If the summary procedure is used, the authorized punishments are relatively minor. See §§ DOC 303.70 and 303.76(4).

  b. **Contested Minor Disposition**

  **If you do not agree to summary disposition for a minor offense**, the staff shall:

  - Inform you of the nature of the alleged infraction;
  - Offer you an opportunity to provide a statement;
  - Inform you that the conduct report and statement will be forwarded to the supervisor for review and determination of disposition.

  § DOC 303.77(2).

  The supervisor shall review the conduct report and your statement, and **render a decision and notify you within 5 working days**. If there is a finding of guilt, the supervisor shall impose a disposition of minor penalty or penalties. §§ DOC 303.77(3) and (4).

  You may appeal a disciplinary decision of the supervisor, including procedural errors, to the warden within 10 days after receiving a copy of the supervisor’s decision. § DOC 303.82(1).

  The warden will review all records relating to the appeal and make a decision **within 60 days** after receipt of the request for appeal. § DOC 303.82(2). The warden will do one or more of the following:

  - Affirm the decision;
  - Modify all or part of the decision;
• Reverse the decision, in whole or in part;

• Return the case for further consideration, to complete or correct the record, to correct any procedural error, or for rehearing.

§ DOC 303.82(3).

The warden’s decision is final regarding the sufficiency of the evidence. You may appeal claims of procedural error using the Inmate Complaint Review System (ICRS) as set forth in § DOC 310.08(3) (see Section II.C.2 of this Guide, below). § DOC 303.82(4).

If you want to appeal the decision regarding a minor violation, you must appeal to the warden within 10 calendar days. § DOC 303.82(1). Remember, you must appeal to the warden if you want to get judicial review of the disciplinary decision later on, and you must take any negative decision by the warden on procedural issues to the ICRS if you want judicial review of the procedural issues of your minor disposition later on.

3. Procedural Rights of Inmates Charged with Major Offenses

When a staff member issues you a conduct report for a major rule infraction and informs you of the proposed disposition, you can (a) choose not to contest the disposition, (b) contest the disposition through a due process hearing, or (c) contest the disposition but waive a due process hearing. The procedures for each of these choices are described below.

a. Uncontested Major Dispositions

A prison employee may write a conduct report and a supervisor may summarily find you guilty and discipline you for major rule infractions. § DOC 303.78(1). However, before you are found guilty and disciplined, a supervisor must:

• Inform you of the nature of the alleged infraction and the contemplated disposition;

• Inform you that the security director shall review the contemplated disposition, and may impose a different disposition; and

• Inform you that a disposition under this section must be agreed to and is not appealable.

§ DOC 303.78(2).

If you consent to the disposition, the supervisor shall submit the contemplated disposition to the security director for review.

• If the security director approves the disposition, you shall be notified and sign the conduct report agreeing to the disposition
• **If the security director disapproves** of the proposed disposition, the security director may do either of the following:
  
  o Recommend a different disposition; or
  o Undertake a full review of the conduct report him or herself under § DOC 303.68, which is described in Section II.B.1., above.

• **If the security director approves a different disposition**, the supervisor shall inform you of the security director’s recommended disposition. If you agree to the revised disposition, you must sign the conduct report. If you disagree with the revised disposition, the matter will be handled as a contested major disposition, which is outlined below.

§ DOC 303.78(3).

You may not appeal an uncontested major disposition to which you have agreed. § DOC 303.78(5).

  b. **Contested Major Dispositions – Due Process Hearing**

The hearing procedures for inmates who are charged with major offenses and who do not consent to the disposition of the conduct report or waive the due process hearing, are outlined in §§ DOC 303.80, 303.83 and 303.84. This hearing is generally known as a “due process hearing.”

Some of the most important aspects of the procedures are discussed below.

  i. **Notice and Procedures**

When you are alleged to have committed a major violation and the security director has reviewed the conduct report, the staff shall give you a copy of the conduct report within **2 working days** after the security director’s review. § DOC 303.80(1).

The institution must inform you of the following:

• The rules which you are alleged to have violated;

• The potential penalties or other results that can be imposed if you are found guilty, including removal from work release or programming;

• That you have the right to a full due process hearing, or to waive the due process hearing in writing; and

• That if you waive the right to a full due process hearing, you shall be given a modified hearing under § DOC 303.81 that does not include all your due process rights.

§ DOC 303.80(1); see also Bergmann v. McCaughtry, 211 Wis. 2d 1, 564 N.W.2d 712 (1997).
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

ii. Time Limits

In general, the due process hearing can be held **no earlier than 2 working days** after you receive notice of the disciplinary rights and a copy of either the conduct report or amended conduct report, whichever is later. It can be held **no later than 21 calendar days** after you receive notice of your hearing rights. However, the security director may authorize a hearing **beyond the 21 day time limit**, either before or after the 21st day. § DOC 303.80(3)(a).

In addition, you may request more time to prepare, and the security director may grant the request. You may also, in writing, waive the time limits. § DOC 303.80(3)(b).

Finally, the time limits will be tolled if you are in observation and control placement, or if you are outside of the institution on a temporary release order. § DOC 303.80(3)(c).

iii. Hearing Officer

The due process hearing will be conducted by a hearing officer assigned by the warden. § DOC 303.79(1). The warden may also assign a committee to conduct the hearing, in which case no more than three staff may be assigned to the committee and one of the staff will be the hearing officer. § DOC 303.79(2).

No person who has substantial involvement in the subject of the hearing may be the hearing officer or on the committee. The hearing officer shall determine the subject matter of the hearing in advance to allow substitution of a hearing officer or committee member. § DOC 303.79(3).

A hearing officer may hold a hearing even if the inmate has waived due process. § DOC 303.79(4)

iv. Assistance from a Staff Representative

The warden shall designate staff representatives for inmates in disciplinary hearings at the institution. §§ DOC 303.80(1)(e)3, 303.83.

Remember, the staff representative has a **limited** role. The staff representative is supposed to:

- Help you understand the charges and provide direction and guidance regarding the disciplinary process;
- In his or her discretion, assist you in gathering relevant evidence and testimony and preparing your statement;
- Help you prepare to speak at the hearing; and
- Speak on your behalf at the disciplinary hearing.

§ DOC 303.83(3).
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

You should make use of the staff representative’s assistance. But you should understand that the staff representative is not your lawyer, and you should not expect that. Your staff representative is not under any duty to keep confidential any information you reveal to him/her. You do not have a constitutional or statutory right to an attorney at a disciplinary hearing.

If you or the staff representative provide information and evidence to the warden that there is a conflict of interest in the case that would impair a staff representative’s ability to perform his or her duties, the warden shall evaluate the information and evidence to determine if a different staff representative should be assigned. § DOC 303.83(2).

If you do not believe that your staff representative is helping you, or if you think he or she is working against you, you should do your best to make a written record of your concerns and of your attempts to bring the problems to the attention of the warden.

v. Place of Hearing

The due process hearing can be held in person, by telephone, video conferencing or other virtual communication means at the discretion of the hearing officer. § DOC 303.80(4).

vi. Due Process Hearing Procedures

Chapter DOC 303 also outlines the procedures for due process hearings. It is important to understand that disciplinary hearings are not criminal proceedings. Thus, you do not get the constitutional safeguards of a criminal trial.

If you choose a full due process hearing, the staff must inform you of the following regarding the due process hearing:

• That you have a limited right to present oral, physical and documentary evidence, as well as testimony from approved witnesses;

• That you may present an oral statement. No written statement will be accepted except under extraordinary circumstances as authorized by the security director. If permitted, a written statement must be a legibly printed statement limited to 500 words and on no more than 2 sheets of paper, a transcript of an oral statement, or a recorded statement;

• That you may have the assistance of a staff representative, as described above;

• That the hearing officer may permit direct questions or require you or your staff representative to submit questions to the hearing officer to be asked of the witness;

• That the hearing officer may prohibit repetitive, disrespectful or irrelevant questions;

• That if you refuse to attend a hearing or are disruptive and removed, you shall forfeit the right to present a defense or to call witnesses. The hearing officer may conduct the
hearing without you present. The hearing officer shall administratively review the conduct report and render a decision based upon the available evidence.

§ DOC 303.80(1)(e).

At the hearing, the hearing officer must read the conduct report out loud and permit you to present evidence as allowed by the rules. § DOC 303.80(5)(a).

vii. Evidence and Witnesses

You have a right to present relevant oral, documentary, and physical evidence at the due process hearing. §§ DOC 303.80(1)(e)(1), 303.80(5), 303.81(3)(c). Evidence is relevant if the evidence makes it “appear more likely or less likely” that you committed the offense. § DOC 303.87(1).

A hearing officer may consider relevant evidence, whether or not it would be admissible in a court of law and whether or not any violation of any state law or any DOC administrative code provision occurred in the process of gathering the evidence. § DOC 303.87(2)(a).

A hearing officer may refuse to hear or admit relevant evidence for any of the following reasons:

- Unreliable;
- Marginally relevant;
- Unduly cumulative or repetitious.

§ DOC 303.87(2)(b).

You must make a request for evidence within two days after you have been served with the notice of major disciplinary hearing rights. This timeframe can be extended by the security director for good cause. § DOC 303.87(2)(c).

The institution shall place the original conduct report and all due process documents in your record, excluding evidence that shall be maintained in accordance with DOC policy.

You have a limited opportunity to present witnesses on your behalf. You must make a request to the security director for no more than 2 identified witnesses within 2 calendar days after you have been served with the notice of the major disciplinary hearing rights. § DOC 303.84(1). You must explain the relevance of the requested witnesses’ testimony in your request to the security director.

If you need more than 2 witnesses, you should give a good reason to the security director. You should give this reason in writing, so that a reviewing court can understand why the additional witnesses were necessary.

After receiving any requests for witnesses, the security director will review the witness requests, and will determine “whether the witnesses possess relevant information and shall be called.” § DOC 303.84(2).
Witnesses requested by you who are staff or inmates shall attend the disciplinary hearing unless one of the following exists:

- Risk of harm to the witness if the witness testifies;
- The testimony is irrelevant to guilt or innocence;
- The testimony is “merely cumulative” (repetitive) of other evidence and would unduly prolong the hearing;
- The witness is unavailable (death, transfer, release, hospitalization, or escape in the case of an inmate; death, illness, vacation, no longer being employed at that location, or being on a different shift in the case of an employee).

§ DOC 303.84(4).

If the security director finds that testifying would pose a risk of harm to the witness, the hearing officer may consider a confidential statement signed under oath from that witness without revealing the witness’s identity or a signed statement from an employee getting the statement from that witness. The hearing officer shall reveal the contents of the statement to you, except the hearing officer may edit or summarize the statement to avoid revealing the identity of the witness. The hearing officer may question a confidential witness if the witness is available. § DOC 303.84(5).

The hearing officer may consider written statements that can be corroborated in one of the following ways:

- By other evidence which substantially corroborates the facts alleged in the statement, including an eyewitness account by an employee or circumstantial evidence;
- By evidence of a very similar violation by the same inmate; or
- Two confidential statements by different persons may be used to corroborate each other.

§ DOC 303.84(6).

Written witness statements will only be accepted if approved by the hearing officer. The hearing officer may consider a legibly printed written statement limited to 500 words on no more than two sheets of appear, a transcript of an oral statement, or a recorded statement. § DOC 303.84(3).

If it is not possible to get a signed statement as permitted under § DOC 303.84, the hearing officer may consider other evidence of what the witness would say if present. § DOC 303.84(7).

After determining which witnesses shall be called for you, the staff will notify you of the decision in writing. § DOC 303.84(8). The record should provide some support for a refusal to allow you to present a witness. See State ex rel. Meeks v. Gagnon, 95 Wis. 2d 115, 127-28, 289
N.W.2d 357 (Ct. App. 1980); State ex rel. Irby v. Israel, 95 Wis. 2d 697, 704-05, 291 N.W.2d 643 (Ct. App. 1980).

Witnesses who are not staff members or inmates (for example, a family member or visitor) cannot attend the hearings. However, the staff representative with the hearing officer’s permission may contact them. The hearing officer may designate a staff member to interview the witness and report to the hearing officer. § DOC 303.84(9).

The hearing officer may call additional witnesses as deemed necessary. § DOC 303.84(10).

viii. Decision

In order to find you guilty, the hearing officer must find that it is more likely than not that you committed the act. § DOC 303.80(6)(c).

If the committee has 3 members, at least 2 of them must find you guilty and agree upon your punishment. If the committee has 1 or 2 members, the decision must be unanimous. § DOC 303.80(6)(d).

If the committee members cannot agree on your guilt or sentence, they shall refer the matter to the warden. § DOC 303.76(6)(5).

If the hearing officer or committee does make a decision, it must give you and your staff representative, if any, a written copy of its decision and the reasons for the decision. § DOC 303.80(6)(h).

c. Contested Major Dispositions – Waiver of Due Process Hearing

If you waive your rights to a due process hearing and you have not agreed to an uncontested major disposition under § DOC 303.78, you will be given a modified hearing at which you will not have most of the rights given to you at a due process hearing.

A waiver of the due process hearing is not an admission of guilt. The waiver cannot be retracted without the approval of the security director. § DOC 303.80(2).

If you waive your right to a full due process hearing, you will have fewer chances to prove your innocence. This is because the procedures for such hearings are quite limited. You have no right to a staff representative, to confront witnesses, or to have witnesses testify on your behalf. § DOC 303.81(3).

Furthermore, despite the waiver, you can receive a penalty just as harsh as you would with the full due process hearing.

If you pursue a writ of certiorari without having had a due process hearing, it will be more difficult for you to get a reviewing judge to rule in your favor in the certiorari case. This is because there will be less of a written record for the judge to base a decision on.
Therefore, if you are charged with a major violation, you should think carefully about whether or not to waive your full due process hearing. If you do decide to waive your due process hearing, you will get the less formal hearing under DOC § 303.81.

4. Preparing for a Due Process Hearing

If you are reading this manual, chances are that you have already had your due process hearing and have been found guilty.

However, if you have not yet had your hearing, or if you again face disciplinary proceedings in the future, the following suggestions may be useful to you in preparing your defense.

a. Witnesses

As soon as you can, write down the names of all of the people (guards and inmates) who saw the incident.

The reason why you should write down all the names, instead of just one or two, is that some witnesses may be unavailable. It is good to have other possible witnesses to call if they might have helpful testimony.

It is important to do this while the incident is still fresh in your mind. If you are not sure of a witness’s full name, ask your staff representative to find out for you.

Remember, you do have a (limited) right to call relevant witnesses at the due process hearing. Use it.

Again, you should make a written request for the witnesses you want at the hearing within two days of the service of notice of major disciplinary hearing rights.

If you want to present more than 2 witnesses based on “good cause,” put that request in writing and submit it to the security director.

b. Write out a Statement

As soon as you can, write out a statement in preparation for your hearing. Do this while the incident is still fresh in your mind. Realize that you may need to spend some time working on the statement in preparation for your hearing (make it clear, understandable, legible, etc.).

We suggest that you present the written statement, as a transcript of an oral statement, to the hearing officer at the disciplinary hearing, even though it may be refused. The statement can be no more than 500 words on no more than two single sheets of paper; it must be legible. If accepted, this statement is a good way to make sure that your version of the incident is preserved in the record, since the hearing will not be recorded.

Keep a copy of the statement for your records.
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

c. **Investigate**

Do any investigation you can. Try to work with your staff representative. Ask for any incident reports (although this request can be denied, it doesn’t hurt to ask). If your staff representative will not help you investigate, or if the institution won’t give you the incident reports you need, **state this at your hearing, and make sure that the hearing officer writes your objection down.**

d. **Keep Your Papers**

You should keep a copy of all papers involved in the disciplinary matter. This will help you prepare your defense at the hearing. It will also help you if you decide to file a petition for writ of certiorari.

e. **Object as Necessary**

If something happens at the hearing (or in the process leading up to the hearing) that you believe is wrong, **make an objection and ask the hearing officer to write down your objection in the record.** This is so you will not be accused of waiving your objection at some later point. You do not need to use legal terminology. Just tell the hearing officer that there is a problem with the way he or she is conducting the hearing, and explain it as best you can.

f. **Make a Good Written Record**

Remember that if you file a certiorari petition later on, **you will be limited to the written record created during the disciplinary proceedings.**

In certiorari, you will **not** be able to testify in front of the judge. This means that you must **make sure there is something written down in the record of the hearing for every issue that you want the judge to be aware of later on.**

g. **Appeal a Guilty Finding to the Warden**

Unless you have a realistic fear of retaliation, you should appeal a finding of guilt to the warden. This process will be discussed in the following section.

**Remember, if you want to file a certiorari petition asking a court to review the discipline, you must appeal to the warden, in order to “exhaust your administrative remedies.”**

C. **Administrative Challenge to Disciplinary Decisions**

1. **Appeal to Warden under Wis. Admin. Code Chapter DOC 303**

You can appeal to the warden the disciplinary decision on a minor contested disposition, a major
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

Contested disposition, or a contested major disposition waiver of due process hearing. This right to appeal includes the right to challenge procedural errors in these matters. § DOC 303.82(1).

You must submit your appeal within 10 calendar days of receiving a copy of the hearing officer’s written decision. § DOC 303.82(1).

Remember, if you want to seek judicial review of the discipline you received, you must first “exhaust your administrative remedies.” This means that you must first appeal to the warden.

If the 10 days for this appeal has already passed, you should file an appeal with the warden anyway. If the warden responds to the merits of an out-of-time appeal, that waives the time limit. This could satisfy the exhaustion requirement.

In your appeal to the warden, be as clear as possible. Say what went wrong and give reasons why the decision should be reversed. Remember that a reviewing court may find this appeal document helpful, so make it as clear and complete as possible.

The warden must act on your appeal within 60 calendar days of receiving it. § DOC 303.82(2). The warden can affirm the hearing officer’s decision; modify it; reverse it; or return the case to the hearing officer for further consideration, to complete or correct the record, to correct any procedural error, or for rehearing. § DOC 303.82(3).

The warden’s decision is final regarding the sufficiency of the evidence to support the hearing officer’s decision. § DOC 303.82(4). If you wish to challenge only the merits of the decision, you must file a certiorari petition in court (see Section III.D., below). However, if you have concerns about the procedures in your disciplinary proceeding, you should read the next section.

Be sure to keep a copy of your appeal and of the response you receive from the warden.

2. Procedural Complaints under Wis. Admin. Code Chapter DOC 310

Aside from the merits of the hearing officer’s/warden’s decisions, you may also believe that improper procedures were involved in the resolution of your conduct report.

For example, the hearing officer may have failed to follow the procedures outlined in § DOC 303.80; or the hearing officer may have refused to allow you to present witnesses; or the warden may have refused to provide you with a substitute staff representative when you alleged that your representative had a conflict of interest. These are all procedural errors that are separate from the “substance” of the hearing officer’s decision on your conduct or punishment.

If you believe that the procedures involved in your disciplinary proceeding were improper, and the warden has denied your appeal under § DOC 303.82, you must file a written complaint about the procedural problems with the Inmate Complaint Review System (ICRS).

The Administrative Code states that you should file the ICRS complaint after the warden has
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

**decided your appeal under Ch. DOC 303. §§ DOC 303.82(4), 310.08(3). You should file the ICRS complaint no later than 14 days after the date of the warden’s decision. § DOC 310.09(6).**

Remember, however, that an ICRS complaint cannot include a challenge to the substance (merits) of the decisions reached by the hearing officer. Rather, the ICRS can only address procedural problems involved in your discipline.

**So, if you want to raise both substantive and procedural issues, you should first appeal the substantive and procedural issues to the warden. Then, once you have exhausted the administrative procedures under Ch. DOC 303, you must also appeal any procedural errors under the ICRS within 14 days.**

If you do file a complaint through the ICRS regarding the procedures involved in your disciplinary hearing, **you must follow the ICRS complaint through the entire administrative process before you can get a court to review the substance of the disciplinary hearing. See State ex rel. Smith v. McCaughtry, 222 Wis. 2d 68, 586 N.W.2d 63 (Ct. App. 1998); State ex rel. Frasch v. Cooke, 224 Wis. 2d 791, 592 N.W.2d 304 (Ct. App. 1999).**

The ICRS sets up a strict series of steps and deadlines to address an inmate complaint. It is important that you follow this procedure exactly. These steps are outlined below.

**Your complaint can contain only one issue.** It is important to make sure that your complaint is clear, specific, and well-documented.

In addition, if there are **documents that you want to have included in the record for any future judicial review, be sure to include them with your inmate complaint from the very beginning.**

  a. **Complaint to the Institution Complaint Examiner (ICE)**

The procedure for using the ICRS is explained in §§ DOC 310.07-14. The first step is to file a complaint with the “institution complaint examiner” (ICE). The rules governing complaints to the ICE are laid out in §§ DOC 310.09, 310.10, and 310.11.

Under §§ DOC 310.08(3) and 310.09(6), your inmate complaint must be filed within 14 calendar days of the warden’s decision on your disciplinary appeal, unless the ICE waives that limitation.

You can file the complaint either by putting it in a locked box designated for complaints, or by putting it in a sealed envelope in the institution mail system, marked for delivery to the office of the ICE. § DOC 310.09(8).

If you are transferred to another institution after the incident that gave rise to the complaint, but before you file the complaint, you can file it at your new prison. The complaint will be sent back to the ICE at your old prison. § DOC 310.11(9).
The ICE is a staff person at the prison. The ICE is supposed to collect complaints, assign a file number to each complaint, then review and acknowledge each complaint within 5 working days of receiving it. § DOC 310.11(2).

Practically speaking, depending on the volume, there can be delays in this process. In particular, the ICE is required to give priority to complaints concerning health and personal safety. § DOC 310.11(3). That may slow down the process of handling non-priority complaints.

Section DOC 310.09 lists several rules governing the form and processing of an inmate complaint:

- You must file the complaint on the form provided by the institution for that purpose;
- You must sign the form with the name under which you were committed to the DOC, or your legal name if you have had a name change;
- Each complaint must contain only one issue, which must be clearly identified;
- The complaint cannot contain abusive, profane, obscene, or threatening language, unless such language is necessary to describe the basis for the complaint (for example, if you are describing what someone else said to you).

If your complaint does not comply with the limitations listed above, the ICE must return it without processing it. § DOC 310.09(3).

Upon receiving the complaint, the ICE’s review of discipline decisions is limited to a review of the record. § DOC 310.11(3). Within 20 working days of the date of acknowledging the complaint, the ICE must take action on the complaint. The ICE can either (1) reject the complaint or (2) address it on its merits and make a recommendation to the “Appropriate Reviewing Authority.” §§ DOC 310.11(4), 310.11(11).

The ICE has the authority to reject a complaint, without deciding on its merits, for any of the following reasons:

- It was submitted solely to harass or cause malicious injury to a DOC employee or any other person;
- It does not raise a significant issue about rules, living conditions, or staff actions;
- It does not allege enough facts about the basis of the complaint;
- It was submitted more than 14 calendar days after the event, and the ICE does not find good cause to extend that deadline;
- It does not personally affect the inmate;
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

- It is moot;
- It has already been addressed through the inmate’s prior use of the ICRS;
- It is not within the scope of the ICRS.

§ DOC 310.11(5).

If the ICE rejects your complaint without a decision on the merits, you can appeal it to the “Appropriate Reviewing Authority” (ARA) within 10 calendar days. The ARA’s decision on the rejection is final. § DOC 310.11(6). This means that you cannot appeal the ARA’s decision to the Corrections Complaint Examiner, as outlined below. It also means that you will not have a legal basis to challenge the rejection in a certiorari petition later on.

Therefore, we recommend that you take care to avoid the grounds for rejection listed under § DOC 310.11(5), so that your complaint will be considered on its merits.

If the ICE decides the merits of the complaint, the ICE must write a report recommending a disposition of the complaint to the ARA within 20 working days of the date of acknowledging the complaint. § DOC 310.11(11).

b. **Appeal to the “Appropriate Reviewing Authority” (ARA)**

Under the Administrative Code, the term “Appropriate Reviewing Authority” (ARA) refers to the warden, bureau director, administrator, or any other person who is authorized to review and decide an inmate complaint. § DOC 310.03(2).

Within 10 working days of receiving the ICE’s report, the ARA must make a decision on the complaint or else return it to the ICE. § DOC 310.12(1) and (2).

If the ARA does make a decision on the complaint, he or she can affirm the complaint; dismiss the complaint; or affirm or dismiss the complaint with modifications. § DOC 310.12(2).

If you do not receive the ARA’s decision within 30 working days of receiving the ICE’s acknowledgment of the complaint, the complaint is deemed to be denied. § DOC 310.12(3).

If you disagree with the ARA’s decision, or if it was deemed denied, you can appeal the decision to the Corrections Complaint Examiner (CCE).

c. **Appeal to the Corrections Complaint Examiner (CCE)**

If you are not satisfied with the ARA’s decision on your complaint, you can file an appeal with the Corrections Complaint Examiner (CCE). The CCE is a DOC employee who does not work in the Division of Adult Institutions (the DOC administrative unit that is responsible for the prisons). § DOC 310.03(5).
Again, there are rules about processing the appeal. You must file your appeal within **10 calendar days** of receiving the ARA’s decision (or, if you did not receive a decision and the complaint is deemed denied, within **30 working days after the ICE’s acknowledgment**). §§ DOC 310.12(3), 310.13(1).

Sometimes the CCE will accept a late appeal, but you should make every effort to get it in on time. § DOC 310.13(2). You should file your appeal in a sealed envelope for confidentiality.

The CCE should acknowledge receipt of your appeal, in writing, within **5 working days** after receiving it. § DOC 310.13(4). The CCE can use any necessary investigatory method in order to make a recommendation about the appeal. § DOC 310.13(5).

The CCE doesn’t actually make the decision on the appeal. Rather, the CCE makes a recommendation to the Secretary of the Department of Corrections. Along with the recommendation, the CCE will send the complaint file to the Secretary, so that the Secretary can make his or her decision on the appeal.

Within **35 working days** of receiving the appeal, the CCE is supposed to make a written recommendation to the Secretary. § DOC 310.13(6). However, as a practical matter, there may be a backlog that slows down this process. In particular, the CCE is required to give priority to complaints involving health or personal safety. § DOC 310.13(5).

\[ \text{d. Decision of the DOC Secretary} \]

The DOC Secretary has three choices on appeal. The Secretary can:

- Accept the recommendation of the CCE and adopt it as the decision;
- Adopt the recommendation of the CCE with modifications;
- Reject the recommendation of the CCE and make a different decision on the appeal; or
- Return the appeal to the CCE for additional investigation.

§ DOC 310.14(2).

The Secretary is supposed to make the decision within **10 working days** of receiving the CCE’s recommendation, but can extend that deadline for good cause and after giving you notice. § DOC 310.14(1).

If you do not receive a written decision from the Secretary within **45 working days** after the CCE acknowledged receiving your appeal, the appeal is deemed to be denied, unless the Secretary extended the 10-day deadline for deciding on the CCE’s recommendation. § DOC 310.14(3).
The DOC Secretary is the final step in the administrative process of the ICRS. Once the Secretary makes a decision on the appeal, or the appeal has been deemed denied by the Secretary, you have exhausted all administrative remedies available to you. § DOC 310.14(3).

At that point, you may take the case to court on a petition for writ of certiorari, if you choose.

e. Checklist/Timeline for Administrative Appeals of Inmate Complaints

1) File your complaint with the Institution Complaint Examiner (ICE) within 14 calendar days of the Warden’s decision on your appeal.

2) The ICE should acknowledge your complaint within 5 working days of receiving it.

3) The ICE must take action on the complaint within 20 working days.
   a) If the ICE dismisses your complaint without a decision on the merits, you have 10 calendar days to appeal to the ARA.
   b) If the ICE addresses the merits of your complaint, the ICE will make a recommendation to the ARA.

4) Within 10 working days of receiving the ICE’s recommendation, the ARA must make a decision on the complaint or else return it to the ICE.

5) If you do not receive the ARA’s decision within 30 working days after you received the ICE’s acknowledgment, your complaint is deemed to be denied, and you may appeal to the CCE.

6) Assuming that the ARA addressed the merits of your complaint under # 3(b), above, you can appeal the ARA’s action to the CCE within 10 calendar days after you received notice of the ARA’s action.

7) The CCE should send you an acknowledgment within 5 working days of receiving your appeal.

8) The CCE should make a recommendation to the DOC Secretary within 35 working days of receiving your appeal.

9) The DOC Secretary should decide on the CCE’s recommendation within 10 working days of receiving the CCE’s recommendation. However, the Secretary can extend that deadline for good cause.

10) If you do not receive a written decision from the Secretary within 45 working days after the CCE acknowledged receiving your appeal, the appeal is deemed to be denied unless the Secretary has extended the 10-day deadline to decide on the CCE’s recommendation.
11) You must file a certiorari petition with the courts within **45 calendar days** of the date that your complaint was finally denied or deemed denied by the Secretary.

**Remember that once you receive a decision on your ICRS complaint, your deadline will start running for filing a certiorari petition to challenge both the substantive and procedural issues involved in your disciplinary hearing.**

At this point, your certiorari petition can address both the substantive issues raised in your Ch. DOC 303 appeal and the procedural issues raised in your ICRS complaint and appeal under Ch. DOC 310.

**D. Harmless Error for Procedural Claims**

If you raise a challenge to procedures used in your disciplinary proceeding, you can expect the DOC to respond by stating that any such procedural error was “harmless.”

Section DOC 303.88 states that “[i]f staff does not adhere to a procedural requirement under this chapter, the error is harmless if it does not substantially affect a finding of guilt or the inmate’s ability to provide a defense.”

In other words, a judge in a certiorari proceeding will not reverse a disciplinary decision on procedural error unless the error “substantially affected” the validity or fairness of the process.

Therefore, it is important that you make clear in your ICRS complaint exactly how any procedural errors may have harmed your ability to defend yourself against a disciplinary charge.

**E. Concluding Reminder**

Remember, if you want to challenge only the substance of a disciplinary proceeding, and not procedural issues, you only need to appeal to the warden as outlined in Ch. DOC 303. You do not need to file a complaint through the ICRS.

In a certiorari proceeding, the DOC may argue that unless you pursued a complaint about disciplinary procedures through the ICRS, you have not “exhausted your administrative remedies,” and therefore cannot challenge the merits of the substantive decision in court.

However, § DOC 303.82(4) makes clear that the warden’s decision on the substance of the disciplinary decision is final. The Wisconsin Supreme Court has also affirmed that appealing the substance of a decision to the warden is sufficient to exhaust your administrative remedies on that issue. *See State ex rel. Grezelak v. Bertrand*, 2003 WI 102, ¶ 30, 263 Wis. 2d 678, 665 N.W.2d 244.

Nevertheless, most inmates have both substantive and procedural concerns about their disciplinary proceedings, and will have to file an appeal under Ch. DOC 303 and also an ICRS complaint under Ch. DOC 310.
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

If you are not sure whether your challenge raises only substantive issues, or substantive and procedural issues, it is **probably safest to go through the ICRS before filing your certiorari petition.**
III. JUDICIAL REVIEW OF DECISIONS REGARDING YOUR PRISON DISCIPLINE

Once your administrative appeals have been denied, you can seek judicial (court) review of the denial by filing a petition for writ of certiorari. In this manual, we call this document a certiorari petition.

Certiorari review by a court is available to people who want to challenge a decision that affects them, made by an administrative agency. The DOC is an administrative agency, so certiorari is available to ask a court to review your disciplinary proceeding.

Certiorari review is also used by prisoners who wish to challenge their revocation or the DOC’s response to a variety of challenges by inmates not related to discipline. The LAIP Desk Book includes two other manuals like this one, the Prisoner’s Guide to Challenging Revocation by Certiorari (Chapter 6) and the Prisoners’ Guide to the Inmate Complaint Review System (Chapter 7), that explain how to request certiorari review of these other issues.

Most inmates who challenge DOC disciplinary decisions want to challenge both the substance of the decision and the procedures used in making the decision. Thus, this manual assumes that you appealed the outcome of your hearing to the warden, and that you also challenged the hearing procedures through the Inmate Complaint Review System (ICRS). Except for Section III.G., below, this manual assumes that you want to raise both substantive and procedural complaints in your certiorari petition.

A. An Overview of Certiorari Review

1. Certiorari Process

In a certiorari proceeding, the petitioner (you) files a certiorari petition against the respondents.

When you are challenging a disciplinary decision under Ch. DOC 303, the respondent is the warden. When you are challenging a decision through the ICRS under Ch. DOC 310, the respondent is the DOC Secretary.

If you only want to challenge the warden’s decision, the warden will be the only respondent. However, except for Section III.G., this manual assumes that you are raising both substantive and procedural challenges, so your petition will need to be filed against both the warden and the Secretary as respondents.

In the certiorari petition, you state why you believe the warden was wrong in his or her decision on your disciplinary appeal. You also state why DOC Secretary was wrong in his or her decision about your inmate complaint.

After receiving the petition, the judge can then issue a writ of certiorari to the respondents.

The fact that the judge issues the writ does not mean that you have won the case. Rather, by
issuing the writ, the judge is simply ordering the respondents to prepare a return in the case and present it to the court.

The “return” is a set of documents that includes the official, written, administrative record (the paperwork) regarding your disciplinary process and inmate complaint.

Once the court receives the return, the court will review this written record to see whether the respondents’ decisions in the case should stand.

Sometimes the parties are given an opportunity to file briefs explaining why the written record supports their argument that they should win.

Usually there is no court hearing in a certiorari proceeding. Rather, judge makes a decision based on the petition and return (the written record) and on the parties’ briefs.

The judge can affirm, reverse, or modify the respondents’ decisions.

2. Evidence in a Certiorari Proceeding

It is extremely important to understand that the court’s review in a certiorari proceeding is limited to review of the written record of the disciplinary proceeding and appeal, and of your inmate complaint and appeal.

In other words, the court will not allow you to present new or additional facts, either orally or in writing, during certiorari review. There will not be any evidentiary hearing that would allow you to present new evidence in your favor.

The written record in the certiorari proceeding will usually consist of at least the following documents:

- The conduct report;
- Your request for witnesses, if any;
- Any written records from your disciplinary hearing;
- The hearing officer’s decision;
- Your appeal to the warden under Ch. DOC 303;
- The warden’s decision on your appeal;
- Your inmate complaint under Ch. DOC 310;
- The Institution Complaint Examiner’s (ICE’s) receipt;
- The ICE’s report and recommendation;
- The “Appropriate Reviewing Authority’s” decision on the complaint (if any);
- Your appeal to the Corrections Complaint Examiner (CCE);
- The CCE’s receipt;
- The report and recommendation of the CCE; and
- The decision (if any) of the Secretary of the DOC.

There may be additional documents in the record (for example, documents that were included as
part of the investigation of the inmate complaint).

Remember that the court will not consider matters outside the record of the disciplinary proceeding or the ICRS process. If you want to make sure that a document is included in the record, be sure to include as part of your due process hearing, and/or as part of your inmate complaint when you submit it to the ICE.

3. **Limits on Judge’s Review in a Certiorari Proceeding**

A reviewing court has a very limited scope of review in a certiorari case. *State ex rel. Griffin v. Smith*, 2004 WI 36, ¶4, n. 4, 270 Wis. 2d 235, 677 N.W.2d 259.

The court’s authority is limited to determining:

1) Whether the DOC kept within its jurisdiction.

2) Whether the warden and/or DOC Secretary acted according to law in making their decisions. This includes whether state or federal constitution, state statutes, or the Wisconsin Administrative Code rules were violated.

3) Whether the decisions were arbitrary, oppressive or unreasonable and represented the agency’s will rather than its judgment. DOC decision makers are supposed to reach reasonable decisions based on the evidence presented. In reviewing the hearing officer’s decision, the standard that the court will use is whether there is substantial evidence to support the decision. *See State ex rel. Baugh v. Sullivan*, 221 Wis. 2d 596, 586 N.W.2d 699 (Ct. App. 1998). This is similar to the next point.

4) Whether, based on the evidence, the warden and/or Secretary could reasonably have decided as they did. This is definitely an uphill battle for the petitioner (you). **Courts will not substitute their judgment of the evidence for the judgment made by the warden or Secretary.** This is because courts do not like to second-guess decisions made by people whom they perceive as experts in a given area.

In general, courts are reluctant to review the substance (merits) of the decision of an administrative agency. They generally will not reverse findings of fact, including those involving witness credibility. The courts also will not re-weigh the sufficiency of the evidence to support a decision.

On the other hand, courts have sometimes vacated or reversed disciplinary decisions for which no credible evidence appeared in the record. Courts have also granted certiorari relief when the hearing officer rejected the inmate’s witnesses without providing a valid reason.

Nevertheless, it is important to understand that the remedy in certiorari is extremely limited. If the court finds that the evidence was not sufficient to find a conduct violation, it will order the DOC to expunge the conduct report and restore any lost good time. The prisons also generally award any pay that you missed.
However, if the court finds procedural errors, this does not prevent the DOC from holding a new due process hearing. For example, if the court finds that you were prejudiced because the hearing officer improperly denied you the ability to call a witness, the remedy would be to grant you a new hearing at which the witness could speak. The court’s ruling would not dismiss your conduct report.

Finally, a court cannot award money damages in a certiorari proceeding. See Coleman v. Percy, 86 Wis. 2d 336, 341, 272 N.W.2d 118 (Ct. App. 1978), aff’d, 96 Wis. 2d 578, 292 N.W.2d 615 (1980).

If you believe that you have valid grounds for a successful court challenge of your discipline, the remainder of this manual will help you secure judicial review by certiorari if you are proceeding pro se (on your own).

The information and suggested forms in this manual should help you get your action properly filed in the proper court. However, you should remember that you may have to do additional legal research to write a convincing certiorari petition, as well as any brief you might submit on the merits of your claim.

B. The Prisoner Litigation Reform Act (PLRA)

I. Overview of the PLRA

Beginning in 1998, the Prisoner Litigation Reform Act (PLRA) created a procedure that applies only when a Wisconsin prisoner starts certain civil cases. See Wis. Stat. §§ 801.02(7), 802.05(3), 807.15, 814.29, 893.735.

The PLRA applies to certiorari challenges to the DOC decisions on inmate complaints or disciplinary issues, and to decisions of the Division of Hearings and Appeals on revocations. The PLRA also applies to habeas corpus suits challenging DOC sentence calculations. See, e.g., State ex rel. Stinson v. Morgan, 226 Wis. 2d 100, 593 N.W.2d 924 (Ct. App. 1999).

The PLRA includes some procedural requirements that you must meet if you want a court to consider your certiorari petition.

- **The PLRA imposes a strict 45-day deadline.** Wis. Stat. § 893.735. This means that your certiorari petition must be filed within 45 calendar days of the final decision by the administrative agency on your issue.

- **Exhaustion Requirement.** You must provide documents showing that you have exhausted your administrative remedies. Wis. Stat. §§ 801.02(7)(b)-(c).

- **The PLRA’s fee requirements** allow you, upon a showing of indigency, to get a waiver of prepayment of filing fees and costs, but the fees and costs will be taken back out of your prison accounts, and the accounts must be frozen until the fees and costs are paid in full. Wis. Stat. § 814.29(1m).
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

- **“Three Strikes Rule”**: This rule states that you cannot use the fee-waiver provisions of the PLRA if you have had three or more civil cases dismissed for being frivolous or malicious. Wis. Stat. § 801.02(7)(d).

- **Penalty for filing a malicious action**: If a court finds that your case was filed maliciously or to harass the opposing party, your release date can be extended. Wis. Stat. § 807.15.

Each of these rules is discussed in greater detail below.

2. **Specific Requirements of the PLRA**

   a. **Statute of Limitations, Wis. Stat. § 893.735**

   Your certiorari petition must be filed within 45 calendar days of the DOC Secretary’s final decision on your complaint. If your petition is not filed in time, it will be dismissed. Details about the 45-day filing deadline will be discussed in greater detail in Section C, “Procedural Requirements for Certiorari Petitions,” below.

   b. **Exhaustion Requirement**

   Along with your affidavit of indigency, you **must include documentation to prove that you have exhausted all your administrative remedies**, as discussed above in Section II of this manual. As explained in Section II, this means that you will need to prove that you pursued your appeal of the discipline to the warden under Ch. DOC 303 and also pursued your inmate complaint of any procedural issues under Ch. DOC 310 up to the level of the DOC Secretary.

   c. **Fee Requirements**

   Under the PLRA, **prepayment of filing fees and costs can be waived** if you file an affidavit of indigency. However, the **fees and costs will be paid back to the court out of your prison accounts**. Wis. Stat. § 814.29(1m)(b). As of 2016, the filing fee for a certiorari petition is $129.50.

   The PLRA allows prisoners to start civil cases without paying the filing fees up front. In other words, the PLRA allows courts to waive prepayment of fees and costs. However, under the PLRA, the costs of filing and serving the civil action must then be deducted from the inmate’s prison accounts, and the accounts must be frozen until the fees and costs are paid in full.

   Both your regular institution and your release accounts are subject to being frozen until the fees and costs are paid in full. *See Spence v. Cooke*, 222 Wis. 2d 530, 587 N.W.2d 904 (Ct. App. 1998); *State ex rel. Akbar v. Kronzer*, 2004 WI App 108, 273 Wis. 2d 749, 680 N.W.2d 280.

   You can expect that fees and costs will first be deducted out of your regular institution account. When the funds in that account are spent, the remainder of the fees/costs will be deducted from your release account.
In addition to requiring you to pay back circuit court filing fees from your inmate accounts, the PLRA also requires you to pay back service fees and any other costs. *Id.*

If the circuit court denies your petition and you appeal to the court of appeals, you will also have to pay back appellate filing fees and costs. Wis. Stat. § 814.29(1m)(b).

d. **“Three Strikes” Rule**

The PLRA’s “three strikes” rule may apply to you if you have had previous civil actions (cases) dismissed. Under this rule, if you ask for waiver of prepayment, a court will dismiss your petition if you have already had three or more actions dismissed while you have been incarcerated, for any of the following reasons:

- The action was legally frivolous or failed to state a legal claim;
- You sought damages against a party who was immune from suit; or
- The action was filed for an improper purpose, such as to harass, delay, or increase the costs of litigation.

*See* Wis. Stat. § 801.02(7)(d).

In order qualify as a “strike” under § 801.02(7)(d), the prior case must have been entirely dismissed for the reasons outlined in the statute. *See State ex rel. Henderson v. Raemisch, 2010 WI App 114, 329 Wis. 2d 109, 790 N.W.2d 242.*

There are a few limited exceptions to the “three strikes” rule. First, if your certification from the Department of Justice says that you have had three or more such dismissals in the past, and you think this information is wrong, you should write to the Department of Justice’s Civil Litigation Unit, at P.O. Box 7857, Madison, WI 53707-7857, and explain why you believe that the information in their database is incorrect.

Second, even if you have had three prior actions dismissed under Wis. Stat. § 801.02(7)(d), you can avoid dismissal of your petition if you pay the full filing fee to the clerk of court when you file the petition. The money to pay the fees up front can be taken out of your prison accounts (both your institution account and your release account), if there is enough in them to pay the filing fee in full. *See* Wis. Stat. § 801.02(7)(d); *State ex rel. Coleman v. Sullivan, 229 Wis. 2d 804, 601 N.W.2d 335 (Ct. App. 1999).*

However, in order get the money in your release account to pay the filing fee in full, a court order will be necessary. *Id.* Although such a procedure is beyond the scope of this manual, you should realize that you would have to request the court order.

Third, the PLRA provides an exception to both the fee and “three strikes” provisions, if you can establish that you are in imminent danger of serious physical harm. *See* Wis. Stat. §§
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

814.29(1m)(f), 801.02(7)(d). If you believe that you are in such danger, you may petition the court without providing an institution trust fund statement, and even if you have had three or more actions dismissed in the past.

It is not known at this time what this “imminent danger” provision means. However, it is difficult to imagine many challenges to inmate discipline that would fit the imminent danger requirement, so that procedure is not included in this manual.

e. **Penalty for Filing a False or Malicious Civil Action**

If the court finds that you have filed a suit for a malicious purpose or to harass the opposing party, or that you knowingly offered false evidence to the court, the court can order the DOC to extend your mandatory release date. See Wis. Stat. § 807.15.

In Section III.D., below, you will find filing instructions and forms to comply with the PLRA.

3. **Avoiding the Requirements of the PLRA**

It is important to remember that you can avoid many of the requirements of the PLRA by paying the filing fees and costs up front.

If you are able to pay the filing fees and costs, you should enclose with your pleadings a money order, made out to the Clerk of Court, in the amount of the filing fee. Alternatively, you could have someone on the outside send the fees directly to the Clerk of Court on your behalf. Finally, as noted above, you can ask the court to order the DOC to provide funds for the filing fee out of your release account.

Even if you can pay the filing fees and costs, you must still provide the court with documents proving that you have exhausted your administrative remedies.

If you decide not to file the PLRA documents, you will be responsible for all costs and fees of the proceeding, not just the filing fee. For example, if the sheriff personally serves pleadings on the respondents, the sheriff either will make you pay the service fee up front, or will send you a bill after service.

C. **Procedural Requirements for Certiorari Petitions**

This section outlines the procedural requirements for filing a certiorari petition. Since most inmates are indigent, this section assumes that you will need to comply with the procedures of the PLRA.

1. **Where to File (Venue)**

Your certiorari petition has nothing to do with your criminal case. Therefore, you do not file it with the court in which you were convicted.

Instead, you should file your petition in the Dane County Circuit Court in Madison. This is
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

because the action is against the DOC warden and the DOC Secretary. Both of these people are state officials acting in an official capacity, and the DOC’s main business address is in Madison. Therefore, venue (the filing location) is properly in Dane County. See Irby v. Young, 139 Wis. 2d 279, 281, 407 N.W.2d 314 (Ct. App. 1987); Wis. Stat. § 801.50(3)(c).

The address for the Dane County Court is:

215 South Hamilton Street, #1000
Madison, WI 53703.

2. Venue v. Service

Even though venue is located in Dane County, “service” is not the same as “venue.” Remember, venue refers to what county the case is filed in. “Service” refers to having your documents about the case “served upon” (given to) to the respondents.

Assuming that your certiorari petition names both the warden and the DOC Secretary as respondents, it is likely that you will have to accomplish service in two counties. Service on the DOC Secretary will take place in Dane County because that is where the Secretary’s office address is located. Service on the warden will take place in the county where the warden’s prison is located. The procedures for service will be discussed in Section III.F, below.

3. When to File

Under the PLRA, there is a strict 45-day time limit for filing a certiorari petition. See Wis. Stat. § 893.735(2). The PLRA’s 45-day deadline runs from the date of that you receive “actual notice” of the final decision by the DOC Secretary on your inmate complaint about the procedures in your disciplinary proceeding.¹

Under § DOC 310.14, if you do not receive a written decision from the Secretary within 45 working days of the CCE’s acknowledgment of receiving your appeal, the appeal is “deemed to be denied,” unless the Secretary has extended his or her deadline for deciding your appeal, and has given you notice of the extension.

In other words, the PLRA’s “actual notice” deadline starts running from the date that you receive the Secretary’s decision on your appeal. However, if you received no decision from the Secretary and no notice of an extension, then your own 45-day deadline for filing a certiorari petition starts running 45 working days after the CCE acknowledged receiving your appeal. See State ex rel. L’Minggio v. Gamble, 2003 WI 82, ¶¶ 26-27, 263 Wis. 2d 55, 667 N.W.2d 1; State ex rel. Locklear v. Schwarz, 2001 WI App 74, ¶ 15, 242 Wis. 2d 327, 629 N.W.2d 30.

¹If you only appealed the warden’s decision and did not file a complaint through the ICRS, your 45-day deadline runs from the date you received the warden’s decision on your appeal. But remember, this manual assumes that most inmates will file both an appeal to the warden and a procedural complaint under the ICRS. If you did not file an ICRS complaint, Section G, below, explains how you can modify the forms for your certiorari proceeding.
You must file the certiorari petition within **45 calendar days** after you received notice that the Secretary denied your complaint or your complaint was deemed denied.

A petition is considered filed as of the date that you place it in the prison mailbox. *See State ex rel. Shimkus v. Sondalle, 2000 WI App 237, ¶ 14, 239 Wis. 2d 327, 620 N.W.2d 409; State ex rel. Bradley, 2003 WI 14, ¶¶ 9-10, 259 Wis. 2d 630, 658 N.W.2d 427.*

However, this “mailbox rule” applies only to a petition that is complete, in proper form, and accompanied by the required filing fee or the fee-waiver documents required by the PLRA. *See State ex rel. Tyler v. Bett, 2002 WI App 234, 257 Wis. 2d 606, 652 N.W.2d 800.*

To get the benefit of the mailbox rule, you must also submit, along with your certiorari petition, a sworn affidavit (statement) that says when you placed the petition and accompanying documents in the prison mailbox. *See State ex rel. Shimkus v. Sondalle, 2000 WI App 262, ¶2, 240 Wis. 2d 310, 622 N.W.2d 763; State ex rel. L’Minggio v. Gamble, 2003 WI 82, ¶ 29, 263 Wis. 2d 55, 667 N.W.2d 1.* A sample affidavit is included as **Form 6** in Section V, below.

There may be certain situations in which a court will “toll” (stop) the PLRA’s 45-day deadline. For example, as will be discussed later, the PLRA requires you to get a certification from the Wisconsin Department of Justice (DOJ) about whether you have had any prior lawsuits dismissed for failure to state a claim. You are not allowed to request this DOJ certification any earlier than 30 days before you file the certiorari petition.

Sometimes, there is a delay in getting the certification form back from the DOJ, and since the certification must be included when you file the certiorari petition, the petition itself can be delayed. The Court of Appeals has ruled that the PLRA’s 45-day time limit is tolled during the period that you are waiting for a response from the DOJ about your request for certification. *See State ex rel. Locklear v. Schwarz, 2001 WI App 74, ¶ 26, 242 Wis. 2d 327, 629 N.W.2d 30.* The affidavit (**Form 6** in Section V, below) includes a statement about when you requested the DOC certification and whether/when you received it.

Similarly, the PLRA requires an inmate to send a certified statement of the funds in his or her prison trust account along with the certiorari petition. Some prison business offices will give the account statement to the inmate to file, while other prison business offices will send the account statement directly to the court.

**If** the prison business office sends the prison trust account statement directly to the court, the Court of Appeals has ruled that the 45–day time limit is tolled between the time an inmate requests the statement and the time the court receives the statement. *See State ex rel. Walker v. McCaughtry, 2001 WI App 110, ¶ 16, 244 Wis.2d 177, 629 N.W.2d 17.*

You should make every effort to get the business office to give the trust account statement directly to you. However, if the business office is going to send the statement to the court, you should make a written record of the date when you asked the business office to send it.

**Form 6** in Section V, below, also includes a statement of when you requested your trust account statement from your prison business office and whether/when you received it.
Despite these tolling provisions, **you should assume that the filing deadline is 45 calendar days from the date you receive notice of the Secretary’s decision on your complaint or the date the complaint was deemed denied.**

According to the Dane County Circuit Court’s Prisoner Litigation Staff Attorney, if you have not received your DOJ certification and/or your trust account statement within the 45-day deadline, **you may file your certiorari petition, and include the affidavit (Form 6 in Section V, below) stating that you have requested these items.**

**D. Instructions for Pleadings**

**1. General Instructions**

All pleadings and documents filed with the court, except for exhibits, should be on regular-size (8½” x 11”) paper.

Try to type all of your court papers. If you don’t have access to a typewriter, print your papers so the court can read them easily. Be as neat as possible. You want to make your papers easy to read.

Be sure that there are **page numbers** on all your documents.

You are free to use the forms in this manual (Section V, below). Some blank lines give you a choice of two or more things to write. In these cases, you should fill out only the lines that apply to you.

If you are using the forms in this manual, you should generally complete each blank line that appears on the form (unless the form indicates that someone else, such as the judge, is supposed to complete and sign the form).

There are a few blanks that you should not fill in when you do your initial filing. For example, you will not be able to fill in the case number until after the court has assigned a number to your case. Similarly, you should not fill in the judge’s signature on proposed orders.

If you make your own papers using these forms as a guide, you can eliminate the form number at the top of the sheet, the italicized words in parentheses, and as many of the blank lines as you can.

In addition, whenever the manual supplies a standard court form (e.g. the Court form CV-438, the PLRA’s “Affidavit of Indigency” form), you must use this standard court form. Otherwise, the court will consider your petition improperly filed.

All formal legal papers have **captions**. A caption is simply a formal heading which gives the name of the court, the names of the parties, the number of the case, and the title of the document.
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

Note that in the caption of the certiorari forms, you should fill in the following:

1) **Your name and address** after “State ex rel.,” since you are the petitioner in the action. Wis. Stat. § 802.04.

2) **The names and addresses of the DOC Secretary and the warden** as the respondents. Wis. Stat. § 802.04.

   As of 2014, the address for the DOC Secretary is:
   Wisconsin Department of Corrections
   3099 East Washington Avenue
   Madison WI 53704

   On the forms in this manual, we have pre-filled in this address for the DOC Secretary. **But you will still need to write the Secretary’s name on the caption.** If the Department of Corrections main address changes in the future, you will need to change the Secretary’s address on the forms.

   The warden’s address will be the mailing address of the warden’s prison.

3) **A case number.** The case number is assigned by the court only after the case is filed. Thus, in your first set of papers you will leave the case number blank.

4) **A case classification code.** The case classification code for a certiorari petition is **30955**. You must put the case classification code in the caption of all your pleadings, under the case number.

None of the forms asks the court to provide you with court-appointed counsel to represent you in your case. This is because the state courts generally will **not** appoint counsel at public expense in prison discipline or conditions of confinement cases. Unlike a criminal case, a prisoner has no right to have an attorney appointed at public expense to challenge a DOC decision on prison discipline and/or an inmate complaint.

In addition, the State Public Defender’s Office does not handle prison discipline cases.

Finally, because money damages cannot be awarded on a writ of certiorari, it is unlikely that you will find a private attorney who is willing to handle your case on a contingency basis.

For these reasons, **this manual is designed to help you pursue your certiorari petition on your own.**

2. **PLRA Forms**

Under the PLRA, the procedure for filing a civil case is complicated. PLRA forms are included in this manual. Be careful to use these forms, and to follow the instructions below. It is extremely important that you follow the PLRA procedures **exactly.**
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

Step 1: Get a Certification from the Wisconsin Department of Justice

The first thing you need to do is to send a form letter to the Civil Litigation Unit of the Wisconsin Department of Justice (DOJ) requesting a certification of whether you have had three prior civil actions dismissed. You should use Form 1, DOC Form 2257, to write to the DOJ. You need to get the certification from the DOJ no more than 30 days before you file your case.

The DOJ will send you a certification form (officially called Form DJLS22), which will list the number of your prior civil filings that have been dismissed. Under the PLRA, you are required to file the original DJLS22 form along with the pleadings in your civil case. Wis. Stat. § 801.02(7)(d).

According to the DOJ’s Civil Litigation Unit, the DJLS22 form is usually sent out within 48 hours of receiving a request from an inmate, so you should receive it in a week or so after you send in your request. However, remember that the DJLS22 form cannot be dated more than 30 days before you file your civil case.

If you have not received the DJLS22 form by the time your 45-deadline is running out, you can go ahead and file your certiorari petition without the form, but also include Form 6. Form 6 is an affidavit in which you state when you requested the DJLS22 form.

Step 2: Get a Six-Month Certified Account Statement of your Trust Account

While you are waiting for the DJLS22 form, you should ask your prison business office to give you a certified six-month account statement of your prison trust fund account for the most recent six months prior to the date you are filing the pleadings in your civil case. Wis. Stat. § 814.29(1m)(b)2.

If the business office is not willing to give the statement directly to you, you should give them the address of the court, and ask them to mail it directly to the court. Be sure to make a written record of when you asked for the statement to be mailed to the court, so that you can include this information on Form 6.

Step 3: File the Required PLRA Forms Along With Your Pleadings in the Civil Case

Once you receive the DJLS22 form back from the DOJ, and your certified six-month account statement is either given to you or has been sent to the court, you can file your certiorari petition.

In addition to your certiorari petition and the proposed writ of certiorari form (discussed later), you should complete and file all the PLRA documents listed below:

1) Court Form CV-438, “Prisoner’s Petition for Waiver of Prepayment of Fees/Costs--Affidavit of Indigency” (Form 2). Be sure to answer each and every question on the affidavit form, even if it seems irrelevant (for example, if it asks about stocks and bonds). If you do not answer all the questions, the court may send it back to you. Your signature
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

on Form CV-438 must be notarized. You should check at your institution to see who is a notary public who can witness you signing this form.

2) The certified six-month account statement for your prison trust account, for the six months prior to the date that you file your certiorari petition. If you have not received the trust account statement within your 45-day deadline, you can leave it out and state that you have not yet received it on Form 6 (“Affidavit of Petitioner”). When you do receive the statement, you must then forward it to the court.

3) DOC Form 1930, “Authorization to Withhold Money from Trust Account” (Form 3). This authorization allows the Department of Corrections to forward payments from your prison accounts (regular and release) to the clerk of courts, until the fees/costs of the action are paid in full.

4) The original DOJ certification (Form DJLS22) stating that you have not had three or more previous filings dismissed under Wis. Stat. § 801.02(7)(d). If you have not received the DOJ certification within your 45-day deadline, you can leave it out and state that you have not yet received it on Form 6 (“Affidavit of Petitioner”). When you do receive Form DJLS22, you must then forward it to the court.

5) Documentation proving that you have exhausted your administrative remedies. This documentation will be discussed in the following section.

3. The Certiorari Petition

The certiorari petition is provided as Form 4 in this manual. This is the document that states the basic facts and the reasons you believe the circuit court should reverse the warden’s and Secretary’s decisions regarding your prison discipline.

Form 4 gives you blank lines in which to describe what happened in the discipline and inmate complaint processes. You may need more room to fully explain what happened. If so, you should attach more pages.

The petition is where you explain fully what happened to you during the processes involving your prison discipline, and what you want the judge to do about it. This is where you explain the facts and where you tell how you were wronged in the process. The petition is the heart of your court papers, and you want to make sure you have covered everything here.

Even though you want to be thorough, you should also do your best to be brief and to the point. You do not want to irritate the judge by going on too long.
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

a. Caption

The caption to the petition includes space for addresses for you as the petitioner, as well as the warden and the Secretary of Corrections, as respondents. The addresses are required on the certiorari petition and on the writ form.

These addresses are required by statute and the Dane County court’s local rules. If you do not include the addresses, your petition and other documents will be returned to you.

Just to be safe, this manual suggests that you include both names and addresses on all pleadings that you file.

On the forms in this manual, we have pre-filled in the Secretary’s address as of 2016, but you will need to make sure you include the Secretary’s name.

You will also need to include the warden’s name and address in the caption. This will be the address of the warden’s prison.

Finally, you will need to put your own name and address in the caption.

b. Petition Form

Paragraph 1 of the petition provides information about you, as the petitioner. Note that if you have moved from the prison where the disciplinary proceeding took place, you should include that information. In that case, there are extra lines in Paragraph 1 where you can state the address of the institution where the disciplinary proceedings took place.

Paragraph 2 provides information about the warden, as a respondent. Note that this is the warden who decided your disciplinary case.

Paragraph 3 provides information about the DOC Secretary, as a respondent.

Paragraphs 4 states that you are asking the court to review the decisions of the warden and the Secretary in your disciplinary case.

Paragraphs 5 says that you received a conduct report, you should tell what it said you were charged with. Be sure to include the number of the conduct report, the names of the offenses it alleged, and the sections of the Ch. DOC 303 that it said you violated.

In Paragraph 6, you should tell what the conduct report said you did.

Paragraph 7 tells when your due process hearing was held.

In Paragraph 8, you can tell what happened at the hearing. You can also tell important things that happened before the hearing (for example, “I asked for my staff representative to be replaced due to a conflict of interest, but my request was denied”). Be sure to stick to the facts at this
point in the petition. You’ll be able to explain what you think was unfair later on in the petition, in Paragraph 10.

In Paragraph 9, you state what finding of guilt and punishment the hearing officer made at your hearing. If the hearing officer found you not guilty of any of the alleged offenses, you should say that too.

In Paragraph 10, you explain why you are challenging the hearing officer’s decision. Here, you can tell what you think was wrong or unfair about the decision. You do not need to cite case law. Instead, focus on the specific facts that show what was wrong with the decision.

Paragraph 11 states when you appealed the hearing officer’s decision to the warden.

Paragraph 12 tells when you received notice of the warden’s decision, and what that decision was.

Paragraph 13 states that the warden’s decision was the final step in the administrative process under Ch. DOC 303.

Paragraph 14 states that you also challenged the procedures used in your disciplinary case through the Inmate Complaint Review System.

Paragraph 15 asks for the number of your inmate complaint. Inmate complaint forms have a number on the top. Be sure to include the complaint number in your petition, so that everyone knows exactly which complaint you are challenging.

Paragraph 16 states when you filed your complaint with the ICE.

Paragraph 17 states when the ICE acknowledged receiving your complaint.

Paragraph 18 asks for an explanation of your complaint. You can quote directly from the complaint. Or, if you want, you can summarize to explain the nature of your complaint.

The ICRS gives the ICE authority to investigate complaints. In Paragraph 19, you can explain what the ICE did or didn’t do in investigating your complaint.

In Paragraph 20, you describe the ICE’s recommendation about your complaint to the “Appropriate Reviewing Authority” (ARA), if you had an opportunity to see that recommendation. If you did not see the ICE’s recommendation, leave this paragraph blank.

In Paragraph 21, you summarize the reasons given by the ICE for the recommendation. If you did not see the ICE’s recommendation, leave this paragraph blank.

In Paragraph 22, you tell the court what the ARA did with your complaint, and when.
Remember, if you received no response from the ARA within **30 working days** after the ICE acknowledged receipt, your appeal was deemed denied by the ARA, and you should say so in Paragraph 22. Wis. Admin. Code § DOC 310.12(3).

In **Paragraph 23**, you tell the court that you appealed the ARA’s decision to the Corrections Complaint Examiner (CCE), and within the time limits. This tells the court that you used all the administrative channels available to you.

In **Paragraph 24**, you tell the court the date that the CCE acknowledged receiving your appeal.

In **Paragraph 25**, you state what recommendation the CCE made to the DOC Secretary, and when. If you don’t have this information, you can state so.

**Paragraph 26.** There are two options in Paragraph 26. **Paragraph 26(a)** is used if you received a decision from the Secretary within 45 days of the date the CCE acknowledged receipt of your appeal. **Paragraph 26(b)** is used if you did not receive a decision from the Secretary within the 45-day time limit. In that case, under the administrative code, your appeal was deemed denied.

In **Paragraph 27**, you tell the court that the Secretary’s decision is the final step in the Inmate Complaint Review Process.

In **Paragraph 28**, you state that, along with your petition, you are including **documentation showing that you have exhausted your administrative remedies**. In general, this documentation will include copies of all of the following written materials:

1. The conduct report;
2. Your request for witnesses, if any;
3. Any written records from your disciplinary hearing;
4. The hearing officer’s decision;
5. Your appeal to the warden under Ch. DOC 303;
6. The warden’s decision on your appeal;
7. Your inmate complaint under Ch. DOC 310;
8. The Institution Complaint Examiner’s (ICE’s) receipt;
9. The ICE’s report and recommendation (if you have it);
10. The “Appropriate Reviewing Authority’s” decision on the complaint (if any);
11. Your appeal to the Corrections Complaint Examiner (CCE);
12. The CCE’s receipt;
13. The report and recommendation of the CCE (if you have it); and
14. The decision (if any) of the Secretary of the DOC.

Finally, in **Paragraph 29**, you tell the court exactly how your procedural rights have been denied. **This is a very important part of your petition.** This is where you explain why you believe the warden’s and Secretary’s actions were in error, arbitrary and capricious, or contrary to law.
In completing Paragraph 29, it will be helpful to review the standards a court uses in ruling on a certiorari petition, which are outlined above in Section III.A.3, “Limits on Judge’s Review in a Certiorari Proceeding.”

Use as many brief, lettered subparagraphs under Paragraph 29 as are necessary to state all of your reasons for asking the court to take action on your petition. The form petition includes four lettered subparagraphs, but you can add a page that includes more subparagraphs if you need them.

You do not need to cite a lot of case law under Paragraph 29. Instead, focus on the facts that show the decision in your case was wrong. As always, be as specific and as clear as you can, but also be brief and to the point.

c. Date and Signature

At the end of the petition is a place for you to write in your signature and the date. It is important that you sign and date the petition.

4. The Proposed Writ of Certiorari

Form 5 is the proposed writ of certiorari for the judge to sign.

You should fill in the entire caption (leave the case number blank, since it has not yet been assigned). Remember to write in your name and address, as well as the names and addresses for the warden and the DOC Secretary as the respondents.

In the body of the writ form, on the lines right after “THE STATE OF WISCONSIN TO,” we have filled in the Secretary’s address. However, you will still need to write in the Secretary’s name. In addition, you will need to write in the warden’s name and address.

The judge can use this writ form to order the respondents to produce the return (or record) in the case. Alternatively, the judge may decide to use his or her own writ form. You should leave the signature line for the judge blank.

This writ of certiorari form commands the respondents to prepare the written record of your disciplinary proceeding and inmate complaint proceeding and file it with the court. This record is also called the “return.”

The return is the record that the judge will consider in deciding your claim. Generally, with this procedure, all the judge will have to base his or her decision on is the return and the parties’ briefs.

The court can give the respondents up to 60 days to produce the return, but the practice generally has been to require a return within 30 days of receipt of service of the writ. The proposed writ supplied in this manual allows for 30 days.
5. **Other Documents to Include with Your Certiorari Forms**

**Form 6** is an affidavit (statement) you can use to tell the court that you have made every effort to comply with the requirements of the PLRA.

On the caption to the affidavit, **be sure to include your name and address, the warden’s name and address, and the DOC Secretary’s name.**

On the affidavit, you can state the following:

- When you requested a copy of your prison trust fund statement from your institution’s business office, and whether/when you received the statement;
- When you requested the DOJ certification form (Form DJLS22), and whether/when you received the certification; and
- The date that you are placing your documents in the prison mailbox.

**You will need to have a notary public witness your signature on the affidavit form.** You should check with the records office at your institution to find out which prison staff members are notaries. You should sign the affidavit in front of the notary.

Whenever you send documents to the court, it is helpful to include a cover letter to the clerk of court, listing all the documents you are filing. **Form 7** is a cover letter that you can use when filing your petition for writ of certiorari and related documents.

Once you have completed your affidavit, you should put all your certiorari materials, including the PLRA materials and cover letter, in the prison mailbox the same day.

6. **Checklist of Documents to Send to Court**

1) **Court Form CV-438, “Prisoner’s Petition for Waiver of Prepayment of Fees/Costs--Affidavit of Indigency” (Form 2).**

2) **The certified six-month account statement** for your prison trust account, for the six months prior to the date that you file your certiorari petition.**

3) **DOC Form 1930, “Authorization to Department of Corrections to Forward Payments to the Clerk of Courts” (Form 3).**

4) **The original DOJ certification (Form DJLS22) that you have not had three or more previous filings dismissed under Wis. Stat. § 801.02(7)(d).**

5) **The petition for writ of certiorari (Form 4).**

6) **The proposed writ of certiorari (Form 5).**
7) Documentation proving that you have exhausted your administrative remedies.

8) A notarized affidavit in which you state when you requested and received your prison trust fund statement and DOJ certification, as well as the date that you placed all of the documents in the prison mailbox (Form 6).

9) A cover letter to the court (Form 7).

**If you have requested, but have not yet received, the trust account statement and/or Form DJLS22, you can leave them out, but you should be sure to include Form 6.**

You should file 3 copies of each of the documents listed above. The first copy of the documents is for the court file. The other two copies of the documents are also mailed to the court; they will eventually be served upon (given to) the warden and the Secretary.

Finally, be sure to keep a copy of every paper that you send to the court.

You file the documents by mailing them to:

Dane County Clerk of Circuit Court  
215 South Hamilton Street  
Madison, WI 53703.

E. The Judge’s Initial Rulings

In this section, we will assume that you have properly filed all of the documents required by the PLRA, along with the certiorari petition and proposed writ.

Next, the judge will determine whether you are indigent. If the judge finds that you are indigent, he or she will issue an “Order on Prisoner’s Petition for Waiver of Prepayment Fees/Costs.”

If the judge does not find you indigent, you will be notified that you have to pay the filing fee before the judge will review the petition.

Assuming that the judge has found you indigent, he or she will do an initial review of your certiorari petition itself. Under Wis. Stat. § 802.04, the judge can deny the petition without requiring a response from the respondents, if the petition:

- Is legally frivolous, as defined in Wis. Stat. § 814.025(3); or

- Is used for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; or

- Seeks monetary damages from a defendant who is immune from such relief; or
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

- Fails to state a claim upon which relief may be granted.

If the judge denies the petition under Wis. Stat. § 802.04, you will be notified in writing.

Remember, if the judge denies the petition under Wis. Stat. § 802.04, this will count as a “strike” against you under Wis. Stat. § 801.02(7)(d), if you try to file future civil cases under the PLRA. See the discussion of the “three strikes” rule in Section III.B.2.d, above.

If the judge does not deny the petition, the judge will sign the writ of certiorari. Remember, the writ simply commands the respondents to file a “return” (a copy of the record). The fact that the judge signed the writ does not mean that you have won the case.

Assuming that the judge has ruled that you are indigent and that prepayment of fees and costs should be waived, the court clerk will “authenticate” (date-stamp) two copies of each of the filed documents, including the certiorari petition and the signed writ. The clerk will then return the authenticated documents to you. The clerk will also send you a copy of the order waiving prepayment of fees/costs, signed by the judge.

F. What to Do With the Papers the Court Sends You

As soon as you get the authenticated documents and the signed order waiving fees/costs back from the court, you should make another copy of each authenticated and/or signed document for your own records.

Next, you need to have the court documents served on the DOC Secretary and the warden. In most cases, this will require that you request, and pay for, service in two separate counties.

1. Service on the DOC Secretary

To have documents served on the DOC Secretary, you should mail one copy of each of the following documents to the Dane County Sheriff’s Department. 115 W. Doty Street, Madison, WI 53703:

- The authenticated petition;
- The signed writ;
- The signed order waiving prepayment of fees and costs; and
- The authenticated documentation showing that you have exhausted your administrative remedies.
Finally, you should include a cover letter stating that you are asking that the Sheriff’s Department serve the authenticated/signed documents on the DOC Secretary, without requiring prepayment of the service fee (Form 8).

The Dane County Sheriff’s Department will serve the documents on the Secretary at the DOC’s main address in Madison. As of 2016, the cost of service is $40 per person served, plus the cost of mileage.

The Sheriff’s Department will then mail you an “affidavit of service,” which you should keep for your records. The affidavit proves that the respondents were served with the certiorari petition, writ, and other filed documents.

Along with the affidavit of service, the Sheriff’s Department will send you a bill for the amount of service. You should give this bill to the prison business office, along with a copy of Form 4 (your authorization to the DOC to have filing fees and costs taken out of your prison accounts) and a copy of the court’s signed order waiving prepayment of fees and costs. The service fees will then be paid back to the Sheriff’s office out of your prison accounts.

2. Service on the Warden

In addition to serving the DOC Secretary, you will also need to serve the authenticated certiorari documents on the warden.

To do this, you should follow the instructions in Section III.F.1, immediately above, except that your letter and enclosures should be sent to the Sheriff’s Department in the county where the warden’s prison is located.

A list of Sheriff’s Department addresses is located in the Appendices to the LAIP Desk Book. Form 9 is a cover letter you can send to the county sheriff, requesting service on the warden.

Remember, you will be charged a separate service fee for service on the warden. These fees vary from county to county. As of 2016, they are likely to cost $40-$50.

G. How to Use These Forms if You Did Not File an ICRS Complaint

Remember, this manual assumes that you both appealed the disciplinary finding to the warden under Ch. DOC 303, and challenged your disciplinary procedures through an inmate complaint process under the ICRS procedures outlined in Ch. DOC 310.

If you did not file an ICRS complaint, you can still use the forms in this manual, but you will have to modify them in the following ways.
1. **PLRA Requirements**

The PLRA requirements outlined in Section III.B., above, are unchanged. However, you must file your certiorari petition within 45 calendar days of the warden’s decision on your disciplinary appeal.

2. **Captions**

If you did not file an ICRS complaint, the warden is the only respondent in your case. So you should cross out the DOC Secretary’s name and address on the caption of the certiorari petition, writ of certiorari form, and any other pleadings that you file.

3. **Certiorari Petition**

You should already have crossed out the Secretary’s name and address on the caption of the certiorari petition.

You should cross out **Paragraph 3**.

In **Paragraph 4**, you should cross out all words beginning with “as well as the decisions of Secretary . . . .”

**Paragraphs 14-27** apply only to the ICRS. So if you are challenging only the warden’s decision, you can skip **Paragraphs 14-27** and cross them out.

However, you still need to complete **Paragraphs 1-13 and Paragraphs 28-29**, and to sign and date the petition.

4. **Proposed Writ of Certiorari**

You should already have crossed out the Secretary’s name and address on the caption of the proposed writ of certiorari form (**Form 5**).

You should also cross out the Secretary’s name and address after the line “STATE OF WISCONSIN TO:”.

In addition, in all the paragraphs of the writ form, you should cross out the last “s” in **“respondents”** so that it reads “respondent” throughout.

5. **Copies for Filing**

You need to file only the original and **one copy** of your certiorari materials with the court. The original copy is for the court, and the second copy will eventually be served upon the warden.
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

You should also modify the cover letter to the Clerk of Court (Form 7) to state that you are filing the original and one copy, rather than the original and two copies, of the certiorari materials.

6. Service

You only need to serve one copy of the documents. You do not need to serve the DOC Secretary. You do need to serve the warden, in the county where the warden’s prison is located. You can use Form 9 to ask the county sheriff to serve the documents on the warden.

H. What Happens Next?

Once the respondents (the warden and the Secretary) are served with your documents, they will have 30 days to file a return. However, if the judge used his or her own writ form rather than the one in this manual, the judge may have given the respondents up to 60 days to file a return.

The return should consist of copies of all documents involved or considered in your disciplinary proceeding and inmate complaint. This would typically include:

- The conduct report;
- The record of the due process hearing;
- The hearing officer’s decision;
- Your appeal to the warden;
- The warden’s decision;
- Your inmate complaint;
- The ICE’s acknowledgment of your complaint;
- The ICE’s recommendation;
- The “Appropriate Reviewing Authority’s” decision (if any);
- Your appeal to the CCE;
- The CCE’s acknowledgment;
- The CCE’s recommendation to the Secretary; and
- The Secretary’s decision (if any).

The return could also include any additional documents that were included at any point in the process (for example, documents attached to your inmate complaint, or documents that were part of the ICE’s investigation).

Once the initial documents are filed and served, you are responsible for sending the respondents or the respondents’ attorney a copy of any later document that you file in the case (including any letters to the court).

However, although your initial documents must be served by personal (sheriff’s) service, these later documents can be served by first-class mail.
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

At some point in this process (probably when the return is filed), the attorney for the respondents will file a “Notice of Appearance.” The attorney may be an assistant attorney general in the Department of Justice, or may be one of the attorneys in the office of the DOC Legal Counsel.

Either way, you should receive a copy of this Notice of Appearance. Once you know which attorney is representing the respondents, you should send copies of all future documents that you file with the court to that attorney, rather than to the respondents.

Once a proper and complete return is filed, the judge may set up a briefing schedule to address the merits of the case. The schedule will typically provide for a brief by the petitioner (you); a response brief from the respondents’ attorney; and your reply brief.

If the court does not order a briefing schedule, you could write to the court, with a copy to the respondents’ attorney, and ask for a briefing schedule. However, the judge is not required to order briefing in the case.

If you do file a brief, it should outline the relevant facts from the record, and the arguments in favor of your motion, including citations to any cases which support those arguments.

After briefs are filed, the judge will issue an order granting or denying the relief you requested.

If the judge rules against you, you may wish to consider taking an appeal to the Court of Appeals.

Appealing a decision on a certiorari case is beyond the scope of this manual. However, the LAIP Desk Book, Chapter 7, does include a manual for people who are representing themselves on appeal, which was prepared by the Clerk of the Court of Appeals. You may find that manual helpful.

Remember, however, that the PLRA’s fee provisions do apply to the fees and costs involved in appeals. This means that, if you are indigent, you can get a waiver of prepayment of appellate fees and costs, but you will have to pay these fees/costs back out of your institution trust funds.

Finally, Form 10 is a general cover letter. This is a sample letter to the court which should accompany any additional documents (e.g. motions or briefs) that you submit for filing in your case, after the initial filing.

In your cover letter, you should state the title of every paper that you submit with the letter. You cover letter should list the respondents’ attorney in the “cc” (“copy to”) line, to show that you have sent copies of the cover letter and any enclosed documents to the attorney.

And remember that you should always keep a copy of any document you send out.
This guide is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this information. This material was drafted in 2015, so you should check to see if the law or procedures have changed.

IV. CONCLUSION

Remember, this manual can only get you started on the process of filing a certiorari petition. Legal cases take on a life of their own once they’ve been filed. It is not possible in a pro se manual to anticipate and discuss all the possible ways that a case could proceed. Instead, we have attempted to provide information that will help you file legally correct documents, so that the court can consider your case on its merits.

Remember also that statutes can change, and that case law interpreting the statutes can also change. So it is important to double-check current statutes and case law, in order to make sure that the law hasn’t changed by the time you want to file your own certiorari petition.
V. SAMPLE FORMS FOR FILING A CERTIORARI PETITION

Note: except for Forms 1, 2, and 3, the forms included in this manual are only samples (and for Form 3 you should obtain the original form from your institution librarian). You can use the sample forms if they are appropriate to your case, but you may need to modify them to suit the circumstances of your case.

Form 1: DOC Form 2257, “Offender Request for Department of Justice Certification”

Form 2: Court Form CV-438, "Prisoner's Petition for Waiver of Prepayment of Fees/ Costs—Affidavit of Indigency"

Form 3: Sample DOC Form 1930, “Authorization to Withhold Money from Trust Account”

Form 4: Sample Petition for Writ of Certiorari

Form 5: Sample Proposed Writ of Certiorari

Form 6: Sample Affidavit of Petitioner

Form 7: Sample cover letter to accompany your initial filing

Form 8: Sample letter to Dane County Sheriff requesting service

Form 9: Sample letter to Sheriff in County where prison is located, requesting service

Form 10: Sample general cover letter
This pro se form is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this form. This form was drafted in 2014-2015, so you should check to see if the law or procedures have changed, or if more current forms are available from the courts.

FORM 4

STATE OF WISCONSIN   CIRCUIT COURT   DANE COUNTY

STATE EX REL. _________________________

__________________________

__________________________

__________________________

(your name and address)

Petitioner,

Case No. ______________

v. Case Classification Code 30955

__________________________

__________________________

__________________________

(Warden's name and address)

and

__________________________

(DOC Secretary’s name)

Wisconsin Dept. of Corrections

3099 East Washington Ave.

Madison, WI 53704

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO: Judge of the Circuit Court

Dane County Courthouse

215 S. Hamilton St.

Madison, WI 53703
I, _________________________, the petitioner in this action, respectfully state as follows:

1. I am now confined at the ______________________________ at _________________. Wisconsin, and have been confined at that institution since ____________, 20___. [If necessary, also include:] Before ________________, 20___, I was confined at the _____________________ at ______________, Wisconsin.

2. The respondent, ________________________, is the warden [or superintendent] of ____________________, and as such is responsible for the care, custody and discipline of the inmates therein.

3. The respondent, ________________________, is the Secretary of the Wisconsin Department of Corrections.

4. I am hereby asking the court to review the disciplinary decisions and actions of Warden __________________ and the disciplinary hearing officer, as well as the decisions of Secretary __________________________ on my inmate complaint about the procedures in the disciplinary action.

5. On or about ________________, 20___, I received conduct report # ______ charging me with the following offenses: [list offenses] ________________________________


in violation of the following sections of Wis. Admin. Code Ch. DOC 303: [list sections of Ch. DOC 303 that correspond to the alleged offenses] ________________________________


6. The conduct report alleged the following facts: ____________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

7. On ________________, 20___, a disciplinary hearing was held on the above charges.

8. At that hearing, [tell the court about anything important that happened before or during the hearing] ____________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
9. The hearing officer found me guilty of: ____________________________

10. I am challenging the hearing officer’s finding because: _________________
11. On _____________, 20___, I filed an appeal with Warden ___________________.

12. On _____________, 20___, I received notice that the warden took the following action on my appeal: [under the Administrative Code, the warden can affirm, modify, or reverse the hearing officer’s decision. Or the warden can return the case to the hearing officer. Tell which of these things the warden did in your case.] ____________________________

13. There is no non-judicial remedy available on the appeal after the decision of Warden _________________. Wis. Admin. Code § 303.76.

14. In addition to my challenge to the hearing officer’s and warden’s decisions under Wis. Admin. Code Ch. 303, I also filed a complaint challenging the disciplinary procedures under the Inmate Complaint Review System, or ICRS. The ICRS is an administrative mechanism in which inmates can file grievances, and is described in Wis. Admin. Code Chapter DOC 310.

15. I hereby ask the court to review the decision of the Secretary on my inmate complaint # _______________________.

62
16. On or about ________________, 20__, I filed complaint # __________ while I was incarcerated at ________________________________ (name of institution).

17. The Institution Complaint Examiner (ICE) acknowledged receipt of the complaint on ______________, 20__.

18. The inmate complaint alleged the following: ________________________________

19. The ICE conducted the investigation in the following way: ________________________________
20. The ICE recommended that my complaint be __________________________
________________________ (dismissed, upheld, etc.).

21. The ICE gave the following reasons for this recommendation: ________________

22. The ICE’s recommendation was submitted to the “Appropriate Reviewing
Authority” (ARA) under Wis. Admin. Code § DOC 310.12. On ____________, 20 __, the
ARA took the following action(s) with regard to the complaint: __________________________
[Note: if you received no response from the ARA within 30 working days after the ICE acknowledged receipt, you should state that your appeal was deemed denied by the ARA under Wis. Admin. Code § DOC 310.12(3)].

23. On ____________________, 20___, I appealed the ARA’s decision to the Corrections Complaint Examiner (CCE), pursuant to Wis. Admin. Code § DOC 310.13.

24. The CCE acknowledged receipt of my appeal on ______________, 20___.

25. On ____________________, 20___, the CCE made the following recommendation to the Secretary of the Department of Corrections: ________________________________

26. (a) On ______________, 20____, the Secretary of the Department of Corrections took the following action on my appeal [Under the Administrative Code, the Secretary can adopt the CCE’s recommendation; adopt with modifications the CCE’s recommendation; reject the CCE’s recommendation; or return the appeal to the CCE for further investigation. Tell which of these things happened in your case.] ________________________________
(b). I did not receive a written decision on the appeal from the Secretary within 45 working days of the Corrections Complaint Examiner’s acknowledgement of receipt of the appeal pursuant to Wis. Admin. Code § DOC 310.14, the appeal is deemed denied.

27. There is no non-judicial remedy available subsequent to the decision of Secretary ____________ (Secretary’s name) on appeal of an inmate complaint. Wis. Admin. Code § DOC 310.14.

28. Included with this petition are the following documents showing that I have exhausted my administrative remedies (list the documents below): __________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________
29. In the following respects, the proceedings as described above were undertaken without jurisdiction, were erroneous, were arbitrary and capricious, and were contrary to state law and the Wisconsin and United States Constitutions:

a. 

b. 

c. 
WHREFORE, I respectfully requests that a writ of certiorari be granted to bring up for review and determination the proceedings in the matter set forth in this petition, and that, upon the return of the writ, the decisions and actions of the respondents and the disciplinary committee be reversed and adjudged to be null and void.

DATED this ______ day of __________________, 20___.

Respectfully submitted,

 ___________________________
(your signature)
PRO SE PETITIONER
FORM 5

STATE OF WISCONSIN   CIRCUIT COURT   DANE COUNTY

STATE EX REL. _________________________

_________________________

_________________________

_________________________

(your name and address)

Petitioner,

Case No. ____________

v.       Case Classification Code 30955

_________________________

_________________________

_________________________

(Warden’s name and address)

and

_________________________

(Warden’s name and address)

(DOC Secretary’s name)
Wisconsin Dept. of Corrections
3099 East Washington Ave.
Madison, WI 53704

Respondents.

WRIT OF CERTIORARI

THE STATE OF WISCONSIN TO:

Wisconsin Department of Corrections
3099 East Washington Avenue
Madison, WI 53704

(Warden’s name and address)
WHEREAS, it has been represented to this court by the verified petition of __________
(your name)
__________________________, that these respondents have caused the petitioner to be
disciplined and that the discipline is contrary to law and justice; and being willing that the record
of the proceedings upon which that discipline is based be certified and returned to our court;

WE HEREBY COMMAND YOU to certify and return to this court within thirty days
after service of this writ upon you a correct transcript of the record and proceedings in the
disciplinary proceedings, together will all papers, documents, and docket entries involved in the
discipline or considered by you in the disciplinary proceedings.

Dated this ____ day of __________________, 20____.

BY THE COURT:

__________________________
Circuit Judge
This form is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this form. This form was drafted in 2015, so you should check to see if the law or procedures have changed.

FORM 6

STATE OF WISCONSIN   CIRCUIT COURT   DANE COUNTY

STATE EX REL. _________________________
_________________________
_________________________
_________________________

(your name and address)

Petitioner,       Case No. ______________

v.       Case Classification Code 30955

__________________________
__________________________
__________________________
__________________________

(Warden’s name and address)

and

__________________________

(DOC Secretary’s name)
Wisconsin Dept. of Corrections
3099 East Washington Ave.
Madison, WI 53704

Respondents.

AFFIDAVIT OF PETITIONER

STATE OF WISCONSIN
COUNTY OF _____________________________

(county where you are now housed)

I, ____________________________, being first duly sworn on oath, depose and state the following:

(your name)

(1) On _____________________, 20___, I requested a copy of my prison trust fund statement from the business office at ____________________________.

(name of your institution)

(2) (Cross out either Paragraph (a) or (b) below):

(a) I have not yet received a copy of my trust fund statement.
(b) On ____________________, 20__, I received a copy of my trust fund statement from the business office at _______________________.  
(name of your institution)

(3) On ________________, 20___, I requested a copy of Form DJLS22 (Certification of Prior Civil Cases Dismissed) from the Wisconsin Department of Justice.

(4) (Cross out either Paragraph (a) or (b), below):

(a) I have not yet received a copy of Form DJLS22.  
OR

(b) On ________________, 20___, I received Form DJLS22 from the Department of Justice.

(5) I placed the following documents in the prison mailbox, addressed to the court, at _______________________.  
(name of your institution)

[Below, list all the documents you placed in the prison mailbox].

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

[Your signature]

[Your printed or typed name]

Subscribed and sworn to before me
this __________ day of ____________, 20__.

________________________ ________

My Commission expires ________________________.
This form is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this form. This form was drafted in 2015, so you should check to see if the law or procedures have changed.

FORM 7

________________________________________

________________________________________

________________________________________

(Your name, DOC number & address)

Date: __________

Clerk of Circuit Court
Dane County Courthouse
215 S. Hamilton Street
Madison, WI 53709

Re: State ex rel. __________ v. __________ and __________

(case name)

Dear Clerk:

Enclosed please find for filing the original and one copy of each of the following documents:

1. Court Form CV-438, “Prisoner’s Petition for Waiver of Prepayment of Fees/Costs--Affidavit of Indigency.”
2. A certified six-month account statement for my prison trust account.**
3. DOC Form 1930, “Authorization to Withhold Money from Trust Account.”
4. A DOJ certification (Form DJLS22) stating that I have not had three or more previous filings dismissed under Wis. Stat. § 801.02(7)(d).**
5. My petition for writ of certiorari.
6. A proposed writ of certiorari.
7. Documentation proving that I have exhausted my administrative remedies.
8. A notarized “Affidavit of Petitioner.”

**(Cross out items 2 and 4 if you have not yet received them)

If the court signs the proposed writ and an order waiving prepayment of fees and costs, please return the copy of the authenticated certiorari petition, the signed writ, and the signed order waiving prepayment of fees and costs to me at the address above.

I will then forward the appropriate documents to the sheriff’s departments for service upon the respondents. Thank you for your attention to this matter.

Very truly yours,

________________________________________

(your signature)

Enclosures
This form is designed to assist you in representing yourself. It is not intended to provide legal advice to any individual. Your case may involve circumstances that are not taken into account by this form. This form was drafted in 2015, so you should check to see if the law or procedures have changed.

FORM 8

____________________________________

____________________________________

(your name, DOC number & address)

Date:__________________________________

Dane County Sheriff’s Department
15 W. Doty Street
Madison, WI 53703

Re: State ex rel. ________________ v. ________________ and ________________
    Dane County Case No. _____________________________

Dear Sheriff:

I am the petitioner in the above-captioned case. Enclosed please find an authenticated copy of my petition for writ of certiorari, the writ of certiorari signed by the court, and documentation that I have exhausted my administrative remedies.

Please serve the documents listed above on Respondent Secretary of the Department of Corrections at the address listed on the writ, without requiring prepayment of service fees. I have enclosed a signed order waiving prepayment of fees and costs.

Please send an affidavit of service to me at the address above.

Thank you for your attention to this matter.

Very truly yours,

____________________________________
(your signature)

Enclosures
FORM 9

________________________________________
________________________________________
________________________________________

(your name, DOC number & address)

Date:____________________________________

________________________________________
________________________________________
________________________________________

(Name and address of county Sheriff)

Re:  State ex rel. _____________ v. _____________ and _____________
Dane County Case No. _____________________________

Dear Sheriff:

I am the petitioner in the above-captioned case. Enclosed please find an authenticated copy of my petition for writ of certiorari, the writ of certiorari signed by the court, and documentation that I have exhausted my administrative remedies.

Please serve the documents listed above on ______________________ (name), the Warden of the ______________________ (name of prison), the respondent at the address listed on the writ, without requiring prepayment of service fees. I have enclosed a signed order waiving prepayment of fees and costs.

Please send an affidavit of service to me at the address above.

Thank you for your attention to this matter.

Very truly yours,

________________________________________

(your signature)

Enclosures
FORM 10

Date:______________

Clerk of Circuit Court
Dane County Courthouse
215 S. Hamilton Street
Madison, WI 53709

Re:  State ex rel. ______________ v. ___________ and ___________
Case No. ______________________________

Dear Clerk:

Enclosed please find for filing in the above captioned case:

[list your papers below].

Thank you for your attention to this matter.

Very truly yours,

__________________________________
(your signature)

Enclosures

cc:  Respondent’s attorney (with address)

w/enclosures [you must send the respondent’s attorney copies of all documents that you send to the court]