

## How To Do Time: Part 2

By Alan Ellis and J. Michael Henderson (February 28, 2018, 1:23 PM EST)

Most lawyers are understandably unable to advise a first-time federal inmate as to what it will be like in prison. Rarely do they ever get beyond an attorney visiting room. In this four-part series of articles, we, the co-authors of "Federal Prison Guidebook," with the help of Philip S. Wise, retired Bureau of Prisons assistant director of health services, offer answers to many questions attorneys, their clients, and their clients' family and friends may have.

In this installment we cover solving problems, and information for family and friends.

### Solving Problems

**Alan Ellis:** *What if a staff member seems unwilling to be helpful, is less than responsive to a problem, or does not seem open or straightforward in communicating with the inmate?*

J. Michael Henderson: The inmate almost always has a case manager, correctional counselor, and unit manager available to them for assistance. In addition, every day the inmate goes to eat a meal, there are almost always staff members from all institutional departments, including upper management of the institution (associate wardens and the warden) available to them in the dining area. The availability of a wide range of staff members is important because Bureau of Prisons' staff members are human beings, meaning that some will be more effective communicators than others and some will be more thorough and patient than others. So, if an inmate is experiencing difficulty in dealing with a particular staff member, there are multiple other staff members who can address a problem.

**Q:** *So, what if an inmate follows all of the rules and regulations but encounters a situation or has a problem that none of the institution staff, including the warden, can or will resolve?*

A: This is likely to be a rare scenario. Just because an inmate may not receive an answer to a question, or receive a response that is personally favorable, does not mean that staff have not responded and acted within the scope of Bureau of Prisons' policy. Sometimes, inmates mistakenly believe that because they do not receive action or a response they want, somehow the institution staff has mistreated them. This



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usually stems from incomplete or inefficient communication, lack of understanding of Bureau of Prisons' policies and procedures, and inmates not speaking to all appropriate institution staff who could resolve a given dispute. That said, there is a procedure that is available to inmates, known as the administrative remedy procedures, by which an inmate can request reconsideration of staff decisions and/or formal reviews of staff decisions at levels higher than the level at which the decision was made.

***Q: What do the administrative remedy procedures involve?***

A: First, the inmate is required to make a meaningful attempt at informal resolution of a dispute. Then, if unsuccessful, the inmate can file an administrative remedy form, BP-9, to the warden. If this step fails to resolve the issue for the inmate, the inmate can then file an administrative remedy form BP-10, to the regional office for the region in which the inmate is confined. If that process is unsatisfactory, the inmate may then file an administrative remedy form BP-11, to the Bureau of Prisons Central Office in Washington, D.C., for the highest level of formal review. One of the most important things an inmate should consider, both in filing an administrative remedy complaint and reasonably expecting a positive result from the filing, is whether the staff action or decision which is being appealed was made within the authority and parameters of Bureau of Prisons' policies. If it was, there is little a formal review will accomplish, regardless of what other inmates may say. Conversely, review of appeals can involve careful scrutiny by Bureau of Prisons' legal staff as well. So, if a complaint involves a staff decision or action that was not made within the parameters of policy, the action or decision will be rectified for the inmate.

***Q: What can an inmate anticipate in terms of maintaining clear conduct and open communication with staff, as you have stressed?***

A: An inmate who conducts himself in an above-board manner at all times, in terms of both staff interaction and interactions with other inmates with whom they associate, generally will not attract extra scrutiny or suspicion. The inmate likely will receive favorable consideration for security and custody level reductions when eligible, which can result in placement in a less secure setting with less intense staff supervision and participation in community activities, if eligible. Earlier, I referenced that an offender who is initially assigned to a prison farther from their home than might be preferred could receive a future transfer to an institution closer to their home. It must be stressed that clear conduct is required in order for an inmate to receive such a transfer. Disciplinary action, on the other hand, can result in placement in a more restrictive setting, an upgrade in security level and custodial supervision, loss of good time, greater restrictions on visiting, unfavorable consideration for transfer to a prison closer to the inmate's home, not to mention loss of preferred quarters assignment and loss of eligibility for certain programs.

***Q: What about problems with other inmates?***

A: If there is a situational conflict or personality clash that is unlikely in the immediate short term to escalate into a physical altercation, then avoidance is always the best practice. For example, if the conflict is with a bunkmate, roommate or co-worker, the inmate should tell the other person that he will request a bed, room or work assignment change, which he can do through the correctional counselor or a work supervisor. It may not seem fair, especially when tempers flare, but it is the best way to conduct one's self above-board and not get into disciplinary trouble. If an inmate encounters a more serious threat or intimidation that is likely to escalate into a serious conflict, or the threat of being hurt, then there are steps that can and should be taken, again, however, with avoidance being the key. As mentioned previously, there are many different staff members with whom an inmate will become familiar and interact on a regular basis. I strongly recommend that an inmate work to develop a positive

and respectful working relationship with as many staff members as possible, though not being overly friendly, which can draw adverse reaction from other inmates. Then, if a potentially violent threat arises, the inmate can and should confide in a staff member that he trusts and who knows him. Such a staff member can be anyone — the unit officer, the case manager, a work supervisor, a lieutenant, a staff teacher, etc. Every staff member in a Federal Bureau of Prisons facility is considered, first and foremost, to be a correctional worker; their primary jobs, regardless of their specialty area of work, is the institution and inmate security.

***Q: Some inmates have court-ordered fines, criminal penalty assessments, or restitution. Will these need to be paid for from the same inmate trust fund account that is used for personal spending in the institution while the offender is confined? If so, what can the new inmate expect?***

A: Possibly, yes. The payment of court-directed fines or fees will be dependent upon how the court order is written. Some fines and/or fees, for example, might be imposed strictly as a condition of the offender's supervised release, after incarceration. Some court orders do not distinguish. The information is contained in the court's judgment and commitment order that is also used to impose sentence, and so it could benefit the offender to review that document closely, and with his or her attorney, for any needed clarification. After arrival at a federal prison, institution staff will review the judgment and commitment order and, if payment is required during confinement, they will discuss payment options with the inmate. When an installment-type of payment plan is needed, the inmate and the unit team can set up a payment schedule, which can involve regular fixed withdrawals from the inmate's trust fund account. The Bureau of Prisons' term for this is the Inmate Financial Responsibility Program, and the new inmate should understand that the Bureau of Prisons is quite serious in its administration of the program, to the point that there can be serious repercussions if prison staff determine that an inmate is not making a meaningful effort at satisfying court-imposed financial obligations. Sanctions that the bureau can impose for failure, which they call refusal, to make measurable progress in a payment plan can include loss of a preferred housing assignment, reduction of pay for an inmate's work assignment, and exclusion from programs for which the inmate may otherwise be qualified, including furloughs and halfway house placement.

## **For Family and Friends**

***Q: What can you tell family members and friends about some prison issues that they might be concerned with? Let's start with visiting.***

A: The new inmate will receive a copy of visiting regulations and forms to send his family and friends, which need to be completed and returned in order to visit. The family and friends must understand that it is imperative for them to answer the questions on the visiting forms accurately and honestly because failure to do so may result in a loss or denial of visiting privileges. For example, a family member or friend who has a prior court conviction of any type, even if given probation, should report it matter-of-factly on the appropriate section of the visiting form. A background check by the Bureau of Prisons will uncover this and if it has been intentionally omitted, may result in denying visiting rights.

New inmates will be given a copy of their approved visiting list, usually by their assigned correctional counselor. Families and friends should ensure that they are approved prior to traveling to the prison to visit. It's helpful if the family or friends can prepare for visiting by viewing a federal prison as a serious and controlled setting, and not a place of emotional warmth. There are no private and/or unsupervised visits with family members or friends in Bureau of Prisons' facilities. However, families and friends can be somewhat relieved in knowing that the majority of visiting rooms are open ones, without the glass

partitions and telephones for communicating so often depicted in television and movie dramas. Inmates are permitted to kiss and embrace at the beginning and conclusion of a visit. Some facilities even provide outdoor visiting areas when the weather permits. Family members and friends should be prepared for being subjected to search procedures and supervision when visiting. Such scrutiny is necessary because, unfortunately, one of the ways illegal drugs and other types of contraband are smuggled into prisons is by visitors, including family and friends. Therefore, it is recommended that friends and family visitors bring very little with them into the prison, giving nothing to their incarcerated loved one other than change, which can be spent on the inmate at the vending machines in the visiting room.

After being cleared into the visiting room, family and or friend visitors will be expected to conduct themselves appropriately, meaning they should avoid any conduct which might make correctional staff suspicious, especially excessive physical contact. It is important to understand and appreciate the fact that a prison visiting room is a serious setting.

Another important factor that family and friends should be prepared for is the possibility of early termination of their visit, should the visiting room become crowded. This can and does happen to enable other inmates to receive visits. This can be an emotionally difficult situation for both the inmate and the family/friends, so it's important to remember that early visit termination due to crowding will be an impartial and necessary decision by prison staff. Arguing with prison staff will not improve or change the decision. In fact, in order to maintain visiting privileges, all visitors are expected to comply with prison staff at all times. The Bureau of Prisons holds the inmate accountable if a visitor fails to follow regulations or comply with staff instructions.

Finally, the family and friends should know that while their loved one is serving a sentence in a federal prison, misconduct that results in the receipt of a written incident report may be sanctioned by the loss of visitation privileges, even if the misconduct was not related to visiting. The reason for this is because the Bureau of Prisons expects clear conduct, if the inmate is to be permitted full privileges, and because receiving visits is meant to be a motivating factor to help an inmate maintain clear conduct. With this understanding, the family and/or friends can reiterate the importance of visiting to the inmate. Should the inmate incur misconduct sanctions that include a temporary loss of visitation, rather than being angry at the Bureau of Prisons, the family and friends will be better served by helping their loved one understand that visitation is a priority and worth clear conduct behavior.

***Q: Are family members and friends also subjected to security measures regarding written correspondence and telephone calls?***

A: Family members and friends should clearly understand that telephone calls and emails they receive from an inmate are subject to monitoring and recording for security, and that the inmates' incoming postal mail will be opened and screened. Therefore, what they say and what they write should always be above board and appropriate. Further, family and friends also need to know that an inmate is prohibited under Bureau of Prisons' regulations from conducting a business while confined. So, telephone, email and written correspondence must not involve such prohibited conduct. Finally, the family and friends should be strongly cautioned against making three-way, or third-party calls, after the inmate has connected with them telephonically, because this, too, is prohibited by the Bureau of Prisons. Such calls are generally viewed by the bureau as circumventing telephone regulations, which are reasonable, since inmates are allowed a large number of people on their authorized telephone lists, which can be frequently modified.

***Q: Since you earlier referenced the disciplinary process, what should the family and friends know about the prison disciplinary process?***

A: As already mentioned, the new inmate will receive a full and comprehensive list of Bureau of Prisons' rules and regulations, which includes all prohibited acts, immediately upon arrival at a federal prison. Therefore, the family and friends should understand that there is usually very little excuse for an offender's claim that they may not have known they were violating a rule. Also, the family and friends should understand that Bureau of Prisons' staff is generally much too busy with daily routines to write disciplinary reports against an inmate simply because the staff member "dislikes" the inmate. In fact, the formal disciplinary process requires an eyewitness staff account of an inmate's prohibited conduct, further investigation by a correctional supervisor, and then review with the inmate in person by a unit team staff member and, later, if referred by the unit team, by a disciplinary hearing officer. The process leaves very little room for the personal likes or dislikes of a single staff member. The family should realize that the institution's disciplinary hearing officer is virtually autonomous as an independent department within the institution. Finally, even if found guilty of an act, the inmate has an appeal process whereby all disciplinary proceedings are reviewed at administrative levels higher than the institution's.

This next article in this series will address BOP health care.

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