

# CHAPTER 11: PRISON DISCIPLINARY HEARINGS\*

## A. INTRODUCTION

This Chapter outlines the rights and responsibilities of prisoners facing disciplinary action for violating prison rules and regulations in the State of Louisiana. Please refer to Chapter 18 of the main *JLM*, “Your Rights at Prison Disciplinary Hearings,” to review your rights and responsibilities under federal law, in addition to general constitutional guarantees which apply to all disciplinary proceedings. Chapter 18 of the main *JLM* describes each of these rights in detail—including the fundamental right to “due process”—and explains how they govern prison disciplinary proceedings in general (*see* Part D of Chapter 18 of the main *JLM* specifically). Note that these federal and constitutional rights serve to limit the discretion (freedom) of states, and are responsible for a number of protective procedures required by state law.

Prison officials enjoy broad authority to discipline prisoners with sanctions (punishments) ranging from simple reprimands to long-term disciplinary detention. Prison officials can subject prisoners to disciplinary-like conditions—such as administrative segregation from the general population—when a prisoner has not broken any laws or rules.<sup>1</sup> Or prison officials may take actions that otherwise appear disciplinary in nature—such as changing a prisoner’s custody status, job classification, or housing assignment—if they believe it is necessary for either public policy reasons or to ensure the safety of the prison institution.<sup>2</sup> More typically, however, prison officials impose sanctions on prisoners found guilty of violating specific prison rules or procedures. This Chapter only concerns itself with the disciplinary process as it relates to these types of offenses. Specifically, this Chapter discusses the disciplinary process related to violations of Schedule A or B offenses as defined in Louisiana’s *Disciplinary Rules and Procedures for Adult Offenders*,<sup>3</sup> also referred to as the *Offender Rulebook*.<sup>4</sup>

Part B of this Chapter reviews the disciplinary system in general, and discusses the two types of offenses with which you may be charged (Schedule A and Schedule B offenses), the two-tiered disciplinary system of courts (consisting of both a Low Court Hearing and a High Court Hearing), and your right to a timely (prompt) hearing. Part C describes what to expect on the day of your hearing, and lists all the important procedures you must follow in order to preserve (keep) all of your rights moving forward. Part D focuses less on what you *must* do and more on what you *can* do, and lists all the rights you can exercise prior to and during your hearing. Part E details the list of potential sanctions you face if found guilty. Finally, Part F addresses the number of ways you can challenge the administrative decisions of a disciplinary court, including the right to appeal to a High Court, a Warden, or the Prison Secretary, or to file a claim in State or Federal Court.

## B. THE STRUCTURE OF THE PRISON DISCIPLINARY SYSTEM

All prisoners sentenced to the custody of the Department of Public Safety and Corrections in Louisiana are provided a copy of the *Disciplinary Rules and Procedures for Adult Offenders*, or more simply,

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\* This Chapter was written by David James McDonnell Bright. Special thanks to Professor Brett Dignam at Columbia Law School for her valuable comments.

<sup>1</sup> LA. ADMIN. CODE tit. 22, § 341F(1)(a)(i)(c) (2017) (permitting a prisoner to be confined to administrative segregation if (1) he “poses a threat to life, property, self, staff or other offenders, or to the security or orderly operation of the institution,” or (2) the prisoner “is the subject of an investigation”).

<sup>2</sup> LA. ADMIN. CODE tit. 22, § 341D(5) (2017) (permitting prison officials to do a number of actions which are not considered “penalties” per se—such as changing a prisoner’s “custody status, job classification, housing assignment, institutional assignment, and/or ability to participate in institutional programs or activities”—so long as the prison official claims these actions are taken to promote institutional security or further other “legitimate institutional goals”).

<sup>3</sup> La. Dep’t. of Pub. Safety & Corr., *Disciplinary Rules and Procedures for Adult Offenders 20–29* (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>4</sup> LA. ADMIN. CODE tit. 22, § 341D (2017) (noting the Louisiana Department of Public Safety and Corrections provides a copy of the *Disciplinary Rules and Procedures for Adult Offenders*—also known as the *Offender Rulebook*—in order to provide “clear and proper notice” to all prisoners of the prison rules, procedures, and appeal mechanisms, including all the associated rights of the prisoner).

the *Offender Rulebook*. After receiving the *Offender Rulebook*, you must get a signed receipt which serves as proof you received “notice” (was made aware) of all the prison rules and regulations that you must follow.<sup>5</sup> The main purpose of the *Offender Rulebook* is to inform you of the type of conduct which may lead to disciplinary measures. If you did not receive a copy of the *Offender Rulebook*, you should request a copy from any prison official. The content of the *Offender Rulebook* is also available online.<sup>6</sup>

Section 1 in Part B discusses the offenses listed in the *Offender Rulebook* and groups them into Schedule A offenses (lesser offenses) and Schedule B offenses (more serious offenses). Section 2 discusses the types of hearings you will be provided based upon the type of offense you committed. Finally, Section 3 outlines your right to a timely hearing.

### 1. Types of Offenses: Schedule A and Schedule B Offenses

The *Offender Rulebook* groups offenses into two categories—Schedule A and Schedule B offenses.<sup>7</sup> The type of offense you are charged with will determine both the severity (harshness) of the sanction you receive and the type of hearing you will be permitted.<sup>8</sup>

Schedule A offenses generally include lower level offenses and minor violations. These offenses include<sup>9</sup>:

- 1) **Disobedience:** Limited to disobedience of posted prison policies and regulations.<sup>10</sup>
- 2) **Disorderly Conduct:** Such as horseplay, cutting lines, and unpermitted talking.<sup>11</sup>
- 3) **Disrespect:** Includes disrespectful communication towards employees, guests, etc.<sup>12</sup>
- 4) **Radio/Tape, CD or Electronic Media Player Abuse:** Limited to disobedience of posted policies.<sup>13</sup>
- 5) **Unsanitary Practices:** Includes spitting, littering, failing to be neat (clothing/bed), and chewing gum in the kitchen or dining area.<sup>14</sup>

<sup>5</sup> LA. ADMIN. CODE tit. 22, § 341D(3) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 3 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014) (“All offenders sentenced to the custody of the Department of Public Safety and Corrections . . . shall be placed on notice as to the requirements of the *Disciplinary Rules and Procedures for Adult Offenders* by providing each offender with a copy of the rules and obtaining a signed receipt.”).

<sup>6</sup> The content for the *Offender Rulebook* is derived from Title 22 of the Louisiana Administrative Code, entitled Corrections, Criminal Justice and Law Enforcement. The relevant portions of this document can be found in Section 341 through Section 369, *available at* <http://www.doa.la.gov/pages/osr/lac/books.aspx> (last visited Jan. 11, 2018).

<sup>7</sup> La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 20–29 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>8</sup> LA. ADMIN. CODE tit. 22, § 341I (2017) (noting that a prisoner “found guilty of violating one or more of the rules defined” in this section “will be sanctioned according to the penalty schedule designated in the rule and the type of hearing provided”).

<sup>9</sup> The *Offender Rulebook* is regularly updated, and the offenses listed below may not include any recent changes or additions. Please refer to the most updated *Offender Rulebook* for an accurate list of offenses.

<sup>10</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 4) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 21 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>11</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 6) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 21 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>12</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 7) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 21 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>13</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 18) (2017) (noting potential sanctions include confiscation of the radio/tape player, CD player, or electronic media player for up to 30 days); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 24 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014) (noting potential sanction may also include a ban on use of the item for a year).

<sup>14</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 26) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 26 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

- 6) **Work Offenses:** Includes failure to do work assignments quickly and efficiently.<sup>15</sup>

Schedule B offenses are more serious violations, which can result in the most serious of sanctions, such as detention or loss of good time. These offenses include:

- 1) **Contraband:** Includes possession or smuggling of illicit drugs, alcohol, cell phones, money, and other items.<sup>16</sup>
- 2) **Defiance:** Committing or threatening to commit bodily harm upon another person, including cursing, threatening, spitting on, or hitting an employee, guest, etc.<sup>17</sup>
- 3) **Disobedience, Aggravated:** Failure to obey or cooperate promptly with verbal orders.<sup>18</sup>
- 4) **Disturbance:** Participating, or inciting others to participate, in a violent disturbance.<sup>19</sup>
- 5) **Escape or Attempted Escape:** Includes attempted, simple, and aggravated escapes.<sup>20</sup>
- 6) **Fighting:** Any hostile physical contact or even attempted physical contact.<sup>21</sup>
- 7) **Gambling:** Participating in gambling, or being in possession of items related to gambling.<sup>22</sup>
- 8) **General Prohibited Behaviors:** A “catch-all” of offenses that may threaten security.<sup>23</sup>
- 9) **Intoxication:** Prohibits being under the influence of any intoxicating substance while in physical custody and when returning from a furlough.<sup>24</sup>

<sup>15</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 27) (2017) (stating being present but not answering at the proper time at work roll call is an example of a violation); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 26 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>16</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 1) (2017) (noting that a prisoner is responsible for all areas within his immediate control, including his storage area, room, bed, laundry bag, and even his assigned job equipment, and that if contraband is found in a cell shared by two prisoners, both prisoners are assigned equal responsibility for the items); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 20 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>17</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 3) (2017) (noting prisoners are, however, permitted to inform a prison official of potential legal redress they may seek, even during a confrontational situation with that prison official); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 20–21 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>18</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 5) (2017) (noting the only valid defense for disobedience or aggravated disobedience “is when the immediate result of obedience would be bodily injury”); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 21 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>19</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 29) (2017) (noting a “disturbance” includes any act of resistance by two or more offenders which may threaten the lawful authority of the correctional officers or their facility); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 27 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>20</sup> The Louisiana Code defines a “simple escape” as “[t]he intentional, unauthorized departure of an offender under circumstances in which human life was not endangered.” The Code defines an “aggravated escape” as “[t]he intentional, unauthorized departure of an offender under circumstances in which human life was endangered.” *See* LA. ADMIN. CODE tit. 22, § 341I (Rule 8) (2017) (noting an escape may include the unintentional failure of a prisoner to return to his place of confinement at the appointed time); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 21–22 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>21</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 10) (2017) (noting “self-defense” is a possible defense to any charge of fighting); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 22 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>22</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 12) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 23 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>23</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 30) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 27–29 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Mar. 23, 2014).

<sup>24</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 14) (2017). Strict liability applies in the case of intoxication, which means you can be found guilty of intoxication even if you did not know the substance you consumed was drugs or alcohol, or even if you did not intend to become intoxicated; the only requirement for this violation is that you are indeed intoxicated. *See* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 23 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

- 10) **Malingering:** Includes making medical complaints that are deemed to lack merit.<sup>25</sup>
- 11) **Property Destruction:** Prohibits prisoners from even destroying their own property.<sup>26</sup>
- 12) **Self-Mutilation:** Deliberately inflicting or attempting to inflict injury upon one's self or another. Tattooing or piercing yourself or others is considered self-mutilation.<sup>27</sup>
- 13) **Sex Offenses, Aggravated:** Includes both non-consensual and consensual sexual acts.<sup>28</sup>
- 14) **Theft:** Forgery, fraud, or submitting false information, are all included in this offense.<sup>29</sup>
- 15) **Unauthorized Area:** Requires you to remain in "authorized" areas only.<sup>30</sup>
- 16) **Work Offenses, Aggravated:** Includes directly refusing to perform your work assignment, hiding out from work or leaving the work area without permission, and requesting to go to administrative segregation rather than work.<sup>31</sup>

If you are charged with either a Schedule A or Schedule B offense, it is important to immediately review the offense in the *Offender Rulebook* to determine two things. First, is there a specific defense you may raise? Some offenses have specific defenses you can raise which will keep the prison official from punishing you at all.<sup>32</sup> If you raise this defense you may not have to participate in a Low Court or High Court Hearing (discussed below), and your violation will immediately be dismissed. Second, were you charged with the right level of offense? If you believe you were charged with a Schedule B offense when you should have been charged with a Schedule A offense, you must raise this objection *immediately* in your Low Court or High Court Hearing, or request a change to the disciplinary report prior to the hearing.

<sup>25</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 15) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 23 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>26</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 17) (2017) (including flooding an area, shaking doors, and standing or sitting on face bowls); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 23 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017). Prisoners may, however, raise negligence as a possible defense to the charge of property destruction.

<sup>27</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 19) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 24 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017). Consent is not a defense to the offense of self-mutilation.

<sup>28</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 21) (2017) (including consensual sexual contact with a staff member, deliberate exposure of your genitals to either staff of employees, and making overt sexual remarks, gestures or sounds); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 24–25 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>29</sup> "Forgery" is defined as "the unauthorized altering or signing of a document(s) to secure material return and/or special favors or considerations." *See* LA. ADMIN. CODE tit. 22, § 341I (Rule 22) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 25–26 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>30</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 24) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 26 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017) (noting incorrectly that this is a Schedule A offense).

<sup>31</sup> School assignments are considered work assignments for the purpose of this offense, and "refusing to work" includes being absent, showing up late, or not adequately performing your task. *See* LA. ADMIN. CODE tit. 22, § 341I (Rule 28) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 26–27 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>32</sup> *See, e.g.*, LA. ADMIN. CODE tit. 22, § 341I (Rule 4) (2017) (permitting a prisoner to escape sanctions if he disobeyed a posted policy in order to avoid "bodily injury"); LA. ADMIN. CODE tit. 22, § 341I (Rule 10) (2017) (permitting "self-defense" as a way to escape sanctions for "fighting"); LA. ADMIN. CODE tit. 22, § 341I (Rule 17) (2017) (permitting "negligence" as a potential defense to the destruction of property).

## 2. Types of Hearings: Low Court and High Court Hearings

### a. Low Court Hearings

If you are accused of committing a Schedule A offense, you will generally be limited to a Low Court Hearing conducted by a single disciplinary officer.<sup>33</sup> Low Court Hearings are run by a prison official who must be either: (1) a ranking security officer (lieutenant or above), or (2) a supervisory level employee from administration or treatment who is appointed by the warden or a designee who specifically conducts hearings of minor offenses.<sup>34</sup> Prison officials who are directly involved in the incident, or who may be biased against you, cannot hear the case without your direct approval or waiver.<sup>35</sup> During a Low Court Hearing you have the right to represent yourself and to speak on your own behalf at the hearing.<sup>36</sup> However, you are not allowed to have counsel or a substitute for counsel present. Additionally, you do not have the right to present witnesses or to confront (challenge) the accusing prison officer, and these hearings are not recorded.<sup>37</sup> As such, the protections afforded to you in these informal Low Court Hearings are greatly limited.

### b. High Court Hearing

If you are accused of committing a Schedule B offense—or if you are appealing a Low Court Hearing for a Schedule A offense—you will participate in a High Court Hearing.<sup>38</sup> High Court Hearings consist of a “board” of two prison officials—an authorized member (approved by the warden or designee) and an authorized chairman (approved by the secretary or designee)—and both officials must represent a different section of the prison (such as security, administration, or treatment).<sup>39</sup> As in the case of a Low Court Hearing, you are protected by the fact that prison officials who are directly involved in the incident, or who may be biased against you, cannot hear the case without your direct approval or waiver.<sup>40</sup> You are also protected by the fact that decisions must be unanimous (meaning that both officials conducting the hearing must agree). Decisions that are not unanimous are referred to a different disciplinary board for a new hearing.<sup>41</sup> There are many rights and protections provided to you in High Court Hearings, and these are detailed in Part C and Part D of this Chapter.

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<sup>33</sup> LA. ADMIN. CODE tit. 22, § 341G(2) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8–9 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>34</sup> LA. ADMIN. CODE tit. 22, § 341G(2)(a) (2014); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>35</sup> LA. ADMIN. CODE tit. 22, § 341G(2)(b) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017). This rule does not necessarily exclude prison officers who discovered the violation through routine administrative duty, such as routine inspections, from the hearing.

<sup>36</sup> LA. ADMIN. CODE tit. 22, § 341G(2)(c) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>37</sup> LA. ADMIN. CODE tit. 22, § 341G(2)(d)–(e) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8–9 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>38</sup> LA. ADMIN. CODE tit. 22, § 341G(3), H(1)(a)(i) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8, 18 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>39</sup> LA. ADMIN. CODE tit. 22, § 341G(3)(b) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>40</sup> LA. ADMIN. CODE tit. 22, § 341G(3)(d) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11–12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017). Like Schedule A hearings, this rule does not include prison officers who discover the violation through routine administrative duty such as routine inspections, etc.

<sup>41</sup> LA. ADMIN. CODE tit. 22, § 341G(3)(e) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017). If the second decision is also not unanimous then a finding

### 3. The Right to a Timely Hearing

If you commit either a Schedule A or Schedule B offense, you have the right to a hearing (either a Low Court Hearing or a High Court Hearing, depending on the type of offense) to be held within seven days of the prison official filing their report.<sup>42</sup> This seven-day requirement does not include weekends and holidays, and may be delayed in the case of “exceptional circumstances, unavoidable delays or reasonable postponements.”<sup>43</sup> In the case of a delay, the reasons for that delay should be documented by prison officials.<sup>44</sup>

There are certain exceptions to this standard rule. For example, if you are placed in administrative segregation pending the hearing, then the hearing must take place within seventy-two hours.<sup>45</sup> However, the seventy-two-hour period “does not begin to run until an inmate is placed into administrative segregation,” and the time spent in a holding cell (or similar types of confinement) prior to being placed in administrative segregation does not count against the seventy-two-hour limit.<sup>46</sup>

#### C. WHAT TO EXPECT AT YOUR HIGH COURT HEARING

Part C discusses what you should expect at a High Court Hearing, which will be held if you have been accused of a Schedule B offense or are appealing a Schedule A offense. High Court Hearings are governed by a number of procedures. Some of these procedures must be followed by the prison officials—the “board”—and some of these procedures must be followed by the prisoner. The *procedures prison officials* must follow were for the most part created to ensure *efficient* hearings are held in a *consistent* manner. These procedures are not likely to have a big impact on the outcome of your case, and should be reviewed only to better understand what to expect on the day of your hearing. However, the *procedures created for prisoners* can greatly impact your case, and it is very important that you learn these procedures and use them to the best of your advantage. The consequences for not learning these procedures can be severe. For example, your right to appeal the finding of a High Court Hearing may be lost if you do not follow certain procedures.<sup>47</sup>

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of “not guilty” is appropriate. *See* LA. ADMIN. CODE tit. 22, § 341G(3)(f) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>42</sup> *See* LA. ADMIN. CODE tit. 22, § 341G(2)(f) (2017) for Low Court Hearings, and LA. ADMIN. CODE tit. 22, § 341G(3)(d) (2017) for High Court Hearings; *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8–9 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>43</sup> *See* LA. ADMIN. CODE tit. 22, § 341G(2)(f) (2017) for Low Court Hearings, and LA. ADMIN. CODE tit. 22, § 341G(3)(d) (2017) for High Court Hearings; *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8–9 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>44</sup> *See* LA. ADMIN. CODE tit. 22, §§ 341G(2)(f), G(3)(d) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8–9 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>45</sup> LA. ADMIN. CODE tit. 22, § 341G(3)(c)(i), J(2) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017). The *Rulebook*, but not the Code, states that weekends, holidays, genuine emergencies, and good faith efforts by the administration to provide a timely hearing are the only acceptable reasons for not granting a hearing within seventy-two hours, and even if such unusual circumstances arise, the prisoner must be brought before the board and explained the reasons for the delay. After meeting with the board, the prisoner is remanded back to administrative segregation or released to his living area after the hearing date is set. *See* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>46</sup> *Hayes v. Goodwin*, 2011-0310, p. 2 (La. App. 1 Cir. 9/14/11); 2011 LEXIS 553, at \*4–5; 2011 WL 4433585, at \*2 (unpublished) (finding the prisoner failed to present evidence showing that the conditions of his confinement in the holding area of a local parish facility met the definition of administrative segregation as defined in the Louisiana code).

<sup>47</sup> For example, if you do not raise a preliminary motion prior to presenting your defense, then such motions are waived and you are not permitted to raise them upon appeal. For a list of these preliminary motions, *see* LA. ADMIN.

The High Court Hearing will begin with the board asking you if you are familiar with all your rights.<sup>48</sup> The rights they are referring to are those listed in the *Offender Rulebook*,<sup>49</sup> and are outlined in Sections 1 and 2 in Part D of this Chapter. The hearing will begin only after you acknowledge you are familiar with these rights. If you state that you are unfamiliar with your rights, then the board will explain them to you.<sup>50</sup> In either case, following either your acknowledgement or the board's explanation of your rights, you will no longer be permitted to claim you do not know these rights, either during the High Court Hearing or on appeal.

Next, the board will ask you to enter your name and DOC number into the record.<sup>51</sup> Then the chairman of the board will read the disciplinary report out loud and request that you state a plea of guilty or not guilty.<sup>52</sup> There are a number of things to consider when deciding whether to plead guilty or not guilty. Prisoners may be encouraged by prison officials to plead guilty in order to show remorse and receive a lower sentence. However, if you plead guilty or are found guilty of the violation, this record will likely be used against you at a later hearing or when you go for parole. Also, if you enter a plea of "guilty," you waive the right to appeal the disciplinary charge, meaning you cannot later argue you should have been sentenced to a Schedule A violation when you pleaded guilty to a Sentence B violation.<sup>53</sup> The only thing you can appeal if you enter a plea of "guilty" is the punishment imposed.<sup>54</sup> Because the board is granted wide discretion (meaning they can choose from a wide range of choices) in determining the severity of the punishment, it is unlikely your appeal will be granted on these grounds.<sup>55</sup> Note that if you refuse to enter a plea of guilty or

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CODE tit. 22, § 341G(4)(g)(i)–(vi) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12–13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>48</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(a) (2017); *see also* La. Admin. Code tit. 22, § 341J (2017) (listing prisoner rights and responsibilities during High Court Hearings); La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11–12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017) (listing prisoner rights and responsibilities during High Court Hearings).

<sup>49</sup> La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11–14 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>50</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(e) (2017) ("If the offender indicates he does not know or understand his rights, they must be explained to him."); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>51</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(e) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>52</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(f) (2017); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2014).

<sup>53</sup> *Simon v. Stalder*, 2008-2318, p. 2 (La. App. 1 Cir. 5/8/09); 2009 LEXIS 240, at \*4; 2009 WL 1270566, at \*2 (unpublished). In *Simon*, the prisoner pleaded guilty to a Schedule B violation upon the advice of his inmate counsel but later discovered that the facts of the allegation supported only a Schedule A violation. In spite of the prisoner's evidence that he was guilty only of a Schedule A violation, the court held that when a prisoner voluntarily pleads guilty to a disciplinary charge (in this case, a Schedule B charge), he waives the opportunity to challenge the charge upon appeal.

<sup>54</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(c)(ix) (2017) ("Absent unusual circumstances, the secretary[, who reviews appeals from decisions made by the prison warden,] will only consider review of the sanction(s) imposed of an offender who pled guilty."); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 19 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>55</sup> *Ford v. Dept. of Corr.*, 2009-0103, p. 1 (La. App. 1 Cir. 5/8/09); 2009 LEXIS 243, at \*1–4 2009 WL 1272349, at \*1 (unpublished). In *Ford*, the prisoner pleaded guilty to the alleged violations and admitted making certain statements but insisted during the hearing that the statements were misunderstood. The High Court found the prisoner guilty and imposed a harsh sentence. The prisoner appealed, claiming he never pleaded guilty. The Louisiana Court of Appeals held that a plea of guilty had been entered and the prisoner could not challenge the disciplinary charge. However, the court noted the prisoner could still appeal the severity of the sentence, and that the court could reverse and remand the decision if they found the High Court abused its discretion. In this case, such abuse was not found, even though the court observed that "the two penalties in this matter might be viewed as somewhat harsh for the particular incident."

not guilty, the chairman of the board will enter a plea of not guilty on your behalf, and the hearing will begin.<sup>56</sup>

After your plea is entered you must make all preliminary motions that are available to you. Preliminary motions are requests to the board to decide particular issues before the hearing starts. If you fail to make these preliminary motions right after you submit your plea, then the board will consider them waived and you will not be permitted to raise these motions at any later stage, including upon appeal.<sup>57</sup> It is also essential to raise all possible preliminary motions at the same time in the proceedings or else they will be considered waived.<sup>58</sup> Preliminary motions available to the accused prisoner include: (1) dismissal of charges, (2) a request for a continuance, which temporarily halts the proceedings,<sup>59</sup> (3) a request to confront your accuser or call witnesses, (4) an objection based on the claim prison officials did not meet their “written notice requirement” (discussed in Part D of this Chapter), (5) a request for further investigation, or, (6) any other appropriate motions.<sup>60</sup> Other appropriate motions you may consider include a request for the board to reevaluate the disciplinary charge and reduce it from a Schedule B offense to a Schedule A offense, or a request to escape culpability (blame) by asserting an affirmative defense.<sup>61</sup> The board will then rule on these preliminary motions immediately, unless the board determines they cannot decide the motion until reviewing evidence which will be presented during the hearing, in which case the board must “expressly [defer its decision] to the actual hearing.”<sup>62</sup>

After preliminary motions have been made and ruled on you will be allowed to present your defense.<sup>63</sup> Your defense is limited to your own statements, unless you entered a preliminary motion to either call witnesses or confront your accusers.<sup>64</sup> The board can interrupt your statement to ask you questions, or to question your witnesses or accuser if the board has granted your preliminary motion.<sup>65</sup> Note that during

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<sup>56</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(f) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>57</sup> LA. ADMIN. CODE tit. 22, §§ 341G(4)(g)–(h) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12–13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>58</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(h) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>59</sup> Note that you cannot move for a continuance to obtain counsel unless you are charged with a violation that is also a crime under state law. Furthermore, only one motion for a continuance will be granted “unless new information is produced.” LA. ADMIN. CODE tit. 22, § 341G(4)(g)(ii) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>60</sup> LA. ADMIN. CODE tit. 22, §§ 341G(4)(g)(i)–(vi) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12–13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>61</sup> *See, e.g.*, LA. ADMIN. CODE tit. 22, § 341I (Rule 4) (2017) (permitting a prisoner to escape sanctions if he disobeyed a posted policy in order to avoid “bodily injury”); LA. ADMIN. CODE tit. 22, § 341I (Rule 10) (2017) (permitting “self-defense” as a way to escape sanctions for “fighting”); LA. ADMIN. CODE tit. 22, § 341I (Rule 17) (2017) (permitting “negligence” as a potential defense to the destruction of property).

<sup>62</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(i) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017). The Louisiana Code also provides that prisoners are entitled to written reasons for each ruling. *See* LA. ADMIN. CODE tit. 22, § 341G(4)(j) (2014); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>63</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(k) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 5, 2017).

<sup>64</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(g)(iii) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>65</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(l) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

the hearing, your accuser should only be present to testify about what happened. The accuser should never be present during deliberations.<sup>66</sup>

After you have finished presenting your defense, the board will deliberate. At this point all non-board members must exit the room, except official observers who may remain but not participate in the deliberation.<sup>67</sup> The board will consider all the evidence submitted in order to determine both the decision and the punishment (if any). To inform its decision, the board may also review your prior disciplinary record to determine if a trend or pattern of behavior exists.<sup>68</sup> Such a pattern of behavior may tip the balance of evidence or lead to a harsher punishment.<sup>69</sup> Following deliberations, the chairman will announce the verdict and any associated punishment.<sup>70</sup> The chairman must clearly state which punishment applies to each rule violation for which you are found guilty,<sup>71</sup> and the board also has the power to suspend any punishment for up to ninety days.<sup>72</sup>

#### D. THE RIGHTS OF A PRISONER IN HIGH COURT HEARINGS

Prisoners are provided a number of rights they may exercise during a High Court Hearing. Some of these rights can be exercised prior to and in preparation for the High Court Hearing, while others are best exercised during the High Court Hearing proceedings themselves. Note that in almost all cases you are not *required* to exercise these rights. They are available to you as an option, and you may waive them at any time.<sup>73</sup>

##### 1. Rights to Exercise Prior to Your High Court Hearing

In addition to your general right to a timely hearing (*see* Section 3 in Part B of this Chapter), there are two other rights you can exercise prior to your High Court Hearing. The first right is the “written notice requirement,” which says that you must be given a copy of the disciplinary report describing the charges against you at least twenty-four hours before your hearing begins.<sup>74</sup> The purpose of this right is to make sure that you have proper “notice” (warning) about the charges that you will be required to defend yourself against in the upcoming hearing. It is important you keep a copy of this notice for your records, and a copy

<sup>66</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(j) (2017).

<sup>67</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(o)(i) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>68</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(o)(iii) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>69</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(o)(iv) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>70</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(p)–(q) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>71</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(r) (2017).

<sup>72</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(s) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>73</sup> *See* LA. ADMIN. CODE tit. 22, § 341G(4)(b) (2017) (“All rights and procedural requirements must be followed unless waived by the accused.”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (same).

<sup>74</sup> LA. ADMIN. CODE tit. 22, § 341F(1)(a)(ii)(a) (2017) (“Offenders shall be served (usually by a correctional officer) with notice of charges at least 24 hours prior to the hearing.”); *see also* LA. ADMIN. CODE tit. 22, § 341J(1) (2017) (noting prisoners have “the right to be given a written copy of the disciplinary report at least 24 hours before the hearing begins which describes the contents of the charges against the offender (unless waived by him in writing)”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

of all other documents related to your disciplinary proceeding.<sup>75</sup> If you do not receive a copy of the report at least twenty-four hours before your hearing, you should state this at your High Court Hearing and request the hearing be moved to a later date. If your objection is denied, you may appeal the decision of the High Court Hearing on this issue. However, your appeal may be denied if you cannot allege facts showing a violation of your substantial (important) rights.<sup>76</sup>

The second right you may exercise prior to your High Court Hearing is to request a Counsel Substitute or Retained Counsel.<sup>77</sup> Counsel Substitutes are “persons not admitted to the practice of law, but offenders who aid and assist, without cost or fee, an accused offender in the preparation and presentation of his defense and/or appeal.”<sup>78</sup> Such Counsel Substitutes must be appointed by the warden or designee, and may be removed by the warden or designee if they believe it is “appropriate.”<sup>79</sup> The right to a Counsel Substitute is provided for all alleged violations of prison rules,<sup>80</sup> and is required if you either refuse to participate in the hearing or are highly disruptive and uncooperative during a proceeding.<sup>81</sup> Retained Counsel, on the other hand, are persons admitted to the bar and whose profession it is to provide legal services.<sup>82</sup> You only have a right to Retained Counsel if you are accused of violating a rule or law for which you could also be charged in criminal court—such as possession of illegal drugs, rape, or aggravated battery.<sup>83</sup>

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<sup>75</sup> You should request a copy of all official documents related to your disciplinary hearing and keep a copy of these documents for your record. This will protect you should the institution claim to lose or be unable to locate your official records. If prison officials will not make a copy of official documents for your own record, you should make a handwritten copy of the original record.

<sup>76</sup> See *Plaisance v. La. State Penitentiary*, 2010-1249, p. 3 (La. App. 1 Cir. 2/11/11); 57 So. 3d 593, 595 (suggesting that even if the prisoner was not provided with a copy of the disciplinary report, this did not constitute a violation of his “substantial rights” and therefore the prisoner was not entitled to judicial review).

<sup>77</sup> LA. ADMIN. CODE tit. 22, §341J(3) (2017) (providing that prisoners are given “the right to counsel substitute for all alleged violations or the right to retained counsel, if the alleged violation is one for which the offender could also be charged in a criminal court”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), available at [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>78</sup> LA. ADMIN. CODE tit. 22, § 341F(1)(b)(ii) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 4 (2008), available at [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>79</sup> LA. ADMIN. CODE tit. 22, § 341F(1)(b)(iii) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 8 (2008), available at [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>80</sup> LA. ADMIN. CODE tit. 22, § 341J(3) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), available at [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>81</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(d) (2017) (noting that a “counsel substitute” shall represent and “enter a not guilty plea” for a prisoner “who does not choose to be present at the hearing,” and that the “same applies to a disruptive offender who refuses to cooperate”); see also La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), available at [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>82</sup> LA. ADMIN. CODE tit. 22, § 341F(1)(b)(i) (2017) (“Counsel is an attorney-at-law of the offender’s choice who has been retained by the offender.”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 4 (2008), available at [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (“Counsel is an attorney-at-law of the offender’s choice who has been retained by the offender or offender’s family for the purpose of representing the offender.”). There are multiple online resources available to assist you in finding Retained Counsel specific for your needs. One such source is the ACLU Prisoner’s Assistance Directory. You may download a copy of this list at <http://www.aclu.org/prisoners-rights/prisoners-assistance-directory-2008>, or contact your local ACLU office for a copy at <http://www.laclu.org>. You may also refer to Chapter 4 of the main *JLM*, “How to Find a Lawyer.”

<sup>83</sup> LA. ADMIN. CODE tit. 22, § 341J(3) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), available at [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

## 2. Rights to Exercise During Your High Court Hearing

Your most important rights at a High Court Hearing are to present evidence, call witnesses, and cross-examine your accusers.<sup>84</sup> These, however, are not absolute rights; if you want to exercise these rights, you *must* make a preliminary motion at the beginning of your High Court Hearing and submit to the board your request to call witnesses or cross-examine accusers.<sup>85</sup> Requests to cross-examine your accusers must be “relevant, not repetitious, not unduly burdensome to the institution and/or not unduly hazardous to staff, offender, or safety”<sup>86</sup> However, the board’s discretion (freedom) to deny your right to call witnesses or accusers is not absolute. If the information underlying an accusation comes entirely from confidential informants, then the accusing employee *must* be present to testify, but this is the case *only if* you enter a preliminary motion requesting his attendance.<sup>87</sup>

The right to present and challenge evidence is equally important because the board is required to “carefully evaluate all evidence presented or stipulated.”<sup>88</sup> Some types of evidence may require additional support, and you can challenge the evidence if such support is not provided. For example, if a disciplinary report is based entirely on information from one confidential informant or known offender, then there must be other evidence to corroborate (support) the violation before a board can find you guilty,<sup>89</sup> though this standard is loosely enforced.<sup>90</sup> Even evidence that is presented to corroborate the violation may be challenged, especially if such evidence is based entirely on hearsay statements (statements made by other people, not during or in preparation for the High Court Hearing, that are being used against you by relying on the truth of the statement itself). Courts traditionally distrust hearsay statements, and if you can

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<sup>84</sup> LA. ADMIN. CODE tit. 22, § 341J(5) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>85</sup> *See* LA. ADMIN. CODE tit. 22, § 341G(4)(g) (2017) (listing among those preliminary motions that “must be raised at the first opportunity or be considered waived . . . requests to face [your] accuser and call witnesses”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12–13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (same).

<sup>86</sup> LA. ADMIN. CODE tit. 22, § 341J(5) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017). The board may also exercise the option of stipulating expected testimony from witnesses, meaning the board may request statements from witnesses to be read into the record in lieu (instead) of the witness directly testifying.

<sup>87</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(n) (2017) (“If requested, the accusing employee must be summoned to testify about the reliability and credibility of the confidential informant(s) when the disciplinary report is based solely on information from confidential informants.”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (using similar language); *see, e.g.*, Singleton v. La. Dep’t. of Pub. Safety & Corr. *ex. rel*/Elayn Hunt Corr. Ctr., 2003-1294, p. 2 (La. App. 1 Cir. 4/2/04); 878 So. 2d 555, 556 (stating that “[m]ust’ is mandatory language . . . [a]nd, ‘[I]f the rules are stated in mandatory language, they must be obeyed and followed”) (citation omitted) (quoting Fegan v. Lykes Bros. S.S. Co., 3 So. 2d 632, 635 (La. 1941)).

<sup>88</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(m) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 14 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>89</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(n) (2017) (“In situations where the disciplinary report is based on a single confidential informant, there must be other evidence to corroborate the violation.”); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 14 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (“When the Disciplinary Report is based solely on information from a Confidential Informant, two witnesses (who may be other Confidential Informants) must corroborate the record or other evidence.”). The Louisiana Code also provides that such corroborating evidence may include a witness statement from a second confidential informant, but only if that informant has proven reliable in the past.

<sup>90</sup> *See* Giles v. Cain, 1999-1201, p. 6 (La. App. 1 Cir. 6/23/00); 762 So. 2d 734, 739 (holding that the failure of prison officials to follow required procedure and whether that warrants reversal is dependent on whether the sanction imposed goes to a substantial right of the prisoner).

undermine (poke holes in) the reliability or trustworthiness of those hearsay statements, the board may not be permitted to rely on them to find you guilty.<sup>91</sup>

You also have a number of procedural rights which you should exercise during the proceeding. You have a right to be present at the hearing.<sup>92</sup> This right may be waived if you are disruptive or refuse to cooperate during the proceeding,<sup>93</sup> and may not apply to certain proceedings of the High Court Hearing, such as during deliberations.<sup>94</sup> You also have the right not to be compelled to incriminate yourself, meaning you do not have to admit to facts or make statements that may help prove the violation with which you are charged.<sup>95</sup> Even if you plead guilty, you may want to exercise this right to ensure you do not offer additional incriminating information that may lead to a new charge. And as previously mentioned, you have a right to request a Counsel Substitute (*see* Section 1 in Part D of this Chapter) and the right to an unbiased board (*see* Section 2 in Part B of this Chapter).<sup>96</sup> This right is particularly helpful if you plan to plead not guilty, are unfamiliar with the disciplinary process, and could benefit from a Counsel Substitute with more experience.

### E. SANCTIONS

If you are found guilty of either a Schedule A or a Schedule B offense you will be subject to sanctions (penalties). Sanctions are calculated based on the specific offense and your prior record.<sup>97</sup> More serious offenses usually result in more serious sanctions, and minor offenses will result in less serious sanctions. However, a history of good or bad behavior can significantly increase or decrease the sanctions you would otherwise face based on the violation alone. For example, if a prisoner is classified as a “habitual offender”—meaning he has been convicted of three major violations (Schedule B offenses) or a total of five violations in six months—prison officials are permitted to provide Schedule B sanctions following a finding of guilt for a Schedule A violation.<sup>98</sup>

<sup>91</sup> *See* Chaisson v. Cajun Bag & Supply Co., 97-1225, p. 20 (La. 3/4/98); 708 So. 2d 375, 382 (holding that for hearsay evidence to qualify as “competent evidence” in administrative hearings, the evidence must have “some degree of reliability and trustworthiness” and be “the type that reasonable persons would rely upon”).

<sup>92</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(d) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>93</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(d) (2017) (“An offender who does not choose to be present at the hearing may sign a waiver which shall be read into the record. A counsel substitute shall represent him and enter a not guilty plea. The same applies to a disruptive offender who refuses to cooperate.”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (providing the same procedural right).

<sup>94</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(o)(i) (2017) (“During deliberations, everyone except the board and any official observers must leave the room . . .”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 13 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>95</sup> LA. ADMIN. CODE tit. 22, § 341J(4) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

<sup>96</sup> In addition to the protections against bias listed in Section 2 of Part B, High Court Hearings also forbid those in a therapeutic relationship with a prisoner (such as a psychiatrist or psychologist) from sitting on the board without the direct approval or waiver of the prisoner. *See* LA. ADMIN. CODE tit. 22, § 341J(6) (2017) (“Any chairman or member . . . who is in a therapeutic relationship with the offender that would be jeopardized by the therapist’s presence on the disciplinary board, cannot hear the case unless the accused waives recusal in writing or verbally on the record.”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11–12 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (noting same).

<sup>97</sup> LA. ADMIN. CODE tit. 22, § 341G(6)(a) (2017) (“Sanctions must fit the offense and the offender. An offender with a poor conduct record may receive a more severe sanction than an offender with a good conduct record for the same offense. Even so, serious offenses call for serious penalties.”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 15 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (same).

<sup>98</sup> LA. ADMIN. CODE tit. 22, § 341G(6)(f) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 15 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

Yet, prison officials do not have the power to impose whatever sanctions they desire. Both the schedule level of the violation (Schedule A or Schedule B offenses) and venue (type and location) for your proceedings (Low Court Hearing or High Court Hearing) limit how prison officials assign sanctions. Specifically, these limits serve to regulate both the *type* of sanctions prison officials may impose and the *number* of sanctions that may be applied.<sup>99</sup> For example, prison officials are limited to impose only one or two specific sanctions per violation.<sup>100</sup>

In addition to the ordinary sanctions imposed by prison officials (such as reprimand or disciplinary detention), prisoners found guilty of violating prison rules may also be subject to other types of sanctions. Prisoners who violate criminal laws may have sanctions imposed as a result of separate state or federal prosecutions for criminal conduct.<sup>101</sup> This may result in a longer sentence. Also, prisoners who damage or steal property may be required to pay restitution (money paid to the institution to replace or repair the property) if the board decides to sanction you with an “Imposition of Restitution.”<sup>102</sup> These other types of sanctions are considered sanctions outside the disciplinary process, and thus are not subject to the standard rule of “one or two” sanctions per violation.<sup>103</sup>

### 1. Sanctions in Low Court Hearings

Low Court Hearings only apply to Schedule A offenses. If the disciplinary officer in charge of a Low Court Hearing finds you guilty, he may impose one *or* two of the following penalties for *each* separate violation committed:

- 1) A reprimand (warning);
- 2) Extra duty (up to four days for each violation); or
- 3) Loss of minor privileges (up to two weeks).<sup>104</sup>

<sup>99</sup> See LA. ADMIN. CODE tit. 22, § 341I (2017) (providing that a prisoner “found guilty of violating one or more of the rules defined . . . will be sanctioned according to the penalty schedule designated in the rule and the type of hearing provided”); LA. ADMIN. CODE tit. 22, § 341K(2)(a)–(c) (2017) (listing penalty schedules according to the type of hearing (Low Court Hearing or High Court Hearing) and the type of offense (Schedule A or Schedule B)); see also La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 15–17 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (listing similar penalty schedules).

<sup>100</sup> LA. ADMIN. CODE tit. 22, § 341G(6)(g) (2017) (“After a finding of guilt, the disciplinary officer may impose one or two of the penalties for each violation.”); LA. ADMIN. CODE tit. 22, § 341(K)(1) (2014); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 15 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (same).

<sup>101</sup> LA. ADMIN. CODE tit. 22, § 341G(6)(d) (2017) (“State and federal criminal laws apply to offenders. In addition to being sanctioned by prison authorities, offenders may also be prosecuted in state and federal court for criminal conduct.”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 15 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (same).

<sup>102</sup> Made in accordance with Department Regulation No. B-05-003. La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 15 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017); see also LA. ADMIN. CODE tit. 22, § 341G(6)(e) (2017) (“Restitution may be imposed in accordance with established policies and procedures and is not considered a disciplinary sanction and may be assessed in addition to any other permissible penalties.”).

<sup>103</sup> LA. ADMIN. CODE tit. 22, § 341G(6)(e) (2017) (“Restitution may be imposed in accordance with established policies and procedures and is not considered a disciplinary sanction and may be assessed in addition to any other permissible penalties.”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 15 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017) (observing the same).

<sup>104</sup> LA. ADMIN. CODE tit. 22, § 341K(2)(a) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 15 (2008), *available at* [https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001\\_Offender\\_Rule\\_Book-1.pdf](https://cityoffaith.org/wp-content/uploads/2015/12/B-05-001_Offender_Rule_Book-1.pdf) (last visited Sept. 4, 2017).

For the purpose of sanctions, minor privileges include: use of radio/tape or CD or electronic media players and/or TV, recreation and yard activities, telephone (except for emergencies and legal purposes), movies, canteen privileges, and similar activities.<sup>105</sup>

## 2. Sanctions in High Court Hearings

High Court Hearings are typically limited to Schedule B offenses, but may include appeals by prisoners found guilty of Schedule A offenses or Schedule A offenses who are also habitual offenders.

### a. Schedule A Offenses

If the board in a High Court Hearing finds you guilty of a Schedule A offense, it may impose one *or* two of the following penalties for *each* separate violation:

- 1) A reprimand;
- 2) Extra duty (up to four days for each violation);
- 3) Loss of minor privilege (up to four weeks);
- 4) Disciplinary detention (up to five days for each violation);
- 5) Forfeiture of good time (up to a maximum of fifteen days for each violation);
- 6) A change in quarters;
- 7) A job change;
- 8) Confinement to dormitory, room, or cell (up to fourteen days); or
- 9) Inability to earn incentive wages (up to three months).<sup>106</sup>

### b. Schedule B Offenses

If the board in a High Court Hearing finds you guilty of a Schedule B violation, it may impose one *or* two of the following penalties for *each* separate violation:

- 1) A reprimand;
- 2) Extra duty (up to eight days for each violation);
- 3) Loss of minor privileges (up to twelve weeks, or twenty-four weeks if the violation involved abuse of that minor privilege);
- 4) Disciplinary detention (up to ten days for each violation);
- 5) Forfeiture of good time (up to a maximum of 180 days for attempted escape, battery of an officer, or physical possession of illegal drugs or a weapon, or forfeiture of all good time in the case of simple or aggravated escape, or 90 days for all other Schedule B violations);
- 6) A change in quarters;
- 7) A job change;
- 8) Confinement to dormitory, room, or cell (up to thirty days);
- 9) Inability to earn incentive wages (up to one year);
- 10) Loss of hobby craft (up to twelve months);
- 11) Loss of visiting privileges (if the violation involves this privilege);

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<sup>105</sup> LA. ADMIN. CODE tit. 22, § 341K(2)(a) (2017). With regard to recreation and yard activities, the Louisiana Code provides that if “the offender is housed in Disciplinary Detention or Disciplinary Detention/Extended Lockdown, the offender must be allowed a 24-hour break with access to recreation and/or yard activities after ten consecutive days in Disciplinary Detention/Extended Lockdown before any subsequent imposition of this penalty.” *See* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 15 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Oct. 29, 2017) (providing the same).

<sup>106</sup> LA. ADMIN. CODE tit. 22, § 341K(2)(b) (2017). The *Offender Rulebook* provides that forfeiture of good time can be imposed up to 30 days for each violation, but it is outdated, and the Louisiana Administrative Code overrules it. *See* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 16 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017)

- 12) Custody change from minimum to medium custody status and/or transfer to another institution, or;
- 13) Custody change from minimum or medium to maximum custody status, working cellblock, or disciplinary detention/extended lockdown.<sup>107</sup>

c. Types of Segregation/Detention

Prisoners found guilty in a High Court Hearing are liable to be sanctioned to detention from the general population. Louisiana recognizes several different forms of detention, each with its own separate definition, policies, and limitations. These include: administrative segregation, protective custody, disciplinary detention, disciplinary detention/extended lockdown, and working cellblock. Definitions for each of these are found in the *Offender Rulebook*.<sup>108</sup>

## F. CHALLENGING YOUR ADMINISTRATIVE DECISION

All prisoners have the right to appeal a decision from either a Low Court or High Court Hearing.<sup>109</sup> The appeals process can really vary depending on where your claim began.

### 1. Challenging the Decision of a Low Court Hearing

The right to appeal a Low Court Hearing is limited. Your decision to appeal must be stated clearly to the prison officer administering your Low Court Hearing as soon as a ruling is issued, otherwise you lose your right to appeal entirely.<sup>110</sup> After receiving this notice, the prison officer will then suspend (put off) the sanction and schedule the case to be heard in a High Court Hearing. The proceedings in High Court will be the same as any other hearing conducted by the board.<sup>111</sup> Appealing to the High Court offers one significant protection—the High Court may not increase the sanction imposed by the disciplinary officer in the original Low Court Hearing.<sup>112</sup> However, the decision of the High Court represents the ultimate and final decision on your claim. No further appeals to any prison officials are permitted.<sup>113</sup>

<sup>107</sup> LA. ADMIN. CODE tit. 22, § 341K(2)(c) (2017). Note that some sanctions require review by the warden or designee every ninety days, such as any sanction involving the loss of visiting privileges.

<sup>108</sup> La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 4–6 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>109</sup> LA. ADMIN. CODE tit. 22, § 341J(9) (2017) (noting that all prisoners have “the right to appeal the decision consistent with the appropriate appeal procedure”); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017) (noting that before a high court hearing can begin, the prisoner “must acknowledge on the record that he is familiar with” “[t]he right to appeal consistent with the appeal procedure”).

<sup>110</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(a)(ii) (2017) (“As soon as the ruling [in the Low Court Hearing] is issued, the offender who wants to appeal must clearly say so to the disciplinary officer who will then automatically suspend the sanction and schedule the case for the disciplinary board.”); *see also* La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017) (stating the procedure in similar terms).

<sup>111</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(a)(iii) (2017) (“The appeal hearing before the disciplinary board is a full hearing the same as any other hearing conducted by the board.”); La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>112</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(a)(iii) (2017) (“The disciplinary board cannot increase the sanction imposed by the disciplinary officer.”); La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017) (“The Disciplinary Board cannot upgrade or increase the sanction imposed by the Disciplinary Officer.”).

<sup>113</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(a)(iv) (2017) (“The appeal to the disciplinary board will be the final appeal in a case heard by the disciplinary officer. No other appeals are allowed.”); La. Dep't. of Pub. Safety & Corr., Disciplinary

## 2. Challenging the Decision of a High Court Hearing

The right to appeal a High Court decision is larger than the right to appeal a Low Court decision. The most noticeable difference is that prisoners are provided a number of resources to aid in their appeal of High Court decisions. First, you have the right to a written summary of the evidence and the reasons for the judgment entered in the original High Court Hearing.<sup>114</sup> The written summary will serve as the very basis for the appeal and it is therefore critical you obtain a copy of this record. Convicted offenders typically receive a written summary of the proceedings soon after the decision is delivered,<sup>115</sup> but you should request one if it has not been provided. This right is limited, however, by one specific qualification—it applies only if you pleaded not guilty and were subsequently found guilty.<sup>116</sup> Second, the Louisiana Code provides that “[d]isciplinary board hearings must be recorded in their entirety and the recording preserved for five years.”<sup>117</sup> These recordings provide a concrete record of the exact testimony provided in High Court, which can either help or harm your appeal.<sup>118</sup> If you plan to appeal the decision of the High Court, it is important you request this recording be preserved for that appeal and keep a record of this request; if the prison officials fail to preserve the recording, you may have grounds for a new hearing.<sup>119</sup>

A prisoner’s right to several levels of review is also important in appealing High Court decisions. The first level of review begins with an appeal to the warden. The next level involves an appeal to the Secretary. A final level of review is available in state or federal court. In addition to each of these measures, prisoners are always at liberty to file a Corrections Administrative Remedy Procedure Report (*see* Chapter 9 of the *Louisiana State Supplement*, “Inmate Grievance Procedures”).

### a. Appeal to the Warden

An offender may appeal a case heard by the disciplinary board (high court). All appeal requests on high court cases shall be to the warden.<sup>120</sup> You may appeal directly, or through the aid of a Counsel

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Rules and Procedures for Adult Offenders 18 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017) (same).

<sup>114</sup> LA. ADMIN. CODE tit. 22, § 341J(8) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>115</sup> LA. ADMIN. CODE tit. 22, § 341J(8) (2017) (noting prisoners have “the right to a written summary of the evidence and reasons for the judgment,” and that the “convicted offender shall be given or sent a written summary”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017) (same).

<sup>116</sup> LA. ADMIN. CODE tit. 22, § 341J(8) (2017) (noting that the right to be given a written summary is provided “when the accused entered a plea of ‘not guilty’ and was found ‘guilty’ by the disciplinary board”); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 11 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017) (same).

<sup>117</sup> LA. ADMIN. CODE tit. 22, § 341G(4)(c) (2017). The *Offender Rulebook* states something differently: that, while recorded in their entirety, hearings should be “preserved in accordance with the Department’s record retention policy for use in any subsequent judicial review or any other court proceedings.” *See* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 12 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>118</sup> *See Ford v. Dep’t. of Corr.*, 2009-0103, p. 1 (La. App. 1 Cir. 5/8/09); 2009 WL 1272349, at \*1 (unpublished) (affirming “somewhat harsh” penalties imposed on a prisoner for derogatory comments made toward a corrections officer because a “review of the record does indicate the petitioner entered a [guilty] plea as reflected by the record”).

<sup>119</sup> *See Hills v. Cain*, 1999-2324, p. 3 (La. App. 1 Cir. 3/31/00); 764 So. 2d 1048, 1050 (holding that an inmate’s right to judicial review was violated and a retrial was required when prison officials destroyed a tape recording of a prisoner’s appeal to the Secretary in spite of the prison’s “knowledge of an ongoing judicial review” with regard to the inmate’s case).

<sup>120</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(b)(i) (2017); *see also* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05->

Substitute, but in any case, the appeal must be received by the warden within fifteen days of the High Court Hearing.<sup>121</sup> The appeal should be presented using Form AF-1, which is available from your classification officer. If no such forms are available, you are permitted to use a blank sheet of paper so long as the paper contains all the same information as Form AF-1 (*see* footnote below).<sup>122</sup> The warden will decide on the appeal within thirty days of receiving the appeal.<sup>123</sup> You will be notified of the result in writing.<sup>124</sup> If additional time is required, the warden must notify you of his need for an extension.<sup>125</sup>

In addition, the warden has the right to return the appeal to a prisoner or Substitute Counsel where the warden deems the appeal too long or that the appeal is missing information.<sup>126</sup> Prisoners will have five days to comply with the Warden's instructions and return the corrected appeal.<sup>127</sup> If you do not return the corrected appeal within five days, then the remedies allowed to you from inside have not yet been exhausted, which means you are not permitted to appeal this case further to either the Secretary or to a state (*see* Section F(2)(c), *Filing in State Court*, below) or federal court (*see* Section F(2)(d), *Filing in Federal Court*, below).

#### b. Appeal to the Secretary

You must appeal a warden's decision *within five days* of receiving the warden's Appeal Decision (Form AF-2). To appeal this decision, simply check the box on Form AF-2 indicating "not satisfied," date and sign the form, and submit it to either your ARP screening officer,<sup>128</sup> or, in some cases, depending on the

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001%20Offender%20Rule%20Book%20OCR.pdf (last visited Sept. 6, 2017) ("An offender who wants to appeal a case heard by the Disciplinary Board (High Court) must, in all cases, appeal to the Warden.").

<sup>121</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(b)(ii) (2017); La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at*

<https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>122</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(b)(iii) (2017); La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at*

<https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017). An AF-1 form requires the following

information: your name, the name of your counsel (if any), the original charge, the charge you were found guilty of, state whether sentence was imposed, what sentence you received, the date of the disciplinary report, the date of your disciplinary hearing, the location of the hearing, members of the board present, and whether you pleaded guilty or not guilty. In addition, you must write down what are the *issues* you want to dispute or argue on appeal, then provide the *arguments* in support of your appeal, and state the *relief* you desire. Finally, your signature is required. As mentioned before, you are recommended to either make a copy of the AF-1 form you submit, or handwrite a second copy for your records.

<sup>123</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(b)(iv) (2017); La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at*

<https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>124</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(b)(iv) (2017); La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at*

<https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>125</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(b)(iv) (2017); La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at*

<https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>126</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(b)(v) (2017) ("It is necessary for the offender to only provide basic factual information regarding his case. Lengthy appeals will be returned to the offender for summarization."); La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at*

<https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017) (stating this in similar terms).

<sup>127</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(b)(v) (2017) ("The offender will have five calendar days from receipt to comply with the instructions and resubmit."); La. Dep't. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>128</sup> ARP screening officers may also be known as Administrative Remedy Procedure Screening Officers.

procedures of your specific unit, the warden’s office.<sup>129</sup> No additional materials will be accepted, as the original appeal to the warden will get added to your file prior to review by the Secretary.<sup>130</sup>

Not all decisions are subject to appeal by the Secretary: “The [S]ecretary shall only consider appeals of sanctions from decisions of the warden that resulted in an imposed or suspended sentence of one or more of the following penalties: (a) forfeiture of good time; (b) a custody change from minimum to medium if it involves transfer to another institution; (c) a custody change to maximum; (d) failure to earn incentive wages.”<sup>131</sup> Appeals against orders of restitution, imposed in accordance with Department Regulation No. B-05-003, will also be considered.<sup>132</sup> And “[a]bsent unusual circumstances, the [S]ecretary will only consider review of the sanction(s) imposed on an offender who pled guilty,” meaning the Secretary will consider changing the sanction (sentence) imposed on those who pleaded guilty but will not reverse their original guilty plea.<sup>133</sup>

All appeals will be decided within eighty-five days of receipt of the appeal, unless there are unusual circumstances.<sup>134</sup> Prisoners will be notified promptly in writing of the result.<sup>135</sup> If a decision is not delivered within eighty-five days, this does not necessarily mean that you can further appeal.

### c. Filing in State Court

If you fail to secure relief by appealing to the warden or Secretary, you can file a claim in state court.<sup>136</sup> Your right of access to state court is governed by the Louisiana Prison Litigation Reform Act (Louisiana PLRA).<sup>137</sup> The Louisiana PLRA—not to be confused with the federal PLRA which governs suits

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<sup>129</sup> LA. ADMIN. CODE tit. 22, §§ 341H(1)(c)(i)–(ii) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 18 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>130</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(c)(vi) (2017). La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 19 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>131</sup> LA. ADMIN. CODE tit. 22, §§ 341H(1)(c)(vii)(a)–(d) (2017). The *Offender Rulebook* provides that the Secretary may also hear appeals from the penalty of “Disciplinary Detention,” but this is not indicated in the Louisiana Code. *See* La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 19 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>132</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(c)(viii) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 19 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>133</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(c)(ix) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 19 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>134</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(c)(ix) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 19 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>135</sup> LA. ADMIN. CODE tit. 22, § 341H(1)(c)(ix) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 19 (2008), *available at* <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Sept. 6, 2017).

<sup>136</sup> LA. REV. STAT. ANN. § 15:1177 (2017) (stating that “[a]ny offender who is aggrieved by an adverse decision, excluding decisions related to delictual actions for injury or damages, by the Department of Public Safety and Corrections . . . rendered pursuant to any administrative remedy procedures under this Part may, within thirty days after the receipt of the decision, seek judicial review of the decision only in the Nineteenth Judicial District Court or, if the offender is in the physical custody of the sheriff, in the district court having jurisdiction in the parish in which the sheriff is located”).

<sup>137</sup> *See generally* LA. REV. STAT. ANN. §§ 15:1181–15:1191 (2017) (governing prisoner suits).

by prisoners raised in federal courts<sup>138</sup>—really regulates and limits the types of law suits a prisoner can bring in state court. For example, it limits the types of injuries you can sue for<sup>139</sup> or the venue (location) where you can file a suit.<sup>140</sup> It is strongly recommended you review the Louisiana PLRA prior to submitting a claim in state court, especially Section 1184, “Suits by Prisoners.” You are also recommended to review the Louisiana Corrections Administrative Remedy Procedure (Louisiana CARP), which likewise regulates the types of claims you can bring in state court.<sup>141</sup>

i. *Exhaustion*

Both the Louisiana PLRA and CARP create filters which prevent a number of claims from making it to state courts. One of the most important filters is the “exhaustion requirement,” which requires that you fully exhaust all the administrative remedies (remedies available within the prison system) available to you before making a claim in state court.<sup>142</sup> Failure to satisfy this exhaustion requirement will result in the state court dismissing your appeal for lack of subject matter jurisdiction (meaning the court does not have the right or power to review your claim).<sup>143</sup> If you skip certain administrative remedies due to a lack of response by the prison authorities—such as failing to return an amended appeal to the Department of Public Safety and Corrections (DPSC) Secretary upon their request—the court will find you failed to exhaust all the administrative remedies available.<sup>144</sup> Likewise, if you skip certain administrative remedies due to your subjective (personal) belief that they will prove inadequate or are pointless, the court will find you failed to exhaust all the administrative remedies available. In both cases, the state court will not have subject matter jurisdiction and will not be able to hear your case.

ii. *Substantial Rights*

Even if you have exhausted all your administrative remedies, the Louisiana CARP further filters out the types of cases a court may review.<sup>145</sup> Specifically, the Louisiana CARP permits state courts to review or modify decisions only if *substantial rights* of the appellant have been prejudiced.<sup>146</sup> Section 15:1177A(9)(a)–(f) of the Louisiana State Revised Statutes states that “substantial rights” are implicated only if the appealed decisions might:

- 1) Violate constitutional or statutory provisions (legal rights protected by laws);
- 2) Be in excess of the statutory authority of the administering agency (meaning the board from the High Court Hearing did more than it was permitted to do);
- 3) Be based on unlawful procedure;

<sup>138</sup> See Chapter 14 of the main *JLM*, “The Prison Litigation Reform Act.”

<sup>139</sup> LA. REV. STAT. ANN. § 15:1184E (2017) (“No prisoner suit may assert a claim under state law for mental or emotional injury suffered while in custody without a prior showing of physical injury.”).

<sup>140</sup> LA. REV. STAT. ANN. § 15:1184F (2017) (“The exclusive venue for delictual actions for injury or damages shall be the parish where the prison is situated to which the prisoner was assigned when the cause of action arose. Upon consent of all parties, the court may transfer the suit to a parish in which venue would otherwise be proper.”).

<sup>141</sup> See *generally* LA. REV. STAT. ANN. §§ 15:1171–15:1179 (2017) (covering administrative remedy procedure).

<sup>142</sup> LA. REV. STAT. ANN. § 15:1184A(2) (2017); *see also* Walker v. La. Dep’t. of Corr., 2010-0057, p. 4 (La. App. 1 Cir. 6/11/10); 40 So. 3d 1238, 1241 (holding that the prisoner was not permitted to appeal in state or federal court on his claim for reinstatement of “good time credits” as the prisoner had failed to exhaust all administrative remedies available in the prison system).

<sup>143</sup> Harrell v. Dep’t. of Pub. Safety & Corr., 2009-1421, p. 1 (La. App. 1 Cir. 2/12/10); 2010 WL 528475, at \*1 (unpublished) (holding that the plaintiff prisoner, Harrell, had not exhausted all the administrative remedies available, and thus the district court lacked subject matter over the claim); *see also* Hull v. Stalder, 2000-2730, p. 3 (La. App. 1 Cir. 2/15/02); 808 So. 2d 829, 831 (holding that “the commissioner and the trial court did not have jurisdiction over Hull’s claim because he failed to exhaust administrative remedies available to him”).

<sup>144</sup> Moreau v. La. Dep’t. of Pub. Safety & Corr., 2007-1430, p. 3 (La. App. 1 Cir. 2/8/08); 2008 WL 426477, at \*3 (unpublished) (holding that prisoner failed to exhaust administrative remedies when he decided not to submit an appeal to the Secretary of his institution as a result of the warden’s failure to respond to his earlier appeal).

<sup>145</sup> See LA. REV. STAT. ANN. § 15:1177 (2017), which includes a comprehensive list of limitations including requirements to: (1) file such appeals within thirty days of receiving the decision you seek to appeal, (2) file in a particular court—the Nineteenth Judicial District Court (with some exceptions), and (3) file against one party only, the Department of Public Safety and Corrections.

<sup>146</sup> LA. REV. STAT. ANN. § 15:1177A(9) (2017).

- 4) Be affected by another error of law;
- 5) Be arbitrary (random or illogical) or capricious (impulsive or unpredictable) or characterized by an abuse of discretion (meaning the board from the High Court Hearing acted in violation of “good faith”); or
- 6) Be “[m]anifestly erroneous in view of the reliable, probative and substantial evidence on the whole record” (meaning the evidence presented could not have supported the final decision of the board in the High Court Hearing).<sup>147</sup>

In spite of this comprehensive definition provided above, there are contradictions in what courts have deemed “substantial rights.”<sup>148</sup> However, in general, most claims brought in state court are found insufficient in meeting this standard.<sup>149</sup>

### iii. *Objections Not Raised at High Court Hearing*

There are two additional reasons why a court may filter out your claim. First, a court may reject your claim if it involves review on the basis of objections or motions that were not originally raised in your prior appeals.<sup>150</sup> At the beginning of each High Court Hearing, immediately after the Disciplinary Report is read aloud to you and you are asked to submit a plea, you must raise all possible motions that may affect your case (*see* Part C in this Chapter). If you do not raise these motions at this time, you will not be permitted to raise them later. Second, a court will refuse to hear cases involving issues which are not ripe for review; this means that the issues to be decided must not be moot (already resolved) and the remedy you seek must have some potential use.<sup>151</sup>

### iv. *Malicious Claims and “Three Strikes”*

If your claim passes these filters, you must also decide if you think your claim has sufficient merit or legal basis. The right to appeal is not unqualified or without peril. If prison officials determine you filed an appeal in state court that is malicious (meaning mean spirited or hurtful) in nature then this may be

<sup>147</sup> LA. REV. STAT. ANN. §§ 15:1177A(9)(a)–(f) (2017).

<sup>148</sup> *See generally* Williams v. Dep’t. of Pub. Safety & Corr., 2010-2301, p. 1 (La. App. 1 Cir. 6/10/11); 2011 WL 2981196, at \*1 (unpublished) (holding that a change in custody status does not infringe upon a “substantial right”); Perryman v. LeBlanc, 2010-1649, p. 1 (La. App. 1 Cir. 3/25/11); 2011 WL 1104110, at \*1 (unpublished) (holding that penalties must involve “atypical and substantial hardship” and represent a “dramatic departure from the basic conditions of [his] . . . sentence”) (quoting Sandin v. Conner, 515 U.S. 472, 484–485, 115 S. Ct. 2293, 2300–2301, 132 L.Ed.2d 418 (1995)); Mars v. La. Dept. of Pub. Safety & Corr., 2010-1617, p. 1 (La. App. 1 Cir. 3/25/11); 2011 WL 1103342, at \*1 (unpublished) (holding that changes in housing or job classification do not infringe upon a “substantial right” under any circumstance). *But see* Orange v. Radar, 2009-1576, p. 2 (La. App. 1 Cir. 5/26/10); 2010 WL 2109829, at \*2 (unpublished) (holding that prisoners who were erroneously charged with Schedule B offenses when they should have been charged with Schedule A offenses may suffer loss of a “substantial right”).

<sup>149</sup> Cases are routinely dismissed because the decision did not impact a “substantial right” of the appealing prisoner. *See generally* Foster v. La. Dep’t. of Pub. Safety & Corr., 2006-0159, p. 1 (La. App. 1 Cir. 12/28/06); 2006 WL 3813717, at \*1 (unpublished) (dismissing the suit because the court ruled the imposition of a penalty of eight days extra duty did not constitute the loss of a “substantial right”); Taylor v. Stalder, 2006-0066, p. 1 (La. App. 1 Cir. 11/3/06); 2006 WL 3110287, at \*1 (unpublished) (holding that the imposition of twenty-eight days of cell confinement and a custody change is “not unusual or a significant hardship in relation to the ordinary incidents of prison life and did not prejudice Taylor’s substantial rights,” and “[t]hus, modification or reversal of the disciplinary action by the DPSC was not warranted under the law”).

<sup>150</sup> Orange v. Stewart, 2008-1966, pp. 3–4 (La. App. 1 Cir. 3/27/09); 2009 WL 839041, at \*3–4 (unpublished) (dismissing the prisoner’s claim that his substantial rights were impacted because he was not permitted to call witnesses on the basis that the prisoner failed to raise this claim at any time during the previous administrative hearings).

<sup>151</sup> *See generally* Alex v. Acklin, 2010-1889, p. 1 (La. App. 1 Cir. 5/6/11); 2011 WL 2112750, at \*1 (unpublished) (dismissing the prisoner’s claim because the remedy sought no longer served any “useful purpose” nor would provide any “practical relief or effect” and was thus rendered moot); Hanna v. La. Dep’t. of Pub. Safety & Corr., 2006-0444, p. 1 (La. App. 1 Cir. 2/14/07); 2007 WL 466750, at \*1 (unpublished) (dismissing a prisoner’s claim to reinstate 180 days of good time credit when the prisoner was already released on probation, thus making his claim moot as it “involved a disciplinary decision that, even if reversed, would have no consequences”).

grounds for additional disciplinary actions.<sup>152</sup> For example, if you file an appeal that unnecessarily injures the reputation of a prison officer by use of harmful or derogatory (offensive) language, then the prison officials may be permitted to charge you with a Schedule A violation for disrespect<sup>153</sup> or a Schedule B violation for defiance.<sup>154</sup> Also, if the screening commission determines your appeal is malicious or frivolous (trivial or unnecessary), it may activate certain legal repercussions under Louisiana CARP.<sup>155</sup> For example, pursuant to Section 15:1187 of the Louisiana State Revised Statutes, the screening commission (or court) may prevent you from bringing suit if your appeal in state court has been dismissed as frivolous or malicious on three or more prior occasions.<sup>156</sup> The “three strikes” rule prevents any prisoner with three strikes—indicating he had three prior cases dismissed for being either frivolous or malicious—to make any future appeal in state court.<sup>157</sup> The only exception to the “three strikes” rule is if you are “under imminent danger or serious physical injury.”<sup>158</sup> Lastly, even if your case is finally heard by a District Court, you will likely be held responsible for paying all your own legal costs if you lose the case, regardless of whether or not your claim was malicious or frivolous in nature.<sup>159</sup>

#### v. *State Court Procedures*

If you determine your claim will not be filtered out for any of the reasons stated above, and you are prepared to face the consequences if your case is either dismissed or deemed to be frivolous or malicious in nature, you are encouraged to seek an appeal in state court. To submit an appeal to state court you must file a Petition for Judicial Review in the Nineteenth Judicial District Court within thirty days of receiving

<sup>152</sup> See *Robichaux v. Tanner*, 995 F.2d 223, 225 (5th Cir. June 11, 1993); 1993 WL 210421, at \*2 (per curiam). In *Robichaux*, a prisoner sought relief through a prison administrative remedy procedure. In his claim for relief he used derogatory terms to describe a prison officer. Prison officials cited him for a violation of Rule 7 (Disrespect), and the prisoner sued claiming prison officials had retaliated in response to his legal right to seek remedy. The court held that while the prisoner is permitted to pursue legal remedies, he may not do so in such a manner that would otherwise constitute a violation of prison rules.

<sup>153</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 7) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 21 (2008), available at <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Oct. 11, 2017).

<sup>154</sup> LA. ADMIN. CODE tit. 22, § 341I (Rule 3) (2017); La. Dep’t. of Pub. Safety & Corr., Disciplinary Rules and Procedures for Adult Offenders 20–21 (2008), available at <https://www.law.umich.edu/special/policyclearinghouse/Documents/LA%20B-05-001%20Offender%20Rule%20Book%20OCR.pdf> (last visited Oct. 11, 2017).

<sup>155</sup> Pursuant to § 15:1184 of the Louisiana State Revised Statutes, if the screening committee for a state or federal court finds a prisoner’s appeal is frivolous or malicious, or fails to state a cause of action, a “legal strike” is placed against the prisoner’s record. LA. REV. STAT. ANN. § 15:1184B (2017) (“The court, on its own motion or on the motion of a party, shall dismiss any prisoner suit if the court is satisfied that the action is frivolous, is malicious, fails to state a cause of action . . . or fails to state a claim upon which relief can be granted.”).

<sup>156</sup> LA. REV. STAT. ANN. § 15:1187 (2017) (“In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding . . . if the prisoner has, on three or more prior occasions while incarcerated or detained in any facility, brought an action or appeal in a state court that was dismissed on the grounds that it was frivolous, was malicious, failed to state a cause of action, or failed to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”). See generally *Rushing v. Goodwin*, 2010-1482, pp. 1–2 (La. App. 1 Cir. 2/11/11); 2011 WL 856915, at \*1–2 (unpublished) (reaffirming the district court’s ruling that the prisoner should be assessed a “strike” for failing to state a cause of action in his appeal); *Harris v. Cain*, 2010-1474, p. 1–2 (La. App. 1 Cir. 2/11/11); 2011 WL 846078, at \*1–2 (unpublished) (upholding a legal “strike” against the appealing prisoner because he failed to state a claim that implicated “substantial rights” and was thus found in violation of LA. REV. STAT. ANN. § 15:1187 (2011) for filing a frivolous claim); *Thomas v. Cain*, 2008-0462, pp. 1–2 (La. App. 1 Cir. 9/19/08); 2008 WL 4287549, at \*1–2 (unpublished) (upholding the district court’s decision to impose the penalty of a “strike” against the prisoner for failure to raise a violation impacting a “substantial right”).

<sup>157</sup> See *Peterson v. Gildon*, 40,328, p. 2 (La. App. 2 Cir. 12/30/05); 917 So. 2d 1284, 1286 (holding that prisoner was not permitted to bring legal appeal because he had “three strikes” against him, representing three prior dismissals of actions brought by the prisoner which were dismissed on the grounds that they were frivolous, malicious, or failed to state a cause of action).

<sup>158</sup> LA. REV. STAT. ANN. § 15:1187 (2017).

<sup>159</sup> See, e.g., *Boatner v. La. Dep’t. of Corr.*, 2010-0994, p. 1 (La. App. 1 Cir. 12/22/10); 2010 WL 5479685, at \*1 (unpublished) (finding the prisoner liable for all costs of his losing appeal even though his claim was neither frivolous nor malicious in nature).

notice of the decision you are appealing.<sup>160</sup> Your petition must list the “Department of Public Safety and Corrections” as the party defendant.<sup>161</sup> If you wish the court to consider whether you can make an oral argument to the court, you must make this request in your original petition.<sup>162</sup>

Your petition will be first reviewed by the court where you filed your appeal to determine if you have a “cognizable claim,” meaning they will determine if your claim has merit (a chance to succeed).<sup>163</sup> The court will then perform a second screening review to determine if you state a cognizable claim, or if your petition fails to state a cause of action.<sup>164</sup> If the court rejects your right to appeal, it is not required to contact the Department of Public Safety and Corrections to alert them to your attempt to appeal.<sup>165</sup> If the court accepts your petition, then the Department of Public Safety and Corrections *must* be notified, and it will likely file a response to your claim in return.

The court will then review your claim. The standard of review in such cases favors the Department of Public Safety and Corrections:

[T]he issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the fact finder’s conclusion was a reasonable one. Even though an appellate court may feel its own evaluations and inferences are more reasonable than the factfinder’s, . . . reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony.<sup>166</sup>

This standard of review suggests the state court will not retry your case but will only review your case to see if the decision reached by the original administrative body was unreasonable considering all the relevant facts. Only in cases where the decision is “clearly wrong or manifestly erroneous” should the court reverse or modify a prior decision.<sup>167</sup> In light of this high standard, many claims are unsuccessful. To overcome this hurdle, you need compelling support that relief should be granted in your case. If other cases decided by the court support your claim, then you should identify this precedent (rule or principle established by a prior court of law) to the judge, but you should note that Louisiana is unique in the United States in that judges are not required to accept precedent, though they often do.<sup>168</sup>

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<sup>160</sup> LA. REV. STAT. ANN. § 15:1177A(1)(a) (2014). This statute is strictly interpreted to mean thirty days. *See Stemley v. Henderson*, 2007-0181, p. 1 (La. App. 1 Cir. 11/2/07); 2007 WL 3227665, at \*1 (unpublished) (holding that the prisoner’s claim must be dismissed for failure to submit it within the required thirty-day time limit, providing no allowance for holidays, weekends, or other circumstances).

<sup>161</sup> LA. REV. STAT. ANN. § 15:1177A(1)(b) (2017).

<sup>162</sup> LA. REV. STAT. ANN. §§ 15:1177A(6)(a)–(b) (2017).

<sup>163</sup> LA. REV. STAT. ANN. § 15:1188A (2017).

<sup>164</sup> LA. REV. STAT. ANN. §§ 15:1178 B–D (2017).

<sup>165</sup> *Gallow v. Stalder*, 2008-0944, p. 1 (La. App. 1 Cir. 12/23/08); 2008 WL 5377807, at \*1 (unpublished) (holding that the prisoner’s claim did not involve a substantial right and would not be heard, thus permitting the screening commission to dismiss the claim and not provide notification to the Department of Public Safety and Corrections).

<sup>166</sup> *Nettleton v. Audubon Ins. Co.*, 93-1576 (La. App. 1 Cir. 5/20/94); 637 So. 2d 792, 794 (quoting *Stobart v. State*, 617 So. 2d 880, 882–883 (La. 1993)) (affirming that the appropriate standard of review is to look to whether the original administrative body could have reasonably reached the conclusion they finally decided upon, not whether the current court believes the facts of the case suggest the original administrative body should have decided differently).

<sup>167</sup> *Walters v. Dep’t. of Police of the City of New Orleans*, 454 So. 2d 106, 114 (La. 1984) (holding that administrative decisions may only be modified or reversed upon finding of substantial error).

<sup>168</sup> Forty-nine state courts follow the common-law principle of *stare decisis*, which means that judges are bound by, and must apply, the interpretation of laws as articulated in older cases. Louisiana is unique because its state courts follow a civil law principle in which judges are not bound by former interpretations of the law. Instead, each judge in Louisiana must make his or her own interpretation of the law. *See* LA. CIV. CODE ANN. art. 1(c) (2017) (“In Louisiana, as in other civil law jurisdictions, legislation is superior to any other source of law. Article 1 of the Louisiana Civil Code of 1870 (Article 2 of this projet), declaring that legislation is a formal expression of legislative will, has been interpreted to establish the supremacy of legislation and to exclude judicial legislation.”).

Should the Nineteenth Judicial District Court dismiss your claim, you can exercise one final state administrative remedy—appeal the decision of the District Court to the Louisiana Court of Appeals within thirty days of receiving the adverse decision.<sup>169</sup>

#### d. Filing in Federal Court

If you fail to obtain relief through the prison grievance system or the state court system, your final option for relief lies in federal court. To obtain relief in federal court, you must file a claim under 42 U.S.C. § 1983,<sup>170</sup> 28 U.S.C. § 1331,<sup>171</sup> 28 U.S.C. § 2254,<sup>172</sup> 28 U.S.C. § 2241<sup>173</sup> and 28 U.S.C. § 2255.<sup>174</sup> For more information on the type of claims you may make in federal court, *see* Chapter 13 of the main *JLM*, “Federal Habeas Corpus,” Chapter 14 of the main *JLM*, “The Prison Litigation Reform Act,” Chapter 15 of the main *JLM*, “Inmate Grievance Procedures,” Chapter 16 of the main *JLM*, “Using 42 U.S.C. § 1983 and 28 U.S.C. § 1331 to Obtain Relief From Violations of Federal Law,” and Chapter 18 of the main *JLM*, “Your Rights at Prison Disciplinary Proceedings.”

In all cases, the federal courts will not hear your case unless you have exhausted all the remedies in your state, including an appeal to the warden and then to the Secretary, filing a Corrections Administrative Remedy Procedure Report, submitting a Petition for Judicial Review in the Nineteenth Judicial District Court, and appealing any adverse decision in the Nineteenth Judicial District Court to the Louisiana Court of Appeals.<sup>175</sup>

### G. CONCLUSION

Prison officials are granted broad authority to give sanctions upon prisoners, but this authority does not go unchecked. Prisoners are afforded a number of rights which serve to protect them from unnecessary or erroneous disciplinary measures—most important of these rights is your right to appeal disciplinary decisions you believe to have been made in error. But many of these rights are contingent upon your ability to follow very specific procedures, such as submitting documents within a certain time period, raising objections and motions at a specific stage of the process, or submitting requests to the proper authorities. In this way, you can only secure the rights which protect you by knowing and following the procedures required by the disciplinary system. You can master these procedures by reviewing the *Offender Rulebook*, or consulting with a Substitute Counsel. And if you master these procedures, then you will secure valuable rights which should help protect you from arbitrary and unjust disciplinary decisions in the future.

<sup>169</sup> LA. REV. STAT. ANN. § 15:1177A(10) (2017) (“An aggrieved party may appeal a final judgment of the district court to the appropriate court of appeal.”).

<sup>170</sup> State prisoners should bring a claim in federal court under 42 U.S.C. § 1983 (2012) if you believe your prison has violated constitutional or federal statutory or legal rights. *See* Chapter 16 of the main *JLM*, “Using 42 U.S.C. § 1983 and 28 U.S.C. § 1331 to Obtain Relief From Violations of Federal Law.”

<sup>171</sup> Federal prisoners should bring a claim in federal court under 28 U.S.C. § 1983 (2012) if you believe your prison has violated constitutional or federal statutory or legal rights. *See* Chapter 16 of the main *JLM*, “Using 42 U.S.C. § 1983 and 28 U.S.C. § 1331 to Obtain Relief From Violations of Federal Law.”

<sup>172</sup> State prisoners should bring a claim in federal court under 28 U.S.C. § 2254 (2012) if you wish to make a habeas corpus claim against your state prison. *See* Chapter 13 of the main *JLM*, “Federal Habeas Corpus.”

<sup>173</sup> 28 U.S.C. § 2241 (2012) provides federal prisoners with a limited range of options to sue a federal prison on a claim of habeas corpus. *See* Chapter 13 of the main *JLM*, “Federal Habeas Corpus.”

<sup>174</sup> 28 U.S.C. § 2255 (2012) provides federal prisoners with a broad range of options to sue a federal prison on a claim of habeas corpus. *See* Chapter 13 of the main *JLM*, “Federal Habeas Corpus.”

<sup>175</sup> *See* Chapter 15 of the main *JLM*, “Inmate Grievance Procedures.”