

# Supervisors' Guide

To

# Progressive Discipline



CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

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# SUPERVISORS' GUIDE TO PROGRESSIVE DISCIPLINE

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## INTRODUCTION

This guide is intended to serve as a general reference for the Progressive Discipline Process. It offers supervisors a constructive approach for handling situations related to employee discipline. It, however, does not present any magic formula for solving the problems arising from interpersonal relationships. No standards or procedures can ever substitute adequately for sound judgment. If you are experiencing personnel problems or if you are anticipating corrective actions, it is important to coordinate with your Region Office (for field staff) or with the Departmental Human Resources Office (for Sacramento staff).

## DISCIPLINE - A DEFINITION

As a State supervisor, you are responsible for efficiently accomplishing the work of your organizational unit through the efforts and abilities of other people. Effectiveness depends largely on how well good working relationships are developed among employees and whether they maintain a positive attitude toward their assignment and the departmental rules within which they work.

**Discipline is not synonymous with punishment or penalties. It is the product of teaching, instructing, and training.**

The conduct of well-disciplined employees is the result of training that has caused them to accept and work according to certain behavioral patterns. They act voluntarily, almost without conscious thought or effort, in accordance with established standards of conduct. This is self- or group-discipline, which results from establishing and maintaining proper working habits over a long period of time. Proper working habits then become the regular behavior of every member of the work group. High morale can develop within such a group and a self-administered group discipline usually results.

In addition to preventing situations from developing that demand corrective action, group attitudes can create, within

employees, the desire and determination to reach work objectives.

In state civil service, the concept of progressive discipline is used. This is a system in which one or more in a series of actions is taken by management to prevent or to respond to an employee's failure to meet work standards. It consists of three phases:

1. Preventive (Informal)
2. Corrective (Informal)
3. Adverse (Formal)

The preventive or corrective phases of the progressive discipline process are considered informal phases. As such, either a lead or supervisory employee may administer the responsibilities of these two phases of the process.

The adverse phase, however, is formal in nature and may only be taken by a designated supervisor or manager.

## THE PREVENTATIVE PHASE (INFORMAL)

The following suggestions will help develop and maintain proper discipline in staff. They are based on the belief that conditions must be created and maintained that makes corrective actions rarely necessary.

### ***Reference Check***

Before making a hiring commitment, contact prior supervisors or employers to determine if there have been performance problems, difficulty in getting along with other employees, attendance problems, etc.

You may also consider reviewing the applicant's Official Personnel File (OPF). The review may be in person, if logistically possible, or may be accomplished by telephone, if permitted by the applicant's Human Resources Office. The applicant's Human Resources Office will require written authorization from the applicant to allow review of their OPF and any additional employment information.

### ***Duty Statement***

The duty statement represents a contract between you and the employee. The employee's areas of responsibility are clearly delineated. It should be carefully reviewed with the employee at the time of hire, during the yearly performance appraisal, and anytime there is a change in duties. This also applies to temporary assignments of "light duty" due to short-term medical conditions.

### ***Expected Conduct and Performance***

#### **Set Clear Standards**

Accepted standards of conduct should be placed in writing. In cooperation with employees, you can develop and write the standards of conduct that are expected in your section or unit and see that all employees, particularly the new employees, receive a copy of these standards (see Appendix A and B). Employees want and are entitled to know what is expected of them, and more readily accept and abide by standards if they have been able to influence their establishment. Here, as in other supervisory contacts, follow the old admonition, "Do not overestimate the knowledge or underestimate the intelligence of an employee."

When establishing or changing standards of conduct or performance, consult with your Administrative Officer who will contact the Legal or Labor Relations Office to determine the appropriateness of the proposed action and to notify the employee union, if necessary.

Establishing standards of conduct and performance and ensuring that employees understand them will go a long way toward preventing many instances of misconduct, thus reducing the need for corrective action. The nature of the standard set will vary according to the duties of the position. For instance, a position engaged in processing may have a production standard such as forms processed per hour or words typed per minute. Standards for janitorial positions may consist of bathrooms cleaned per shift.

Other standards may be more qualitative. For instance, if writing reports is required, there may be a standard length of time required for completion. Also, a representative standard of quality may be developed. It is important to remember that all standards, whether in conduct or performance, should be fair and reasonable.

### ***Favorable Working Environment***

A good working environment encourages employees to want to do their work. This involves not only physical conditions, but also interpersonal relationships. Remember, a word of commendation and praise for a job well done can be as conducive to the maintenance of proper discipline as correction of an employee who has been guilty of some act of misconduct.

### ***Communication***

Employees should feel free to offer suggestions for improvements in working methods and to bring problems to you when and if they arise. What is important, however, is the willingness of employees to approach you with suggestions. They will come only when they know you will be both open-minded in evaluating their recommendations and fair in handling their problems.

Be ready at all times to:

- Listen to employees' concerns when they arise. Through skillful, active listening, you may be able to assist your employees in working through their own problems. An important point to remember is to encourage your employees to solve problems that lie within the scope of their own authority.
- Listen to job stewards representing employee interests. Ongoing

communication with the steward builds a relationship with management that can be helpful in resolving problems and may alert management to future potential problems.

- Adjust a situation if it calls for an adjustment, and you are in a position to take the action.
- Stop infractions that have become accepted by a group by making a public announcement of change followed by impartial enforcement. This must be followed by written confirmation to the group. If left alone, small infractions may become larger problems that may be more difficult to change later on.
- Be familiar with collective bargaining agreements and formal grievance procedures.
- Those cases you cannot satisfactorily resolve may be referred to a higher authority. Do not deny employees the opportunity to discuss a problem with a higher-level supervisor if they wish and if they follow the established lines of authority for such a request.

### ***A Good Example***

Good conduct starts at the top. Employees watch and evaluate you, the supervisor, who sets the pattern of acceptable conduct and performance. Unless a good example is set, it may be difficult to obtain good work conduct. There is considerable truth in the old saying: "What you do speaks so loudly, I cannot hear what you say."

## ***Fair, Impartial Control***

Fair and impartial control creates respect. Do not allow infractions to go uncorrected. Otherwise, employees can come to regard them as accepted practices. Nothing will do more to undermine the morale of your employees and their confidence than the feeling that you are being arbitrary and unfair. Beware of actions when strong feelings make it difficult to handle the situation objectively. At such times, consult with your supervisor to assure that actions will be fair and impartial.

## ***Training***

It is the mutual responsibility of the supervisor and employee to assure that necessary and appropriate training is undertaken, whether it is on-the-job or through formal classes, such as those given at the training academy. Planning for training is most appropriately accomplished through the yearly Performance Appraisal Summary – Individual Development Plan (IDP) (Std 637).

## ***Performance Appraisals Summary***

### **Individual Development Plan (Std 637)**

These forms are required on a yearly basis after the end of probation. They may be done more frequently if the employee experiences performance problems subsequent to the time of the last report. It is extremely important to be direct in stating performance deficiencies. However, comments in conjunction with the annual performance summary review should not be the first time an employee is made aware of problem areas. After the performance review, the employee completes the reverse side indicating his or her goals for the next year, including training and development that addresses any deficiencies identified.

Next, review, discuss, and comment on this plan. You need not approve all goals and/or requested training but should acknowledge these goals/training in writing.

## ***Employee Assistance Program***

The Employee Assistance Program (EAP) is a confidential short-term assessment, counseling, and referral program for all Department of Forestry and Fire Protection employees and eligible family members. This program should be offered to employees throughout all phases of the progressive discipline process.

You should encourage employees with personal or job performance problems that may be due to some external factor to use EAP. Factors causing employee problems may include alcohol and/or drug abuse; emotional, personal, and stress-related concerns; marriage, family, and relationship problems; financial and credit difficulties; child/elder care or any other problem that may cause difficulties. Help ensure that your employees understand the EAP and how to use its services.

Refer to bargaining unit contracts for specific information on EAP benefits.

There are three types of EAP referrals — a self-referral, informal supervisor referral (also known as a supervisor recommendation), and a formal supervisor referral.

The differences between the three kinds of referrals are outlined below:

### **Self-Referral**

When employees recognize they have a problem and call EAP on their own to set up an appointment, this is a self-referral. When

this happens, you are not aware of the call and are not involved in the EAP process.

### **Informal Supervisor Referral (Supervisor Recommendation)**

When you become aware of an employee's problem, but their performance is not necessarily affected, you should suggest that your employee contact the EAP. Ensure the suggestion is made in a private and supportive manner. You can also refer to the EAP when an employee asks you for help in solving a personal problem or advice in dealing with the employee and the problem.

### **Formal Supervisor Referral**

When you recognize poor performance or behavior changes that may be caused by personal problems, you can make a formal referral to the EAP. In this situation, you prepare a letter to the workplace support technician that describes the problem. You then need to encourage the employee to set up an appointment or you may schedule an appointment for the employee if the employee prefers.

Employees who use the EAP are assured that their problem(s) and the source, treatment, and resolution will always be afforded the maximum confidentiality permitted by law.

The EAP is strictly a voluntary program and employees should be strongly encouraged, but not mandated, to use the program. Before recommending the EAP to an employee, you should review the appropriate collective bargaining agreement for information on benefit levels, leave credit usage, etc., in relation to the EAP. Counselors are available, with rare exception, within a 25-mile radius of the home or work sites.

Critical incident debriefing for emergency, post-trauma counseling is also provided on a voluntary, per interest basis, for an employee or employees who have been involved in a traumatic situation or critical incident on the job. This can be either group or individual counseling.

For further information about EAP, contact the Region or Headquarters EAP coordinator.

### **EAP Consultation for Supervisors**

The EAP is one of the most valuable resources you have available to you. You can call the EAP for a confidential consultation anytime you need assistance with a work performance issue. A second opinion can be very helpful when you are facing a performance problem. The EAP offers a professional and objective viewpoint. Most importantly, the EAP can help you to maintain a positive and productive work environment.

Remember, asking for professional assistance is a good management decision. Calling the EAP does not commit you to anything. The decision to confront an employee, make a referral or take disciplinary action is yours.

Also, available to assist you with employee problems or issues is the State Personnel Board's voluntary mediation program. Contact your Administrative Officer for additional information.

## THE CORRECTIVE PHASE (INFORMAL)

By emphasizing preventive rather than corrective action, you can make great strides toward securing the cooperation of employees in developing and maintaining discipline. This task will receive support since most employees try to be competent and effective in their work and in their relations with others. In an organization of any size, however, it is inevitable that a few employees unwittingly, thoughtlessly, or willfully violate the established standards of conduct and job performance. Such instances, if uncorrected, can undermine the morale of other employees, disrupt their work effort, and reflect unfavorably upon you, as the supervisor, and the Department. These situations may require prompt corrective action. The following will assist you in giving full consideration to any case when considering corrective action.

### ***Accurate Statement of the Problem***

Perhaps the most important step in the disciplinary process is to be absolutely certain that the problem calls for corrective action. The following questions should be answered in order to determine if corrective action should be taken:

1. How long has the employee worked for the Department? For the State?
2. Have the specific standards of conduct/behavior and performance been explained to the employee?
3. Are the specific standards of conduct/behavior and performance in writing and have they been given to the employee?
4. What is the employee's past history of discipline?

5. What is the exact nature of the current problem?
6. When and how does the problem occur? Are the occurrences documented?
7. What is the history of attempts to correct this problem? Are they documented?
8. What are the circumstances surrounding the present problem?
9. What individual or individuals are involved?
10. Are there witnesses? If so, were they interviewed, and the information recorded?
11. What is the employee's side of the story? Has he or she been interviewed? Have conflicting statements been reconciled?

In answering these questions, keep in mind that it is important to get the facts, investigate, and report the incident(s) with a recommended course of action to your supervisor. At this time, a corrective interview may be necessary.

### ***The Corrective Interview***

Although preventive measures have been utilized and the employee has been informally counseled in an attempt to correct an undesirable situation the problem may still exist. Intensified corrective action may be necessary to put the employee clearly on notice that there is still a problem. This can be accomplished through a corrective interview.

The corrective interview is a very important point in the disciplinary process. It marks either: (1) the beginning of acceptable behavior and/or performance by the employee, or (2) continuing documentation which will support formal adverse action (if necessary).

Technically, it is not an adverse action nor is it an annual performance appraisal. It is a meeting between you and your employee to develop a plan to change the employee's behavior or performance by a certain time. This change is to avoid further corrective or formal adverse actions. (Appendix C provides a suggested format to follow in conducting a corrective interview.) An employee does not have a right to representation in the corrective interview as no adverse action is being contemplated at that time.

A corrective interview has several objectives:

1. Complete understanding by the employee of what behavior or performance is unacceptable.
2. A definite plan for employee improvement.
3. A definite time by which the required improvement shall be accomplished.
4. Creation of a written record to memorialize the corrective discussion and plan.

It is easier to accomplish these objectives if the following dos and don'ts are observed.

### **DO**

- Arrange privacy for the interview.
- Allow ample undisturbed time.

- Plan in advance what is to be covered, and note it for reference during the interview.
- Tailor the approach to the individual--people react differently.
- Be sure the corrective interview is necessary and have the facts.
- Make the next level of supervision aware of the situation and the intended course of action.
- Explain to the employee that the purpose of the corrective interview is to discuss specific behavior and/or performance problems, and that it is not "adverse action".

Explain to the employee that the discussion will be documented with a memo to the employee and a copy in the supervisor's working file (the working file is described in Supervisor's Files on page 11).

- Keep it job-oriented. Focus on correcting observable behavior, not personality traits.
- State the problem clearly, as you understand it. Be specific.
- Stick to the subject. This is not a career exploratory discussion.
- Use examples and relate them to standards of performance or behavior.
- Be helpful—encourage employee to plan for change.
- Respect the employee's dignity and right to a viewpoint.

- Stay calm.
- Be aboveboard—do not engage in harassment or entrapment.
- Explain EAP and encourage the employee to use these services.
- Set the timeframe for the change to take place.
- Take notes freely during the course of the interview. They will assist in summarizing and preparing a written summary of the discussion.
- Summarize verbally. Be sure that the purposes of the discussion have been met:
  - Communicate standards
  - Point out deviations or errors
  - Indicate remedy
  - Reiterate plan of follow-up
- Set a specific time for the next progress review.
- Prepare a written summary of the interview in memorandum form addressed to the employee, have the employee sign and date the summary, and furnish the employee with a copy (see Appendix D).
- Prepare a follow-up memo to the employee at the time he or she is supposed to have accomplished the planned change. A positive letter may mitigate the action but should be retained for one year of acceptable performance or behavior. A negative letter can be used as part of your evidence, if necessary, in taking further action. The follow-up memo should also be signed and dated by the employee.

## **DON'T**

- Procrastinate. Go ahead with the interview once you determine it is needed.
- Exaggerate. Avoid insupportable generalizations.
- Apologize for the interview, or volunteer excuses for the employee to use; avoid "reaching" to give praise or to find humor.
- Be trapped into a prolonged discussion of the merits of one example or of a non-related issue.
- Be angry.
- Accuse or recriminate. Stick to a discussion of the behavior or performance that must change.
- Jump to conclusions.
- Be afraid of listening to mitigating circumstances.
- Win the argument and lose the employee. Try to solve the problem.
- Require abject submission or agreement. It's the change in behavior or performance that counts.
- Bluff or threaten what you don't mean or can't carry out.
- Block the employee from taking the matter up the line of supervision, as this is the employee's right.

- Allow the employee to control or redirect discussion away from his or her own work performance or behavior.

The corrective interview is not an adverse action; therefore, nothing is filed with the State Personnel Board (SPB). However, be sure to retain a copy of the written summary and the follow-up memo in the working file.

As previously mentioned, both the written summary and the follow-up memo should be signed and dated by the employee. If the employee refuses to sign, you should indicate this on the memo itself, along with your signature and date. In such cases it is appropriate to have another supervisor verify the employee's refusal to sign the memo. See Appendix D.

### ***Letter of Warning***

When the employee fails to improve his or her behavior or performance by the deadline established during the corrective interview, you may serve the employee with a Letter of Warning. The Letter of Warning notifies the employee of the continued deficiencies that need to be corrected and the consequences that will result if correction is not accomplished by the due date.

A Letter of Warning is an informal action and may be placed in your working file and/or the employee's Official Personnel File (OPF) for up to one year. It should be used as an instructive, corrective tool rather than an indefinite punitive device. It is intended to correct an unsatisfactory situation. However, if the behavior or performance problem is not corrected, it can serve as documentation for formal adverse action. The employee may submit a rebuttal that will be attached to the Letter of Warning.

Once the letter has served its intended purpose, it should be destroyed. The

determination of when such a letter has served its purpose depends on common sense and the circumstances. If the employee has not improved his or her work performance, the Letter of Warning should be incorporated into the next Annual Performance Appraisal. Sample Letter of Warnings is provided in Appendix E. A Letter of Warning may also be used to support taking Adverse Action.

A Letter of Warning should:

- Advise the employee of the deficiency(s) and identify previous corrective actions taken.
- Tell the employee what corrective action is necessary and directions to achieve it.
- Inform the employee when the improved performance should be achieved. Time allowed for improvement should be appropriate for the correction expected; it should not be an indeterminate threat to force compliance and good behavior.
- Specify a date to review the employee's progress. Be sure to follow up.
- Inform the employee that more severe action (adverse action) will be recommended if all attempts to correct behavior at the corrective phase fail.

You should be aware that acts or omissions that give rise to informal corrective action may not be used as the basis for future adverse action under circumstances where the informal corrective action constitutes "prior discipline".

"Prior discipline" takes place when the Department communicates to the employee that the action being taken is intended to resolve the act or omission.

However, if the work performance or behavior is not corrected and the employee is informed at the time of the Letter of Warning, the Letter of Warning may be used in formal adverse action. Suggested language for a Letter of Warning may be: "Your conduct of this occasion was unacceptable and will not be tolerated by this department. If you engage in similar conduct in the future, the Department may take adverse action against you based on the incidents cited in this memorandum, as well as any future incidents".

### ***Right to Representation for Informal Actions***

An employee does not have a right to representation during the corrective action phase or routine business communications. However, the Department allows a representative to be present if requested by the employee. Routine business communications include:

1. Routine business discussions.
2. Performance evaluations.
3. Training discussions.
4. Job-related counseling.
5. Career development discussions.
6. Corrective action interview.
7. Preventive or corrective actions (includes Letter of Warning).

Such communications are considered informal actions and are part of the preventive and corrective phases of the progressive discipline process.

If, however, during any of these communications, you receive information

that may lead to formal adverse action or rejection during probation, the employee has a right to representation. You are required to inform the employee of his or her right to representation and postpone your meeting/discussion if representation is requested.

Employees are entitled to representation during the following activities:

1. Meetings with a Supervisor, and
2. where the employee is expected or required to respond to questions, and
3. the employee has reasonable belief that he or she may be disciplined for the answers given or refusal to answer.

### ***Documentation***

Complete and factual records permit appropriate action to be taken.

Documentation of a case may include, but is not limited to, any of the following:

1. Notes dated and signed that set forth the facts of the incident(s).
2. Witnesses and their statements, if any.
3. Substantiation of the course of prior/continuous corrective action that you followed, including what was told to the employee.
4. Informal letters or memoranda showing corrective action, e.g. corrective interview memo. Documents should be signed by the employee acknowledging receipt. If the employee refused to sign, the you should indicate this on the memo along with your signature and date.

5. Documents pertaining to the standards of conduct or performance that have been breached, such as schedules, work records, mileage logs, accident reports, attendance reports and absence requests.
6. A summary of pertinent dates and descriptions of actions to delineate timeline relationships.
7. Duty statements, previous annual appraisals, rejections from probation, MSA/PSA denials, and training records (if pertinent).
8. Written standards of conduct or performance relative to the deficiency, such as Unit, Region or Headquarters' policies, the 1000 Personnel Procedures Handbook sections, MOU provisions.
9. Comparisons of the employee's work to published or known performance standards. For example, where poor production is the problem, production records should show the results of other employees performing similar tasks during the same period.

### ***Supervisory Files***

Supervisory or working files are those files you, the supervisor, maintain on each of your employees. Your working file is not the employee's official personnel file (OPF).

These supervisory files will contain documents such as your copy of evaluations/appraisals, written standards of performance and conduct given to your employees, written instructions for special projects or assignments, current duty statements, leave balances, etc.

This file should not contain "secret documents" that are unknown to the employee. The key to determining whether or not a document may be retained is the word "secret." If the information has been shared with the employee, it is not secret and may be kept in your working files. You may also keep calendars and log books if you are documenting an employee's behavior or performance problems.

However, you should first inform the employee that you would be doing so. For instance, after informing the employee that attendance is a problem and that arriving late at work, as well as any absences, will be recorded and kept in your working file. Any questions you may have regarding the appropriateness of file maintenance and what may or may not be placed in your working files should be directed through the Region Administrative Officer or the Headquarters Human Resources Office or Legal Office.

### ***Information Practices Act***

It is very important to note and to remember that supervisory or working files **are** subject to the provisions of the *Information Practices Act*, §§ 1798.3 *et seq.* of the Civil Code.

The ***Information Practices Act*** provides that each employee has the right to inquire and be notified as to whether the department maintains a record about himself or herself. It is essential to recognize that "[A]ny notice sent to an individual which in any way indicates that the agency maintains any record concerning that individual shall include the title and business address of the agency official responsible for maintaining the records, the procedures to be followed to gain access to the records, and the procedures to be followed for an individual to contest the contents of these records unless the individual has received this notice

from the agency during the past year." [See § 1798.32 of the Civil Code].

Further, the department must permit the employee upon request to inspect all the personal information in a supervisory or working file within 30 days of the receipt of such a request. The department must also permit the employee to have an exact copy made of all or any portion thereof within 15 days of the inspection. [See § 1798.34 of the Civil Code].

The department must also allow an employee to request in writing an amendment of their OPF or a supervisory/working file. Within 30 days of the date of receipt of such request, the department must make each correction in accordance with the individual's request, or, alternatively, inform the individual of its refusal to amend the record in accordance with such employee's request. Such a refusal must include the reason for the refusal, the procedures established by the agency for the individual to request a review by the head of the agency or an official specifically designated by the head of the agency of the refusal to amend, and the name, title, and business address of the reviewing official. [See § 1798.35 of the Civil Code].

If the employee disagrees with the refusal of the department to amend an OPF or supervisory/working file, he or she is statutorily authorized to request a review of such refusal by the Director or an official specifically designated by the Director. The Director, or her delegate, must, not later than 30 days from the date on which the employee requests such review, complete such review and make a final determination unless, for good cause shown, the Director or her delegate extends such review period by 30 days. If, after such review, the Director/delegate refuses to amend the

record in accordance with the request, the department must permit the individual to file with the agency a statement of reasonable length setting forth the reasons for the individual's disagreement. [See § 1798.36 of the Civil Code].

Moreover, the department, with respect to any disclosure containing information about which the individual has filed a statement of disagreement, shall clearly note any portion of the OPF or supervisory/working file that is disputed. The department must also make available copies of such employee's statement, and copies of a concise statement of the reasons of the department for not making the amendment, to any person or agency to whom the disputed record has been or is disclosed. [See § 1798.37 of the Civil Code].

It follows that a supervisory or working file should be concise and impeccably accurate. Inasmuch as there are exceptions to the disclosure and inspection mandates of the *Information Practice Act* [§1798.40 of the Civil Code], it is highly advisable to seek counsel from the CDF Legal Services Office whenever one is confronted with a request by an employee to review a supervisory or working file.

## THE ADVERSE PHASE (FORMAL)

### ***Types of Adverse Actions***

There are five types of adverse actions that may be taken on an employee. These actions are progressive in nature, which continues to allow the employee the opportunity to correct or eliminate the documented problem in behavior or performance.

Collective bargaining contracts often address this issue and should be consulted, as well as, the Personnel Procedures Handbook section 1000.

Official Letter of Reprimand — is used when action stronger than a corrective interview or Letter of Warning is necessary, but without financial penalty. It is often effective in making an employee realize that prior warnings, verbal and written, are serious and can be followed by more stringent actions. It is an appropriate action to take against an employee whose performance is not up to standard. By statute, Official Letters of Reprimand must be removed from the employee's official personnel file (OPF) after three years.

Suspension Without Pay — is used to bar the employee from working for a specified period of time and his or her salary is suspended accordingly. This action may be taken against employees with permanent, probationary, or limited-term status. The length of the suspension depends on the severity of the offense, previous attempts to correct the problem (i.e., training and counseling sessions), and prior progressive discipline.

Suspensions for Fair Labor Standards Act (FLSA) exempt employees must be for a minimum of five (5) working days and thereafter in increments of five (5) working days (i.e. total suspension of 10 working days, 15, 20, etc.)

Reduction in Salary (within the salary range for the class) — is usually used in place of a suspension against an employee whose continued service on the job is of value but the offense is such that serious adverse action is warranted. The reduction is in increments of five percent. It should generally be for a specific period but can be without a time limit so that the employee will be required to earn his or her Merit Salary Adjustments annually. This is considered a permanent reduction in salary. Normally, the length of salary reduction is set in relation to the loss of pay that would have resulted from an appropriate suspension. A five-percent reduction in salary for one month is approximately equal to a one-day suspension.

**Salary reductions shall not be imposed on FLSA exempt employees.**

Demotion — is usually used against an employee whose continued service is of value. It should be used only when an employee is qualified for, and can be expected to perform satisfactorily at the lower classification. Demotion can be to the maximum salary of the next lower class; however, it is possible to demote to a lower level class at a salary less than the maximum. The action must contain the exact salary for each class. For a time specific demotion, the employee will have mandatory reinstatement rights to return to

the higher class and salary on a specified date. For a demotion without specific return date to the higher classification the employee has permissive reinstatement rights.

Dismissal — is used for exceptionally serious infractions, continued/repeated failures in work performance, and/or continuing offenses that can no longer be tolerated. Care should be taken to determine that the employee had adequate instruction and supervision, and was given every opportunity to correct work performance or behavior problems. Except in very unusual circumstances, other forms of adverse action must precede dismissals. In considering dismissals, the Region or Headquarters should consult with the Legal Office or Labor Relations Office to ensure adequate grounds exist to sustain the action.

### ***Responsibilities of Immediate Supervisor***

When one or more incidents occur which you believe might require formal adverse action against an employee, you should promptly notify the Unit Chief, Region Chief, or Deputy Director, via your supervisor. A written report, including a recommendation of what action should be taken, is submitted for review to your supervisor. See Appendix R.

You and/or your supervisor should then discuss the proposed action with your second level supervisor. Upon agreement, discuss with the Region Chief or his or her representative in the field, or the Deputy Director in Headquarters. The Region/Area Chief and/or Deputy Director may be aware of the case, even though one of them may eventually serve as the Skelly Officer.

### ***Responsibilities of Region Chief or Deputy Director***

The Region Chiefs and Deputy Directors are delegated authority to take actions up to, but not including, dismissals or charges of unlawful discrimination including harassment.

The Region Chief or Deputy Director (or his or her representative) should review the employee's record to ensure the employee has been informed, both verbally and in writing, how the employee's performance has not met standards.

After a discussion with the Region staff, the Unit or Region Administrative Officer prepares the Notice of Adverse Action. The causes listed in the Notice of Adverse Action must be precisely those contained in Government Code Sections 19572 or 19572.1. The notice must clearly state specific allegations and incidents. General conclusions are not sufficient to sustain an adverse action. Appendix F illustrates the format to be followed in preparation of the action. The original Notice of Adverse Action is either served in person or sent by registered/certified mail, to the employee's last address of record with the department. See Appendices M, N, and O. Also see Appendix P on distribution of document.

### ***Responsibilities of Legal Office***

The Legal Office reviews the entire adverse action for conformity with the government code and State Personnel Board laws and rules governing adverse action. Additionally, it is reviewed for statewide uniformity.

Once the adverse action has been served, the Legal Office sends a copy of the action to the State Personnel Board along with the original Declaration of Service. The action

must be filed with the State Personnel Board no later than 15 calendar days after the effective date of the adverse action for the action to be valid. If corrections need to be made after this filing, an amended Notice of Adverse Action must be served with a new Declaration of Service.

The Region Office or Human Resources Office is responsible for coordinating the adverse actions with the Legal Office, Labor Relations Office or other counsel, when necessary. It is important to remember that the Region Office, Human Resources Office, or Legal Office should be initially involved when any type of corrective action is being considered.

### ***Formal Action to be Taken or Recommended***

When determining the type of formal action needed, consider:

1. The circumstances surrounding the misconduct
2. The seriousness of the employee's conduct in relation to the employee's particular job and employment record with the State
3. The extent to which the employee's misconduct resulted, or if repeated, is likely to result in harm to the public service.
4. The probable cause of the employee's behavior
5. What management has done to help prevent this type of behavior
6. What corrective action would serve to eliminate the cause and prevent a recurrence (the California Supreme Court clearly finds that the State may,

punish errant employees as long as that punishment is "just and proper."

7. The probable impact of the action on the employee
8. Types and severity of discipline administered in similar cases
9. The nature and cause of prior actions against this individual

### ***Causes of Adverse Action***

The causes of adverse action are based on Government Code Section 19572 (alpha) or for BU 8 19572.1 (numeric). Under Section 19572 and 19572.1, each of the following constitutes cause for discipline of an employee.

- (a) (1) Fraud in securing appointment
- (b) (2) Incompetency
- (c) (3) Inefficiency
- (d) (4) Inexcusable neglect of duty
- (e) (5) Insubordination
- (f) (6) Dishonesty
- (g) (7) Drunkenness on duty
- (h) (8) Intemperance
- (i) (9) Addiction to the use of controlled substances
- (j)(10) Inexcusable absence without leave
- (k) (11) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of

felony, or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.

- (l) (12) Immorality
- (m) (13) Discourteous treatment of the public or other employees
- (n) (14) Improper political activity
- (o) (15) Willful disobedience
- (p) (16) Misuse of state property
- (q) (17) Violation of this part or board rule
- (r) (18) Violation of the prohibitions set forth in accordance with Section 19990
- (s) (19) Refusal to take and subscribe any oath or affirmation which is required by law in connection with the employment
- (t) (20) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment
- (u) (21) Any negligence, recklessness, or intentional act which results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled
- (v) (22) The use during duty hours, for training or target practice, of any material which is not authorized therefor by the appointing power
- (w) (23) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap,

marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee.

- (x) (24) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

### ***Causes Defined***

- (a)(1) Fraud in securing appointment

This is generally used only when an employee falsified his or her educational and/or work experience to so great a degree that he or she would not have qualified for the position/job, or he or she omitted an extensive criminal record with recent serious convictions. It can also refer to falsification of a health or medical questionnaire. This cause is also used to cover cheating in examinations or otherwise using illegal help to obtain employment.

- (b)(2) Incompetency

This is used only when the employee cannot, in the opinion of his or her supervisors, satisfactorily perform the work required of the position.

- (c)(3) Inefficiency

This cause includes the case of the employee who appears to have the necessary ability, but for some

reason, does not produce in a satisfactory manner or does not see that the work is done; for example, a poor supervisor. It also includes failure to perform adequately as a result of other causes listed below.

(d)(4) Inexcusable neglect of duty

This charge is used when "an intentional or grossly negligent failure to use due diligence in the performance of a known official duty" occurs (e.g. employee fails to follow well known and accepted policies and procedures.)

If negligence has resulted in damage to state property, Government Code 19572(p) and (t) should be cited in addition to this cause or Government Code 19572.1 (16) and (20) for BU8 employee.

(e)(5) Insubordination

This charge implies a prevailing regularity of dissident, unreserved, or obstinate behavior. California Court of Appeal has held that a tendency to foment strife is a proper ground to discharge an employee. Use when an employee is outspoken or argues with those in charge, or a flaunting disregard of authority of the supervisor is exhibited, i.e., "You do it this way" ["I won't"].

(f)(6) Dishonesty

This charge is used for any false report such as an attendance report, sick leave request, expense account, or other official document, and for misappropriation of state property. This charge may also be used when

employee makes untrue statements during fact-finding interviews.

The SPB has held that dishonesty in a peace office has been repeatedly characterized as a grave offense which can justify dismissal on the grounds that it "is not an isolated or transient behavioral act; it is more of a continuing trait of character." Indeed, in speaking of high moral standards to be expected from a peace officer, the SPB has sustained a dismissal from service for two acts of dishonesty in a peace officer on the grounds that they demonstrated a "propensity to be dishonest."

(g)(7) Drunkenness on duty

This means intoxication on duty but not drinking on duty. A person who takes drinks during working hours but does not get drunk is not charged under this particular cause. In this latter case, it may be proper to use (c), (d), (h), or (t); BU8 employee - (3), (4), (8) or (20).

(h)(8) Intemperance

This applies to angry outbursts, violent actions, or other acts showing lack of moderation. This charge would be used in cases of continued or excessive drinking or use of narcotics.

SPB held that where misconduct demonstrates a lack of restraint to such an extent that the conduct may be characterized as excessive or going to extremes, such conduct constitutes "intemperance."

(i)(9) Addiction to the use of controlled substances

The word "addiction" can be considered to imply the continued use of drugs or the compulsion to use them.

(j)(10) Inexcusable absence without leave

This applies to an employee who was absent without leave for any amount of time.

The parties to an employment relationship rely upon the precept that the employer is obligated to pay agreed upon wages and benefits and the employee is obligated to perform his or her work in a satisfactory manner. Dependable attendance is one element of satisfactory work. The employee who does not report to work in a timely manner is not performing satisfactory work in that her or she is failing to meet one of the primary responsibilities as an employee.

Employers have the right to expect their employees to report for work on the day and at the time agreed, and may discipline the employee for his or her failure to meet that expectations.

(k)(11) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section

The phrase "involving moral turpitude" can be explained as

involving an element of baseness or dishonesty, so that other persons would generally hold the person in disrespect. For instance, stealing (whether the charge is petty theft or grand theft), embezzlement, various sexual crimes, use and possession of narcotics and drugs, etc., involve moral turpitude.

(l)(12) Immorality

It has never been clearly established whether this particular cause must be connected with the work or not. Unless the immorality comes within one of the other causes, it is better not to base the action solely on this cause.

(m)(13) Discourteous treatment of the public or other employees

This cause is used to support action against employee who shows anger or intimidation or swear at or take violent action against his or her supervisors or fellow employees, or who fail to give the public courteous and proper service.

The SPB precedential decisions state that even if the employee had no history of past violence and no actual intention of harming those impacted by the threats, threatening statements of this type may be so inherently disruptive to the workplace that they justify dismissal from employment.

It is frequently used with cause (t) or (20) for BU8 employee.

(n)(14) Improper political activity

This cause is based on Section 19990 of the Government Code.

Further restrictions are found in the Incompatible Activities Statement. A violation under this cause would also be under cause (r) or (18) for BU8 employee.

(o)(15)Willful disobedience

This cause includes any intentional violation of instructions, orders, rules, or regulations. Be prepared to prove the willfulness of the employee's behavior.

"Willful disobedience" is a specific violation of a command or a prohibition, while "insubordination" implies a prevailing regularity of dissident, unreserved, or obstinate behavior.

The California Court of Appeal has held that a tendency to cause or instigate strife is a proper ground to discharge an employee.

(p)(16)Misuse of state property

This cause would apply to any case where an employee took state equipment without authorization, damaged or lost state equipment because of lack of care, used state equipment for personal business, or demonstrated lack of good judgement in use of state equipment.

(q)(17)Violation of this part or board rule

Deleted as per SPB precedential decision.

(r)(18)Violation of the prohibitions set forth in accordance with Section 19990

All incompatible activities fall within this cause.

(s)(19)Refusal to take and subscribe any oath or affirmation which is required by law in connection with the employment

This cause is self-explanatory.

(t)(20)Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment

This is a "catch-all" cause and occasionally is the only cause that can be used. It is generally used where the employee's action has become public knowledge or where his or her action would damage the department or state employees in general.

The SPB has long held that there is a two-prong test to determine whether an employee's conduct constitutes a violation of subdivision (t). First, the conduct must bear some rational relationship to the employee's employment. Second, the conduct must be of such character that it can easily result in the impairment or disruption of the public service.

(u)(21)Any negligence, recklessness, or intentional act which results in the death of a patient of a state hospital or the developmentally disabled

This cause is self-explanatory.

(v)(22)The use during duty hours, for training or target practice, of any material which is not authorized therefor by the appointing power

This pertains to the misuse or inappropriate use of weapons, or training material, or targets.

(w)(23)Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex or age, against the public or other employees while acting in the capacity of a state employee

This cause is self-explanatory

(x)(24)Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

This cause is self-explanatory.

### ***Preparation of the Adverse Action***

Appendix F provides an example of the general format to be followed in the actual preparation of the formal action. Following are issues to be addressed in its preparation.

#### **Section I: Nature of Adverse Action**

This section indicates which of the five possible actions are being taken, and when the action will be effective.

State Personnel Board Rule 52.3 requires that the Department give an employee with permanent civil service status written notice of the proposed action at least five working

days prior to the effective date of the adverse action.

#### **Section II: Statement of Causes**

This section contains a listing of the specific causes, from Government Code Section 19572 and 19572.1. These causes should be broadly construed so that every cause that may be applicable to the acts or omissions, for which the employee is being disciplined, is alleged.

#### **Section III: Current Assignment and Relevant Duties and Responsibilities**

This section gives a synopsis of the employee's current assignment and previous assignments relevant to the action being taken. It also describes relevant duties, responsibilities, and training received.

#### **Section IV: Statement of Acts or Omissions**

This section contains, in chronological order, the specific acts or omissions for which the adverse action is taken.

It is very important that the acts or omissions included within this section are described with as much specificity as possible. Ordinary language should be used to ensure the appellant is clearly informed of the specific acts or omissions for which he or she is being disciplined. (Korman SPB 91-04). The statement of facts regarding a particular act or omission should include:

- (1) **WHO** - The names and classifications of other persons involved in the act or omission;
- (2) **WHAT** - Citation of the specific California or Federal regulation or statute, Department regulation, policy,

procedure, training, or other standard which was violated. When the act or omission is related to Department training which the employee had received, a short description of where and when this training was received should be included;

- (3) **WHEN** - The date and, if applicable, time of the act or omission (the description should allege, "On or about date..." if unsure of the exact date.);
- (4) **WHERE** - The location where the act or omission occurred.
- (5) **WHY** - The details of the act or omission which occurred;
- (6) **CONSEQUENCES** - Any resulting harm or potential liability to the Department, the employees, or public if applicable;

Supporting documents should not be relied upon to provide the employee with notice of the charges against him or her. However, where the supporting documents will provide the employee with additional clarity into the specific details of a charge, the supporting documents which provide such a description should be referenced in this section. See Appendix G and H.

Please see samples of "Statement of Acts or Omissions" for some examples of wrong and right statements to be used in preparing actions.

The "Statement of Acts or Omissions" section cannot include incidents which were the subject of "prior discipline", whether formal or informal. To determine if "prior discipline" for an act or omission has taken place, consider whether the Department somehow communicated to the employee that the action taken was intended to resolve with finality the matter and that only future

occurrences would form the basis of adverse action. This would be considered informal "prior discipline" and, as such, would be described in "Section V: "Prior Progressive Disciplinary Actions" and supporting documentation should be included with the action. Prior adverse actions would also be described in Section V.

### **Section V: Prior Progressive Disciplinary Actions**

This section focuses on progressive discipline and may not be applicable for a first time offense. In this section, you should reference other prior disciplinary actions, formal or informal, and any other attempts which have been undertaken to correct the performance or behavior such as training provided, counseling sessions, etc.

This section is distinguished from Section IV: Statement of Acts or Omissions, in that the actions described in this section are not acts upon which the adverse action is based.

If there have been no prior disciplinary action, eliminate this section and renumber the remaining sections.

### **Section VI: Materials and Documents**

This section is boilerplate language. This section notifies the employee whom to call if they have a request regarding the supporting documents. The supporting documents should include transcribed interviews and a copy of every specific California or Federal regulation or statute, Department regulation, policy, procedure or training which was violated. Supporting documents should be clean, readable copies.

Verbiage regarding the Employee Assistance Program (EAP) is included in this section.

### **Section VII: Right to Respond to Appointing Power (Skelly)**

This section is boilerplate language. This section identifies an employee's rights to respond or appeal the adverse action to the appointing power. Enter the name of the person who will be the "Skelly Officer" and will serve as the contact point to receive oral and written responses. Be sure to include his or her phone number and work address.

See Skelly Rights, page 24 - 26 for additional information.

### **Section VIII: Right of Appeal**

This section states the employee's right to appeal the action to the State Personnel Board or the Board of Adjustment (check bargaining contracts). The employee can exercise this right of appeal whether or not he or she responds to the appointing power (Skelly Hearing).

Collective bargaining contracts should be consulted.

### **Section IX: Separate and Distinct Rights**

This section is boilerplate language. This section further delineates the rights described in Sections VII and VIII above.

## ***Samples Statements of Acts or Omissions***

### **RIGHT**

### **WRONG**

1. Be Specific.

You were tardy (or late to work) on the following dates:

September 5, 2000 - 25 minutes  
September 6, 2000 - 10 minutes  
September 8, 2000 - 12 minutes  
September 10, 2000 - 31 minutes  
September 19, 2000 - 15 minutes

The employee is often tardy.

2. Avoid conclusions or support them with facts.

When arriving for your 3:00p.m. shift at 2:55p.m. on November 2, 2000, you staggered as you walked, you slurred your speech, tripped on the curb and there was a strong smell of alcohol about you. FC Jones witnessed your behavior.

The employee was drunk.

3. Be thorough - include all facts that are relevant to the situation.

Include:

- a. Who did what
- b. Who saw what
- c. When did activity [situation] occur - dates and times
- d. Importance of offense

Fire Captain J. Thomas and Firefighter II J. Smith observed you drinking alcoholic beverages at the Pelican City bar on September 9, 2000 at 3:45p.m. Drinking alcoholic beverages while on duty is a violation of CDF policy memo #xxxxxx.

Employee John Jones has twice been seen drinking on duty by a Fire Captain and a Firefighter II. This is against the rules.

4. Do not exaggerate - a factual accounting will describe the problem and support the recommendation.

You did not finish the three budget estimates assigned to you with a due date of April 4, 2000. Peter, Paul, and Mary were each assigned five estimates and these estimates were completed on time. The unit is not meeting its deadlines because of your delays. P. Brown and M. Charles complained directly to me about your lack of production.

Employee has really been a big headache to me on getting her part of the budget done. The other staff is ready to throw their hands in the air and mutiny.

5. Avoid in-house slang and terminology - others who may not be familiar with local or departmental terminology will use your information.

Mr. Jack Smith, Area Supervisor  
Area 14

Area supervisor

Travel Expense Claim  
Std. Form 262 (5/78)

Form 262

6. Make reference to the statute, regulation, departmental policy, procedure, guideline, or temporary directive that the employee violated. Also include how the employee was informed of the same.

On or about July 4, 1999, Battalion Chief Arnold McDoughal observed you backing up engine #5757 without using a backup person during a non-emergency driving situation. Firefighter II Joe Smith was sitting in the engine cab with you and was available to act as a backup guide at the time. As per the basic academy training manual (see attached) a CDF Fire Captain is required to use a backup guide, if one is available, when backing up his or her engine in a non-emergency driving situation. You received the basic engine training in

You backed up your engine without a backing guide.

July 1998 at the CDF Academy.

On or about July 4, 2000, Fire Apparatus Engineer George Jones observed you watching television at the Hardluck Station at 3:30a.m. Captain Smith has an established policy at the Hardluck Station that required no television watching after midnight. Captain Smith informed you of this policy during your station orientation on or about the first week of May 2000.

You were watching television late at night.

## EMPLOYEE'S RIGHT TO APPEAL ADVERSE ACTIONS

Per State Personnel Board (SPB) Rule 52.3, an employee has the right to respond to charges contained in the adverse action prior to the effective date. An employee must be notified at least five working days prior to the effective date of the action which ensures the employee of this right. The employee is served with written notice of the proposed action and materials upon which the action is based. The employee may respond either verbally or in writing to the appointing authority. This is known as the "Skelly" process.

### ***The "Skelly" Process: Answers to the Most Commonly Asked Questions***

#### **What is a "Skelly Hearing?"**

On September 16, 1975, the California Supreme Court announced its decision in Skelly vs. State Personnel Board. Dr. Skelly, a physician employed by the state, was dismissed and appealed to the court based on the fact that the decision to dismiss him was made by one supervisor, without a higher review, and without opportunity for consideration of his perspective.

SPB Rule 52.3 defines a Skelly hearing as follows:

At least five working days prior to the effective date of any adverse action against an employee with permanent civil service status, the appointing power or any person authorized by it shall give the employee written notice of the proposed action, the reasons for such action, a copy of the charges and material upon which the action is based, and the right to respond, either verbally or in writing, to the authority proposing the action prior to its effective date.

The "Skelly" response is the employee's first level of appeal to an adverse action. The employee can request a Skelly in writing or verbally. Upon this request, an informal meeting called a Skelly Hearing is held. This meeting is the employee's opportunity to be heard. No response is expected from the Skelly Officer at the time of the meeting; however, a response in writing is necessary.

The Skelly hearing is not intended to be a formal hearing with examination of witnesses, etc. However, someone may represent the employee such as an attorney or an employee organization, in presenting a response.

#### **Who is the Skelly Officer?**

The Skelly Officer is a departmental employee, selected by either the Region Chiefs or the Deputy Directors. The Skelly Officer selected should reflect the intent of SPB Rule 52.3. The person must (1) be reasonably impartial and non-involved (the Skelly Officer should not be the person who signed the action) and (2) be at least one organizational level above the supervisor who initiated the action. The Skelly Officer has the authority to effectively recommend and/or sustain, amend, modify, or revoke any or all of the charges. See Appendix I and J.

It is entirely proper for the Skelly Officer to consult with whomever he or she sees fit, including the investigator, supervisors, Administrative Officers, Chief of Human Resources Office, Legal Council, Labor Relations Officer, etc., before rendering a decision.

### **Can the employee request a different Skelly Officer?**

Management maintains the right to determine the Skelly Officer. It may occur, due to circumstances of a particular action, that it would be in management's best interest during an intensive appeal/litigation process to have a third party outside of the chain of command serve as Skelly Officer. This should be considered and determined by management prior to serving the action. Once the Skelly Officer is identified, it would establish an ill-advised precedent to change the officer based on employee request.

### **Where is the Skelly Hearing held?**

The meeting should be held in an office that will ensure privacy for the employee. The location of the hearing may be at the employee's worksite, region or unit office, or another unit or region office. Should travel be required of the employee who was served the adverse action, travel expenses (i.e., mileage, per diem) shall be borne by the employee's payroll reporting unit. Every effort should be made to schedule the Skelly hearing during the employee's normal workday. No expenses shall be paid for an employee's representative.

### **Who represents the employee?**

It is the employee's choice to represent himself or herself or to choose a representative, e.g., a union representative, friend, relative, other legal counsel, etc. Supervisors may select another supervisor or personal advisor or counsel. The representative may not be disruptive during the Skelly hearing. Usually, the representative is striving to gain the confidence and empathy of the Skelly Officer and, therefore, is professional and constructive. However, if the representative

is disruptive and/or uncooperative, the meeting can be recessed.

### **Can the Skelly Officer have someone take notes in the Skelly Hearing?**

Yes. The goal is to create a supportive setting in which the employees may freely express themselves. If a note taker would interfere in this effort, the Skelly Officer is encouraged to take his or her own notes.

### **Can the Skelly Hearing be taped recorded?**

This is permissive. It is recommended that should the employee or representative show up with a tape recorder, the Skelly Officer has the choice either to (1) not tape the meeting, or (2) delay the meeting until the Skelly Officer can set up his or her own taping equipment.

### **Can the Skelly Officer investigate the case and, if so, who is available for consultation?**

At any time before, during or after the hearing, the Skelly Officer can question anyone involved in the action including the supervisor, witnesses to actions, administrative and Chief of Human Resources Office, and other employees. The Skelly Officer can also obtain advice from Legal Council or the Labor Relations Office.

### **Can the Skelly Officer entertain a settlement offer?**

It is not improper for an employee who has been served with an adverse action to waive his right to an appeal. CDF commonly enters into settlements where the adverse action is modified in exchange for the employee's waiver of appeal rights.

The Skelly Officer is in a position to entertain a settlement offer from an employee against whom adverse action has been taken. However, the Skelly Officer should never initiate or even suggest settlement negotiations. After consultation with other interested parties, including the employee's Unit Chief, if applicable, the Skelly Officer may agree to modify the adverse action in exchange for the employee's waiver of appeal rights.

### ***The State Personnel Board Hearing***

When an employee does not request a Skelly Hearing or is dissatisfied with the Skelly Hearing response, he or she may appeal, directly to the State Personnel Board. Collective bargaining contracts often address these issues and should be consulted. When an appeal is filed, a hearing before an Administrative Law Judge (ALJ) appointed by the State Personnel Board is scheduled. The legal office usually represents the department. Actual witnesses to the actions and representatives of management generally attend the hearings. Legal office staff handling the case will specify who will be needed at the hearing. Following the hearing, the ALJ prepares a decision and submits it to State Personnel Board members for approval. The ALJ may revoke, sustain, or modify the action. Often, a settlement is reached between the department and the employee during the appeals process. The SPB generally approves the decision of the ALJ as submitted, but may revise the decision, assign the case to the same or another authorized representative to take additional evidence, or conduct a hearing themselves. The five-member State Personnel Board also may modify or cancel the action entirely. If the action is modified or revoked, the employee must be paid for such a period of time as the adverse action was improperly in effect. Conditions of payment are

contained in Section 19584 of the Government Code.

The employee or department may file a request for rehearing within 30 days of receipt of the State Personnel Board's decision. The State Personnel Board shall either grant or deny the petition within 60 days. The employee, either with or without a rehearing, may petition to the Superior Court for A Writ of Mandate so that the court may hear the case.

Concern regarding a possible appeal should not deter a supervisor from taking adverse action, if warranted. If the facts are documented and the adverse action is properly prepared, an appeal should present no problem.

### ***The Board of Adjustment Hearing***

Consult the appropriate Bargaining Unit Memorandum of Understanding to check if this option is available to the employee when writing the adverse action.

### ***Apprentice FFII and FAE Right to Appeal to Apprenticeship Committee***

In addition to the employee's appeal rights discussed, apprentice Fire Fighters II and apprentice Fire Apparatus Engineers may appeal disputes regarding their apprenticeship training to the California Fire Fighter Joint Apprenticeship Committee (CFFJAC). The apprentice or a representative may contact the CFFJAC when there is an issue regarding the apprenticeship-training program only. The CFFJAC will not review any other complaints or issues. For further information pertaining to the appeal right of apprentice Fire Fighters II or Fire Apparatus Engineers, contact the Labor Relations Office.

## ***Employee's Right to Discovery***

Once an employee has been served an adverse action the employee and his or her designated representative have the right to discovery of information at times and places reasonable to both the employee/representative and the appointing power. As stated, all documents relevant to the decision to take adverse action should

be attached to the Notice when served. In addition, employees who have been served have a right to interview other employees having knowledge of the acts or omissions upon which the adverse action is based. The Department will make the employees available, even though the employee can refuse to be interviewed.

## **SPECIAL ACTIONS**

### ***Administrative Leave***

Occasionally, in cases of workplace violence or pending a dismissal, it is desirable that the employee not be present at the work site prior to and subsequent to the service of notice. The department may grant up to 40 hours (typically five Monday –Friday working days) of administrative time off (ATO). This provides for full pay during that period of time, but the employee does not report to work. This time may be extended beyond five days with approval from the Department of Personnel Administration (DPA). This must be coordinated through the Headquarters Human Resources Office.

**Note:** If you put an employee on ATO prior to service, you must order the employee to call in each day and be available for work. If the supervisor so requests, the employee may be required to remain in their home during normal working hours. This will allow the supervisor to order the employee in to work so that the action can be served. If the employee doesn't call in, he or she is AWOL for that day. The employee must be advised of these restrictions in writing.

### ***Ordered Leaves of Absence***

An employee may be suspended immediately for reasons listed in Government Code Section 19574.5. This is rarely used. G.C. 19574.5 states: Pending investigation by the appointing power of the accusations against an employee involving misappropriation of public funds or property, drug addiction, mistreatment of persons in a state institution, immorality, or acts which would constitute a felony or a misdemeanor involving moral turpitude, the appointing power may order the employee on leave of absence for not to exceed 15 days. The leave may be terminated by the appointing power by giving 48 hours notice in writing to the employee. If adverse action is not taken on or before the date such a leave is terminated, the leave shall be with pay. If adverse action is taken on or before the date such leave is terminated, the adverse action may be taken retroactive to any date on or after the date the employee went on leave. Notwithstanding the provisions of Section 19574, the adverse action, under such circumstances, shall be valid if written notice is served upon the employee and filed with the board not later than 15 calendar days after the employee is notified of the adverse

action. This process should be coordinated through Region Office or Sacramento Headquarters Human Resources Office and the Legal Office.

### ***Amended Adverse Action***

Adverse Actions may be amended by the appointing authority or as a result of a Skelly Hearing at any time prior to the employee's appeal. The amended action will be served on the employee and filed with the original action. The letter resulting from the Skelly Hearing may be used as an amendment to the action. Additional time to prepare for the hearing or an additional Skelly Hearing may need to be provided where substantial changes have occurred. (See Appendix J for a sample of an amended action.)

### ***Stipulated Settlement***

Where the employee has appealed the adverse action, the action may be amended by stipulation. In those instances where the employee has not filed an appeal, agreements reached with the employee which alter the terms of the adverse action, must be received by the Board prior to the expiration of the appeal period or the action will become final. Departments are prohibited by the Board from entering into stipulated settlements that: 1) exempt the employee from indicating on their applications for state employment that their resignation was under unfavorable circumstances; and, 2) provide that the department would not communicate to other agencies the circumstances of the employee's resignation if asked.

### ***Resignation/Retirement in Lieu of Adverse Action (Prior to the Effective Date)***

When faced with an adverse action, an employee may announce intent to

resign/retire or ask to resign/retire. The adverse action does not become effective if the employee resigns/retires before the effective date of the action. It is the employee's right to do so under any circumstances, and they cannot be prevented from doing so. The resignation/retirement must be entirely voluntary. If a supervisor says, "Unless you resign, you will be dismissed," or a similar statement, the action could be set aside because it was given by "mistake, fraud, duress, or undue influence". If the employee inquires about the effect of resignation/retirement, you should be careful to give the correct information in answer to any questions that the employee may have concerning the employee's status if he or she resigns. If you are unsure of a response, the employee should be referred to the personnel or region office for advice. An exception to the above are instances where an employee fails to meet the "Conditions of Employment." (Please see "Failure to Meet Conditions of Employment.") A resignation under duress is subject to appeal to the Department of Personnel Administration within 30 days of the effective date.

It should be noted that with certain actions if the employee decides to resign or retire after service and after the action was filed, the lump sum payment for vacation credit might be affected. This occurs when the served action is a reduction in pay or a demotion. Under those circumstances, the lump sum payment beginning with the effective date of the adverse action will be made at the lower rate of pay specified in the action, provided that the amount of vacation credits does not exceed the period of the demotion or pay decrease. If it does, then the employee will be paid at the regular rate for the excess time. Be sure to give the employee a letter explaining this fully.

## Withholds

The Department may request that a person's name be removed from any open or promotional employment list. Government Code (G.C.) 18935 provides the circumstances under which a person's name may be removed from employment lists. Each Region and Unit has the responsibility of assessing the actions of its employees. Using the criteria in G. C. 18935 Regions are responsible for recommending to Headquarters' Examination Unit that the affected employee's name be withheld from employment lists.

When an adverse action cites G. C. 19572 (w) or 19572.1 (23) which is unlawful

discrimination including Sexual Harassment, an automatic **WITHHOLD** is placed on any CDF promotional or open list which the person's name appears.

Withholding an individual's name from an employment list is not an "adverse action." However, a list withhold will often be based on the same set of facts that gave rise to an adverse action. Withholding a candidate's name from an employment list is not "double jeopardy" when coupled with an adverse action; and it is not considered "punishment." Instead it is simply a result of the candidate demonstrating that he or she is not ready for employment in the classification which he or she gained list eligibility.

## WHEN AN EMPLOYEE IS DISMISSED

### ***Examination and Eligible Lists***

In addition to terminating the employee from state service, a dismissal will remove the person's name from all eligible lists and makes him or her ineligible to take another civil service examination without State Personnel Board approval.

### ***Salary and Accumulative Overtime***

A dismissal terminates the salary of the employee on the effective date of the adverse action. Except for pay purposes, all accumulated overtime is credited as of the day of dismissal.

### ***Payment for Vacation Credit***

Upon being dismissed, the employee must be paid lump sum payment for all accumulated leave balances up to the date of separation. As a general rule, when there

has been no direct loss to the state in money or property as a result of actions by the employee, payment in full is granted. If the employee owes the employer money, this may be withheld from the employee's wages paid upon separation, however CDF **MUST** pay everything that we reasonably believe and acknowledge is due.

### ***Timely Payment of Wages***

Passage of legislative bill AB 2410 amends Section 220 of the Labor Code to remove the State employer's exemption to the Labor Code provisions applicable to the payment of wages and the resolution of wage disputes, effective January 1, 2001.

**When an employee is discharged (terminated from State service other than voluntary), the wages earned must be paid immediately.**

**The employer must make payment to discharged employees at the place of their discharge.**

Any person, agent, manager, superintendent or officer of the State is guilty of a misdemeanor, who: (a) Having the ability to

pay, willfully refusing to pay wages due and payable after demand has been made. (b) Falsely denying the amount of wages owed, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.

## **OTHER EMPLOYER ACTIONS**

In addition to defined Adverse Actions, there are other actions a supervisor should be aware of in the interest of good personnel management. While not considered adverse actions, the following require similar justification and collection of facts.

Collective Bargaining Contracts should be consulted.

### ***Denial of Special In-Grade Salary Adjustment***

A full-time probationary employee in a class, which may receive a special in-grade salary adjustment (SISA), is eligible for an increase at the end of six months. Supervisors should be careful to review and analyze the probationer's work performance to determine if the employee should receive this special in-grade adjustment. If the employee's probationary work performance has been in any way less than satisfactory, the adjustment should be denied. This is not an adverse action. The letter of denial (see Appendix Q) must include specific examples with dates, times, and places of unsatisfactory work performance. The specifics about the employee's performance should be noted. If, at the end of the probationary period, the employee shows some tendency to improve to the point where he or she may be allowed to attain permanent status, the special in-grade adjustment may not be reconsidered for

three months after denial, but must be reconsidered at the end of six months.

### ***Denial of Annual Merit Salary Adjustment (MSA)***

Supervisors should carefully consider annual merit salary adjustments (MSA). MSAs for full-time employees are at the end of 12 months. If an employee's performance has been less than satisfactory, it is essential that the annual salary adjustment be denied (see Appendix Q). If poor performance is being documented by counseling sessions, corrective interviews, letters of warning, and annual performance appraisals, these specifics may be used for the salary denial.

If a salary adjustment is not denied, it is difficult to use any documentation of poor performance prior to the effective date of the salary adjustment to support a future adverse action.

When either a SISA or MSA is denied, the employee should be given written notification no later than the 16th of the month prior to the month in which the increase is due. Denials should not be a surprise to the employee, but should be an extension of ongoing discussions regarding performance.

An employee may file a request for reconsideration within 10 days of being informed of an MSA denial. Additionally, the employee may appeal to DPA within 15 days of exhausting the departmental remedy. When an MSA denial is appealed to DPA, the appointing power's decision to withhold the MSA shall be sustained by DPA if the decision is supported by substantial evidence. A denied MSA may be reconsidered at any time after three months have elapsed but must be reconsidered after one year.

### ***Denial of Performance Salary Adjustment (PSA)***

An employee whose performance salary adjustment is denied may grieve that action using the discipline process outlined in the employee's respective collective bargaining contract. At the discretion of the appointing power, employees who are not granted a PSA may be reconsidered for a PSA at any future time, but at least within 90 days.

### ***Rejection During Probationary Period***

Rejection of a probationary employee is the last phase of the selection process and is **not an adverse action**. However, the same procedures and types of documentation used for adverse actions are required for rejection of a probationary employee. A probationary employee may be rejected for reasons relating to the probationer's qualifications, the good of the service, or failure to demonstrate merit, efficiency, fitness, or moral responsibility.

You should take special care and effort during an employee's probationary period to document all significant aspects of performance. Notification to the employee that progress at the rate expected is not

being met should not wait until a probationary report is due. Deficient performance and suggestions for improvement should be called to the employee's attention both verbally and in writing as soon as the deficiencies occur.

The first probationary report should contain as many specific examples of unsatisfactory performance as is necessary to inform the employee of all items that need improvement. You may reject a probationer after the first report of performance or earlier if you have extremely strong data to support your belief that the employee cannot improve over the course of the probationary period. Performance reports not given at the proper time intervals could prejudice an effort to reject an employee. Timely feedback is essential.

If at the time the second probationary report is due the employee's performance is still unsatisfactory, the employee should be informed in writing that a rejection from the position is being considered. The Notice of Rejection During Probationary Period must be served either personally or by certified mail and shall include: (a) the effective date of the rejection, which cannot be later than the last day of the employee's probationary period (the Notice of Rejection must be served at least five working days prior to the effective date of the action; however, an extension of up to 5 working days is permitted beyond the end of the probationary period to allow sufficient notice required by Rule 52.3); (b) a statement of the reasons for the rejection, including all acts and omissions with dates, times, places, and witnesses, if any, as well as when and how the employee was counseled; and (c) a statement advising the employee that within 15 calendar days of the effective date of rejection, he or she may file with the State Personnel Board a written request for an investigation of the reasons

for the rejection. It should also include all documentation to support the rejection. See Appendix L.

If applicable, the written Notice of Rejection During Probationary Period should also include: (a) a statement advising the employee when he or she has the right of return to a former position and that it is the employee's responsibility to make a request for reinstatement to the appointing power of his or her former position within ten working days after the effective date of rejection; (b) a statement advising the employee who is being rejected after appointment from a general reemployment list that he or she may file a written request with the State Personnel Board to have his or her name restored to the reemployment list from which originally certified. However, the employee's name shall not be certified to the department that rejected the employee, except with the consent of that appointing power.

Appendix K is a sample of a written Notice of Rejection During Probationary Period.

### ***Timely Payment of Wages***

Passage of legislative bill AB 2410 amends Section 220 of the Labor Code to remove the State employer's exemption to the Labor Code provisions applicable to the payment of wages and the resolution of wage disputes, effective January 1, 2001.

**When an employee is discharged (terminated from State service other than voluntary), the wages earned must be paid immediately.**

**The employer must make payment to discharged employees at the place of their discharge.**

Any person, agent, manager, superintendent or officer of the State is guilty of a misdemeanor, who: (a) Having the ability to pay, willfully refusing to pay wages due and

payable after demand has been made. (b) Falsely denying the amount of wages owed, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.

### ***Resignation/Retirement in Lieu of Rejection During Probationary Period***

When faced with a rejection, an employee may announce intent to resign/retire or ask to resign/retire just as with a dismissal adverse action. Please see "Resignation/Retirement in Lieu of Adverse Action."

### ***Drug and Alcohol Testing***

CDF employees required to possess a commercial driver's license or a commercial pilot's license in order to perform their duties are subject to the U.S. Department of Transportation Drug and Alcohol Testing regulations.

For additional information please consult the CDF 1000 Personnel Handbook, Section 1084, "Employees Under the Influence of Alcohol or Drugs."

### ***Failure to Meet "Conditions of Employment"***

Whenever a permanent or probationary employee fails to meet the "Conditions of Employment," such as no longer maintaining the valid license or credential which may be legally required as part of the minimum qualifications for the position or classification, the employee may be separated from state service. It is important to remember that this type of action is not considered to be a "punitive action" by the State Personnel Board. Government Code

19585 provides for separation in lieu of adverse action.

If separation is necessary, an employee should be told that he or she has the option to choose voluntary resignation from the position prior to separation by the department. If the employee voluntarily resigns, he or she should be told that there is no eligibility for reinstatement to his or her former classification unless the "Conditions of Employment" which caused the separation from the position are met.

For more detailed information, refer to Section 1013 of the CDF 1000 Personnel Procedures Handbook.

### ***Automatic Resignation (AWOL)***

The Department of Forestry and Fire Protection do not use this form of resignation. Instead, the preferred method of terminating an employee who is absent without approved leave (AWOL) is under adverse action "inexcusable absence without leave," Government Code Section 19572 (j) or for Bargaining Unit 8 19572.1 (10).

Another option would be the AWOL Separation as outlined in Section 1091.6.4 of the CDF 1000 Personnel Procedures Handbook.

For seasonal employees, the method of separation is Termination With Cause. See Appendix S.

## SEPARATION OF UNSATISFACTORY NON-PERMANENT EMPLOYEES

### Limited-term Employees

A limited-term employee may be terminated with cause by giving the employee written notice stating the reasons for the termination on or before the effective date. Limited-term employees should be afforded an opportunity to respond to the charges within a "Skelly-type setting". When the employee has permanent status in another classification, inform the employee of the right to return to prior position.

The employee may appeal to the State Personnel Board only to remove the "with cause" from the record. The employee has no other appeal from this action except on the grounds that temporary or emergency employees in limited-term positions remain employed in violation of SPB Rule 282.

### ***Seasonal or Temporary Authorization (TAU) Employees***

Please refer to the CDF 1000 Personnel Handbook, Section 1091.6.5, Separation of Unsatisfactory Nonpermanent Employees, for guidance. Seasonal or TAU employees may be separated at any time at the discretion of the employer. Such a termination may be "with" or "without" cause.

If the termination is "with cause", the employee should be given written notice of the deficiencies and an opportunity to discuss the circumstances of the separation with someone at a higher level of authority (i.e., second level supervisor or the Deputy

Director). This is not a "Skelly" hearing, as seasonal employees have no rights to a hearing under SPB Rule 61. The employee may appeal to the State Personnel Board to remove the "with cause". The employee does not have the right to appeal to be reinstated.

For sample letter of Fire Fighter I Termination With Cause see Appendix S.

### ***Timely Payment of Wages***

Passage of legislative bill AB 2410 amends Section 220 of the Labor Code to remove the State employer's exemption to the Labor Code provisions applicable to the payment of wages and the resolution of wage disputes, effective January 1, 2001.

**When an employee is discharged (terminated from State service other than voluntary), the wages earned must be paid immediately.**

**The employer must make payment to discharged employees at the place of their discharge.**

Any person, agent, manager, superintendent or officer of the State is guilty of a misdemeanor, who: (a) Having the ability to pay, willfully refusing to pay wages due and payable after demand has been made. (b) Falsely denying the amount of wages owed, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.

## EMPLOYEE'S RIGHT TO REPRESENTATION AT INVESTIGATORY INTERVIEWS

The Third District Court of Appeal has held that, "A state employee has a right to union representation at a meeting with his superiors held with a significant purpose to investigate facts to support disciplinary action and may not be dismissed for attempted exercise of the right." Robinson v. State Personnel Board (1971) 97 Cal. App. 3rd 994.

"Disciplinary action" refers to formal adverse action and includes dismissal, demotion, reduction of pay, suspension without pay, and Official Letter of Reprimand.

### ***Determining Whether a Meeting is Held With a Significant Purpose to Investigate Facts to Support Disciplinary Action***

Whether or not a meeting is held with a significant purpose to investigate facts to support adverse action is an objective inquiry based upon reasonable evaluation of all the circumstances, not upon the subjective reaction of the employee or the subjective opinion of the interviewer.

It must be reasonably foreseeable that adverse action may be a consequence of the meeting. In Robinson, referenced above, a counseling session was found to give rise to the right to representation because the facts showed:

1. Adverse action was in the minds of the employee's superiors, and
2. A significant purpose of the meeting was to elicit a response from the employee upon which adverse action might in part be based.

If the meeting is disciplinary in character, but explanatory in the sense that the employee

is only told what the employer intends to do and is not required to respond, there is no right to representation.

A routine counseling session may at any time transform into an investigatory interview that may lead to adverse action. For example, a "witness" in an investigation may become a "subject" of the investigation. If this happens, the meeting should be terminated, the employee told of his or her right to have representation, and the meeting rescheduled.

### ***Limitations on the Right to Representation***

As a matter of State policy, you should inform the employee of the right to representation when the matter to be discussed at a meeting may support adverse action that is probable or is being seriously considered.

Employees may select another employee from their same bargaining unit, a personal advisor, or legal counsel as a representative. (See Public Safety Officers' Procedural of Bill Rights (POBR) section 3303 (i).

An employee who requests a specific representative should be accommodated, if reasonably possible. However, the interview need not be postponed if the employee insists on a specific representative who is unable to attend a meeting within a reasonable period of time and another representative is available.

The interview should be handled in a setting of cooperation among the employee, you, and the employee's representative. If the representative becomes unduly disruptive, the interview should be recessed. If the

representative refuses to cooperate and another representative is not reasonably available, the interview may proceed without a representative.

The representative is present to assist and advise the employee regarding his or her rights, not negotiate appropriate discipline. Disagreements concerning any adverse action, which may be taken, can be dealt with in the appeals process.

In the extremely rare situation of a bona fide emergency when the employer must conduct a prompt investigation and representation is not reasonably available, the right to representation does not apply and the employee is so informed. (See POBR section 3303)

Such emergencies may involve possible criminal conduct. In these situations, if the employee is placed under arrest and the interrogation is conducted by a peace officer, remember that the employee has the right to legal counsel.

### ***Additional Information Regarding Representation***

If the employee refuses to be interviewed in a situation where there is no right to representation, inform the employee why there is no right to representation and that the employee may be disciplined for insubordination for refusing the interview. As management, you are free to act on the basis of information obtained from sources other than the employee.

If the employee wants a representative but does not know where to obtain one, inform the employee he or she may choose any representative other than a designated managerial, supervisory or confidential employee.

Uncertainties over an employee's right to representation should be resolved in favor of representation. This will protect the employee while generally imposing little burden on the employer.

When in doubt regarding the appropriate course of action in particular situations consult with your Labor Relations Office or Region Human Rights Officer.

## PUBLIC SAFETY OFFICERS' PROCEDURAL BILL OF RIGHTS

### **The Public Safety Officers Procedural Bill of Rights Act**

The Public Safety Officers Procedural Bill of Rights Act, Title 1, Division 4, Government Code Sections 3300 through 3311, provides that all employees designated as "peace officers" have the right to representation upon request whether or not an interrogation focuses on matters which are likely to result in punitive action against the officer. Additional provisions in this regard are set forth in Government Code Section 3303 and are entirely consistent with the Robinson case.

### ***The Public Safety Officers Procedural Bill of Rights Government Code Sections 3300***

**3300. Short title** This Chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

#### **Definition; legislative findings and declaration**

**3301.** For purposes of this Chapter, the term "public safety officer" means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33 except Subdivision (e), 830.34, 830.35, except Subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this Chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees

and their employers. In order to assure that throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

#### **Political activity; membership on school board**

**3302.** (a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

#### **Investigations and interrogations; conduct; conditions; representation; Reassignment**

**3303.** When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during

the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off duty time in accordance with the regular procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or

photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanction against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by the public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further

interrogations at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or wherever an interrogation focuses on matters which are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for non-criminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

**Lawful exercise of right; insubordination; administrative appeal; 1-year limitation; exceptions; written notification of decision**

**3304.** (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.

(d) Except as provided in this subdivision and subdivision (f), no punitive action nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

- (1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.
- (2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.
- (3) If the investigation is a multi-jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.
- (4) If the investigation involves more than one employee and requires a reasonable extension.
- (5) If the investigation involves an employee who is incapacitated or otherwise unavailable.
- (6) If the investigation involves a matter in civil litigation where the public safety is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

- (7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.
- (8) If the investigation involves an allegation of worker's compensation fraud on the part of the public safety officer.

(e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(f) If after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(g) Notwithstanding the one-year time period specified in subdivision (c), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

- (1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.
- (2) One of the following conditions exist:
  - (A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency
  - (B) The evidence resulted from the public safety officer's predisciplinary response or procedure.

(h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in

subdivision (e) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice. (Effective January 1, 1998).

**Administrative appeal instituted by a public safety member**

**3304.5** An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local agency. (Effective January 1, 1999 – Senate Bill 1662 (Ayala).

**Comments adverse to interest; entry in personnel file or in other record; opportunity to read and sign instrument; refusal to sign**

**3305.** No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

**Response to adverse comment entered in personnel file; time**

**3306.** A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

**Polygraph examination; right to refuse; effect**

**3307.** (a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take or was subjected to, a lie detector test.

(b) For the purpose of this section, "lie detector" means a polygraph deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

**Financial disclosure; right to refuse; exceptions**

**3308.** No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

**Search of locker or storage space; consent; search warrant**

**3309.** No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

**Public safety officer; applicability of chapter; violations; jurisdiction; remedies**

**3309.5.** (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(c) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

**Procedures of public agency providing same rights or protections; application of chapter**

**3310.** Any public agency which has adopted, through action of its governing

body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

**Mutual aid agreements; effect of chapter upon**

**3311.** Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

**RETENTION SCHEDULE FOR MAINTAINING DOCUMENTED EMPLOYER ACTIONS FROM THE EFFECTIVE DATE OF THE ACTION**

<b>EMPLOYER ACTION</b>	<b>RETAIN</b>	<b>WHERE</b>
Informal Action (i.e., documented corrective interviews/counseling)	Up to one year or until incorporated in the annual performance appraisal	Supervisor's working file
Letter of Warning	Up to one year or until it serves its purpose	Supervisor's working file and/or Official Personnel File
Formal Adverse Action (excluding dismissals)	Three years	Official Personnel File
Dismissal	Until age 70	Official Personnel File
Rejection During Probationary Period	Three years	Official Personnel File
Denial of SISA, MSA, or PSA	Three years	Official Personnel File
Termination for Failure to Meet "Conditions Of Employment"	Three years following separation	Official Personnel File
Termination "With Cause" of Non-Permanent Employees	Three years	Official Personnel File

**Expectations**

DATE

To: Employee Name  
Classification

SAMPLE

From: Supervisor Name

Welcome to CDF! As your supervisor I want you to know what my expectations are regarding your schedule and Articles 8 and 19 in the Bargaining Unit 1 Agreement. You have been given a copy of the BU 1 Agreement.

**Schedule:** Your workweek is Monday through Friday. Your shift is from 8:00 a.m. until 5:00 p.m. Work at home is unauthorized unless pre-approved.

**Sick Leave:** Each day that you cannot work your schedule because of illness, injury, etc., you need to telephone me prior to the beginning of your work schedule stating your illness, etc. If I am unavailable, leave a voicemail message with the above information. I **may** call you back if I don't talk to you. **You also need to call the receptionist so they are on board.** For planned sick leave usage (i.e., doctor/dental appointments), email information with your vacation requests at the beginning of each month, or as soon as scheduled.

**Vacation:** Send me an email at the beginning of each month letting me know if you anticipate time off needed for that specific month. If you anticipate a two-week or longer vacation, let me know two months in advance or sooner, if you know.

**Overtime:** All overtime is pre-approved. You need to notify me via email for approval and identify what the workload priorities are, what workload is pending, including deadline dates/time frames, and anticipated time needed to accomplish the specific task(s).

**Meal Periods:** Your scheduled lunch hour is from 12:00 p.m. to 1:00 p.m., unless you notify me of a need to change.

**Rest Periods:** You are entitled to two breaks, per your bargaining agreement, during each four hours of your work shift. They may not be accumulated, nor used to "make-up" time.

Since you work in a controlled temperature environment I encourage you to leave your immediate work area and take in some fresh air at meal and rest periods when possible.

Other than your meal period you need to notify the **Receptionist** when you leave the compound and for how long you anticipate being gone in case of an emergency.

If you have any questions please feel free to ask me anytime.

"I have read and understand the above expectations".

\_\_\_\_\_  
Employee Signature and Date

\_\_\_\_\_  
Supervisor Signature and Date

# Memorandum

**To:****Date:**

# SAMPLE

**Telephone:****From:** Department of Forestry and Fire Protection**Subject:** 1000 PERSONNEL MANAGEMENT BATTALION EXPECTATIONS

- ❑ "By the book" maintenance and upkeep of all vehicles and fire equipment. Clean top and bottom, inside and out. All associated fire equipment maintained and in serviceable condition. All paperwork and compliance inspections completed.
- ❑ Training and required certifications-Keep accurate and up to date records on yourself and all seasonal personnel.
- ❑ Assure that all facilities are properly maintained and are free of hazards. Conduct continual safety inspections and submit semi-annual reports to the Unit Safety Officer.
- ❑ I need monthly performance appraisals on all seasonal and limited term employees utilizing either the Performance Appraisal Summary STD 637 for the LT employees and the Seasonal Employee's Performance Record CDF-212 for the seasonal employee's.
- ❑ All paperwork correct and on time. OUR LIVES ARE A LOT SWEETER IF WE DO NOT IMPACT SUPPORT SERVICES. Get things done before the date they are due. Do not wait until the last minute. Being on anyone's "Late List" is not acceptable. If a situation, out of your control, occurs that could cause something to be late, contact the affected person and me and let us know of the delay.
- ❑ I expect all fire and preliminary fire investigation reports (LE-66) reports to be completed by the end of your duty shift. Overtime is authorized to complete reports that need to be done when justified by unusual circumstances.
- ❑ Our cooperators and the public deserve our respect.
- ❑ Work the assigned hours of your duty shift unless otherwise excused.
- ❑ Report all accidents to your supervisor, irrespective of the damage.
- ❑ I expect your appearance to be of the highest caliber. This means the approved CDF uniform at all times. In the non-fire season time, foot wear with the exception of your wildland boots, will be highly polished black. Highly polished wildland boots look good too.
- ❑ I expect time slips to be completed and turned in to me or on the duty Battalion Chief the last day of the work period.
- ❑ I expect that you provide me with a doctor's excuse when you are sick more than 3 days.
- ❑ If you are sick or not going to report for work for any reason, I expect to be notified.
- ❑ I expect you to be familiar with all CDF procedures, state laws and regulations.
- ❑ At least one Fire Captain will be on duty during the Fire Season.

PAGE TWO

Expectations/Priorities

- ❑ When the vehicle of a Battalion Chief or above comes into the compound the windshield will be washed if possible.
- ❑ When you are assigned an out of Unit assignment as overhead, ensure that someone will replace you on the engine AND notify me by pager, if possible.
- ❑ I expect everyone to adhere to the established chain of command. The on-duty supervisor, of course, will handle emergencies. Not everything is an emergency.
- ❑ Any legal order from any chief officer will be completed within the time frame expected. I'll deal with the chain of command issue in an appropriate manner.
- ❑ Stop for stranded motorists. I have issued business cards to all of you, even the Fire Fighters. A little bit of marketing will go a long way in the future.

"I have read and understand the above expectations".

---

Employee Signature and Date

---

Supervisor Signature and Date

**Supervisor's Checklist for Maintaining Effective Discipline**

Employee's Name  
Classification

S A M P L E

<b>Steps</b>	<b>Action</b>	<b>Date</b>
1.	Employee informed of unit rules of conduct/standards.	_____
2.	Employee provided with and instructed in expected job performance/standards. See Appendix A	_____
3.	Observation of employee performance and self-discipline.	_____
4.	Informal counseling - Offer EAP!	_____
5.	Repeat informal counseling as necessary. Write a record of the discussion, including employee comments and the expected standards required. Offer EAP!	_____
6.	If improvement is needed, write a Corrective Interview Memo (see Appendix C) to include: a) A description of the behavior which needs to be corrected; b) What is required to be improved by the employee; c) Timeframe for improvement; d) What help will be provided, e.g. training; and, e) What disciplinary action may be taken if behavior does not improve.	_____
7.	Discuss Corrective Interview memo with your Supervisor.	_____
8.	Complete Corrective Interview with employee, sign and give employee a copy of the Corrective Interview memo.	_____
9.	Follow through on corrective schedule and identified training.	_____
10.	After the Corrective Interview Memo is issued, follow up with employee every two to three weeks to discuss overall progress and write summaries of discussions. Let employee know you are documenting the follow-ups.	_____

\_\_\_\_\_  
Supervisor's Name

**Worksheet for Corrective Interview/Counseling**

Complete Parts A and B before the interview; complete Parts C and D during the interview.

A. Supervisor's Record of Corrective Interview with (employee's name and classification) regarding (describe the behavior that needs correction and state the required standards).

B. Examples -- Note specific instances. Discuss each and support with appropriate documentation, e.g., rules, policies, MOUs, sick leave records, etc.

- 1.
- 2.
- 3.
- 4.

C. Actions to be taken by employee to correct behavior:

- 1. By when
- 2. By when
- 3. By when
- 4. By when

D. The employee will be assisted in accomplishing the foregoing changes in behavior in the following ways:

- 1.
- 2.
- 3.
- 4.

A review of employee's progress/accomplishments under this plan of action will be held (date). If at that time, these matters are fully settled as planned, this record will be so noted. If these matters are not settled satisfactorily, this record may be made an attachment to such plan of further corrective action or adverse action as may be necessary.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor's Signature

**USE LETTERHEAD OF UNIT****SAMPLE*****Letter Following Corrective Interview/Counseling***

Date

*Employee's name*  
*Classification*

On (date), I discussed with you some of the problems you have had in meeting the work requirements in this office.

Specifically, we discussed the following items:

1. On several occasions you failed to turn in your completed work to me promptly so that I may have time to review it and obtain the supervisor's approval and necessary signatures. For example, (date), you handed me a letter at (time), dated (date), for the Region/Unit/Program Chief's signature.
2. You delayed correcting an error in the letter of (date) to the U.S. Forest Service; therefore, it could not be sent out until (date). You argued about the necessity for making the change.
3. You did not record the receipt on (date), of a report from the unit. Your failure to do this caused an unnecessary trace for the report.
4. On (date(s)), you left the office without being sure someone was available to answer the telephone. I verbally admonished you for this on (date).

We agreed that the following actions would be taken by you to correct this behavior:

1. Your completed work will be turned in promptly for my review, then forwarded immediately to the supervisor for approval and necessary signatures.
2. All errors in letters are to be corrected on a timely basis.

Employee's Name

Date

Page Two

3. You are to record all receipts of reports immediately.
4. If you need to leave the office, you will let me or someone else know to assure the telephones are covered.

Your transcription of dictation is generally good. I am pointing out your deficiencies in work performance so that you may be able to correct them to achieve acceptable performance. I will be available to answer your questions if you do not understand some phase of your work and will assist you in learning our procedures and requirements. This will help you to complete your work promptly. I will review your progress toward improvement with you during the week of (date).

If these matters are not settled satisfactorily, the Department may take further corrective action against you based on the incidents cited in the memo, as well as any future incidents.

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
(Date of signature)

\_\_\_\_\_  
(Date of signature)

DEPARTMENT OF FORESTRY AND FIRE PROTECTION  
Complete Region/Unit Address



**PERSONAL & CONFIDENTIAL**

***Letter of Warning (Informal)***

July 9, 2001

SAMPLE

**Name of Employee**  
**Civil Service Classification**  
**Address**

[If Peace Officer show in home address space - PEACE OFFICER -  
CONFIDENTIAL]

Upon review of your traffic accident report, which you prepared on -----, it is my opinion that the responsibility of the accident that day rests with you. Although the vehicle you hit was apparently hit while parked and no one was injured, it is your responsibility to -----.

Such an incident although not causing significant damage does create an unacceptable "hit" against the Department's driving record. I trust in the future you will be much more cautious when driving for the State of California, or for that matter any vehicle. It is imperative that you drive defensively and alert, as there is no substitute for either of these two critical elements.

You will be scheduled for a refresher defensive driver training course and a review of the department's policies with me. I will notify you when the training is scheduled.

Since attendance and work performance problems are sometimes characteristics of an outside problem you are being reminded of the department's Employee Assistance Program that is available to you.

You are entitled to submit a written rebuttal to this Letter of Warning. The Letter of Warning and Rebuttal may be placed in your Personnel file and/or your Supervisor's working file for up to one year. The department may take adverse action against you based on the incidents cited in this memorandum, as well as any future incidents.

XXXXXXXXXXXXX  
Unit Chief

By:

Supervisor  
Classification

DEPARTMENT OF FORESTRY AND FIRE PROTECTION

REGION

Complete Name and address of whom is going to sign the action



Notice of Adverse Action (Formal)

SAMPLE

Full Name of Employee
Social Security Number
Civil Service Classification
Department of Forestry and Fire Protection
Name of Unit
Work Address

Home Address: Street
City, CA 00000

[If Peace Officer show in home address space - PEACE OFFICER - CONFIDENTIAL]

I

NATURE OF ADVERSE ACTION

Pursuant to Government Code Section 19574, you are hereby notified that adverse action is being taken against you as follows:

IF THE ADVERSE ACTION IS A DISMISSAL INSERT:

You are dismissed from your position as a (classification) effective at the close of business on (effective date).

OR

IF THE ADVERSE ACTION IS A DEMOTION FOR NO SPECIFIC TIME PERIOD:

You are demoted from your position as a (present classification) to the classification of (new classification at the salary rate of \$-----) effective at the commencement of business on (effective date).

**OR**

*IF THE ADVERSE ACTION IS A DEMOTION FOR A SPECIFIC TIME PERIOD:*

You are demoted from your position as a *(present classification)* to the classification of *(new classification at the salary rate of \$\_\_\_\_\_)* commencing on *(effective date)* through *(expiration date)*.

**OR**

*IF THE ADVERSE ACTION IS A SUSPENSION:*

You are suspended for *(number of)* working (Monday through Friday) days *(weeks or months)* commencing on *(effective date)* through *(expiration date)*.

**OR**

*IF THE ADVERSE ACTION IS A SALARY REDUCTION:*

Your salary is reduced (5%) five percent for *(number of)* pay periods commencing on *(effective date)* through *(expiration date)*.

**OR**

*IF THE ADVERSE ACTION IS AN OFFICIAL LETTER OF REPRIMAND:*

You are Officially Reprimanded effective *(date)*.

**II**

**STATEMENT OF CAUSES**

This adverse action is being taken against you for *(for BU8 add; just cause and) the causes specified in the following subsections of Government Code Section 19572 (For BU8 use 19572.1):*

*List the applicable causes specified in Government Code Section 19572 (alpha) or 19572.1 (numeric), such as:*

- a) or 1) Fraud in securing appointment
- f) or 6) Dishonesty
- m) or 13) Discourteous treatment of the public or other employees

**III**

**CURRENT ASSIGNMENT AND  
RELEVANT DUTIES AND RESPONSIBILITIES**

You are employed as a permanent Fire Apparatus Engineer (FAE) for the Department of Forestry and Fire Protection (CDF) assigned to the xxxxxx Fire Station in the xxxxxxxx Unit. You began your career with CDF on June 21, 1983 as a Firefighter I and after four fire seasons separated on October 15, 1986. You were then hired as a permanent FAE on April 27, 1987. You also have several fire seasons as a limited term Fire Captain.

- *This is an informational paragraph that gives the Administrative Law Judge synopsis of "basic" facts.*
- *It should state the employee's current assignment ("name" of office or unit, location, hours, etc. as applicable), previous assignments and training that are relevant to the action.*

As a Fire Apparatus Engineer, one of your primary duties and responsibilities is for the safe operation and maintenance of the Department's emergency response vehicles. Routinely you are asked to drive the structural-type fire engines in emergency (Code 3, red lights and siren) and non-emergency situations with due

regard for the safety of the public, your passengers, and yourself in both rural and urban environment. You have attended several training classes in regards to emergency vehicle response that included the Department's policies and the California Vehicle Code.

- *This paragraph states the duties/responsibilities relevant to the "acts or omissions" the employee is being charged with--it informs the Administrative Law Judge of what was/is expected so that when the Judge reads the "Statement of Acts or Omissions" he or she can correlate each "act or omission" to what should have been done.*

#### IV

#### STATEMENT OF ACTS OR OMISSIONS

This adverse action is being taken against you for the acts or omissions stated below.

- *This is the "heart" of the adverse action. It contains the allegations/charges and any necessary information.*
- *The components for each allegation/charge are:*
  - *When - Date, time or time period: On or about June 25, 1991; between the hours of 2 p.m. and 4 p.m.; at approximately 10:30 a.m., etc.*
  - *Where - Location: in the reception area; in the accounting office; in the emergency command center; in the hallway outside the records room; in the dormitory at the Academy.*
  - *Who - Names, titles, and/or relationships: in the presence of Fire Captain (FCA) John Smith and Fire Apparatus Engineer (FAE) Mary Parker, you tossed a glass of water on ward Jay Ray (YA# 11111), in the presence of Youth Counselors Patricia Join, Daniel Elbow, Senior Youth Counselor Julie Strick, and Group Supervisor Steve Plum, you ... .*
  - *What - Describe the act or omission, being specific: (1) you were insubordinate to your supervisor FCA (name) in that when ordered to complete your monthly report prior to leaving for lunch, you stated, "no way, it's already a day late, what does another couple of hours matter. I'm hungry and I'm going"; (2) You are responsible for completing the time records by the 5th of each month. In September and October 1991 these time records were not completed until the 8th and 10th, respectively.*

*There were no extenuating circumstances regarding your failure to perform this job responsibility in a timely manner.*

- *What - Policy and/or procedure was violated. List specific manual title and section number; it is not necessary to quote the language from the policy/procedure. Be sure to use the manual and section that was in effect at the time the act or omission occurred.*
- *Why - Should the employee be disciplined? What was the effect, actual or potential? Possible effects are: adverse impact on morale of unit or peers; overtime had to be paid (absences or tardiness); deadlines not met (deadlines should have a purpose); injury occurred; placed department in position of being liable for act or omission; other departments impacted; public impacted; security of unit jeopardized; safety of staff, public, etc. impacted.*
- *Potential effects are: (1) your failure to file the reports in a timely manner caused the records department a delay in completing their job responsibility in ensuring that the institution's report was mailed to central office by the 10th day of every month; (2) this insubordination is detrimental to an efficient and harmonious work place; (3) it is fortunate that Mr. Doe was not injured by your actions but the fact is that your actions could have caused an injury.*

## V

### PRIOR PROGRESSIVE DISCIPLINARY ACTIONS

**(Eliminate this section if not applicable. Renumber remaining sections.)**

*This section puts the Administrative Law Judge on instant notice of the employee's previous formal disciplinary proceedings and as such, these are evidence of progressive discipline.*

- A. You have received the following prior formal disciplinary actions, referenced pursuant to Government Code Section 19582(d):

1. *In September 1992, you received an adverse action consisting of a 10-day suspension. Your appeal of this action was SPB Case No. 12345. Final disposition of this case has not occurred.*
2. *In February 1992, you received an adverse action consisting of a five percent (5%) salary reduction for one (1) year. Your appeal of this action was SPB case No. 23456. The State Personnel Board upheld the action with the modification that the salary reduction is for a period of six (6) months.*
3. *In July 1991, you received an adverse action consisting of an Official Letter of Reprimand. You did not appeal this action.*
4. *In April 1990, you received an adverse action consisting of a 30-day suspension. Your appeal of this action is SPB Case No. 54321. The State Personnel Board upheld this action.*

B. You have received the following prior informal progressive disciplinary memoranda:

*This section contains all memorandum discussions, warnings, etc. of an informal/corrective nature that the supervisor(s) had with the employee. Include denial of MSA (Merit Salary Adjustment) if the allegations are regarding performance upon which the denial of the MSA was based.*

1. *On March 3 and June 25, 1991, you received counseling memoranda for insubordination. Additionally, on November 3, 1991, you were verbally counseled by your supervisor for inappropriate interaction with a co-worker.*

*Be sure to include copies of prior adverse or corrective actions noted in the section in Section V, "Materials and Documents".*

## VI

### MATERIALS AND DOCUMENTS

Pursuant to State Personnel Board rule 52.3, a copy of all materials and documents upon which this Adverse Action is based, accompany this Action with a cover sheet denoting each material/document.

Additionally, pursuant to Government Code Section 19574.1, you, or your designated representative, have the right to inspect any documents in the possession of, or under the control of, this Department which are relevant to this

Action or which would constitute "relevant evidence" as defined by Evidence Code 19574.1, you should contact **(name)** at **(phone #)**.

Work performance problems are sometime characteristic(s) of an outside problem. You are advised that the Department's Employee Assistance Program (EAP) is available to you.

## VII

### RIGHT TO RESPOND TO APPOINTING POWER

Pursuant to State Personnel Board Rule 52.3, you have the right to respond to this Notice of Adverse Action, either in writing or verbally, prior to **(effective date)**, the effective date of this Action. If you wish to respond verbally, please contact Skelly Officer **(name)** at **(phone #)** to schedule your meeting so that it may take place prior to the effective date, **(effective date)**. You have the right to a representative at this meeting; however, at this stage of the proceedings you are not entitled to a formal hearing with examination of witnesses. You are entitled to a reasonable amount of State time to prepare your response to the charges/allegations. If you wish to respond in writing, please submit your response to **(name)**, **(title)**, at **(address)**. Your written response should be mailed or hand-delivered to ensure receipt prior to **(effective date)**.

Whether you choose to respond verbally or in writing, the individual to whom you respond will be representing the appointing power and shall have the authority to amend, modify or revoke any or all of the foregoing allegations.

## VIII

### RIGHT OF APPEAL TO THE STATE PERSONNEL BOARD

Regardless of whether you choose to respond as detailed in Section **VII** (*if you renumbered your document this # will change*) above, pursuant to Government Code Section 19575, you may appeal this Action to the State Personnel Board. You, the employee, have 30 calendar days after the effective date of this Adverse Action to file with the State Personnel Board a written answer (appeal) to the Notice of Adverse Action. The answer shall be deemed a denial of all of the allegations of the Notice of Adverse Action not expressly admitted and a request for hearing or investigation as provided in this article. With the consent of the State Personnel Board, or its authorized representative, an amended answer may subsequently be filed. If the employee fails to answer within the time specified, or after answer withdraws his or her appeal, the Adverse Action taken by the appointing power shall be final. A copy of the employee's answer and of any amended answer shall promptly be given by the board to the appointing power. This appeal shall be sent

to: State Personnel Board  
Attention: Hearing Office  
P.O. Box 944201  
Sacramento, CA 94244-2010

You may also file your appeal in person with the State Personnel Board at 801 Capitol Mall in Sacramento, California. Business hours are 8 a.m. to 5 p.m. Monday through Friday, and closed holidays.

Pursuant to Government Code Section 19578, the State Personnel Board, or its authorized representative, shall hold a hearing within a reasonable time. You will be notified of the time and place of the hearing. You are responsible for notifying the State Personnel Board of any changes in your address that occur after the effective date of this Action.

***The following paragraph should be added only for dismissals:***

Pursuant to State Personnel Board Rule 52.4, you or the department may request the use of the expedited appeal process by writing to the State Personnel Board Hearing Officer within 10 calendar days of the filing of the appeal. Staff of the Board will contact the opposing party to determine if the party is prepared and concurs with the request. If the party concurs, a hearing will be scheduled within 15 calendar days of the concurrence of both parties. A proposed hearing officer decision will be prepared within 5 calendar days of the concurrence of both parties and considered at the next appropriate Board meeting. If concurrence is not obtained, the appeal will be processed through the normal scheduling system.

**Check Bargaining Unit Contracts to see if the employee is entitled to a Board of Adjustment appeal. If so, use Section VIII below instead of the above Section VIII.**

## VIII

### **RIGHT TO GRIEVE ACTION OR, ALTERNATIVELY, TO APPEAL TO THE STATE PERSONNEL BOARD**

Regardless of whether you choose to respond as detailed in Section VII above, you have the choice of filing a discipline grievance with the Department's Labor Relations Office, pursuant to Article XIX of the Bargaining Unit 8 Memorandum of Understanding (MOU), **OR**, alternatively, you may appeal this Action to the State Personnel Board, pursuant to Government Code Section 19575.

If you do not grieve this adverse action as described in subsection A below or if you do not file an answer as described in subsection B below, then the adverse action

taken by the appointing power shall be final. IF YOU DO NOT DISPUTE THIS ADVERSE ACTION AS PROVIDED HEREIN IT WILL BECOME FINAL.

**A. Departmental Discipline Grievance:**

If you elect to grieve this Action pursuant to Article XIX of the Bargaining Unit 8 MOU, your discipline grievance must be on an official discipline grievance form or a writing that contains the same information, and, further, an "Acknowledgment and Waiver" form must be signed by you and submitted with your discipline grievance. Your discipline grievance must be filed with the Department's Labor Relations Office within thirty (30) calendar days following the effective date of the action. The discipline grievance should be sent to:

Department of Forestry and Fire Protection  
Attention: Labor Relations Officer  
P.O. Box 944246  
Sacramento, CA 94244-2460

You may also file your discipline grievance in person with the Department of Forestry and Fire Protection's Labor Relations Office at 1416 Ninth Street, Room 1653-3, in Sacramento, CA. Business hours are 8 a.m. to 5 p.m. Monday through Friday and closed holidays.

**B. State Personnel Board Appeal:**

If you elect to appeal this Action pursuant to Government Code Section 19575, you, the employee, have thirty (30) calendar days after the effective date of this Adverse Action to file with the State Personnel Board a written answer (appeal) to the Notice of Adverse Action. The answer shall be deemed a denial of all of the allegations of the Notice of Adverse Action not expressly admitted and a request for hearing or investigation. With the consent of the State Personnel Board, or its authorized representative, an amended answer may subsequently be filed. A copy of the employee's answer and of any amended answer shall promptly be given by the board to the appointing power. This appeal should be sent to:

State Personnel Board  
Attention Hearing Office  
P.O. Box 944201  
Sacramento, CA 94244-2010

You may also file your appeal in person with the State Personnel Board at 801 Capitol Mall in Sacramento, California. Business hours are 8 a.m. to 5 p.m. Monday through Friday, and closed holidays.

Pursuant to Government Code Section 19578, the State Personnel Board, or its authorized representative, shall hold a hearing within a reasonable time. You will be notified of the time and place of the hearing. You are responsible for notifying the State Personnel Board of any changes in your address that occur after the effective date of the Action.

***The following paragraph should be added only for dismissals:***

Pursuant to State Personnel Board Rule 52.4, you or the department may request the use of the expedited appeal process by writing to the State Personnel Board Hearing Officer within 10 calendar days of the filing of the appeal. Staff of the Board will contact the opposing party to determine if the party is prepared and concurs with the request. If the party concurs, a hearing will be scheduled within 15 calendar days of the concurrence of both parties. A proposed hearing officer decision will be prepared within 5 calendar days of the concurrence of both parties and considered at the next appropriate Board meeting. If concurrence is not obtained, the appeal will be processed through the normal scheduling system.

## IX

### SEPARATE AND DISTINCT RIGHTS

Your right to respond prior to the effective date of this Action as detailed in Section VII, (*check renumbering*) is separate and distinct from your appeal rights as detailed in Section VIII (*check renumbering*) above. You may exercise both rights as long as you do so within the time limits provided.

DATED: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

Name (*Type under signature*)  
Classification

**NOTE: If dismissal is proposed or discrimination is charged, including sexual harassment, signature of Director is required!**

***Instructions: List of Materials/Documents Accompanying the Notice of Adverse Action or the Notice of Rejection During Probationary Period***

The person compiling the list and copying the materials/documents should ensure/be aware of the following:

1. The copies of the materials/documents should be readable.
2. A copy of the entire investigation report and file should be served with the Notice.
3. If interview tapes have not been transcribed, copies of the tapes, contents clearly identified, should be supplied upon request.
4. In addition, to the investigative report and file, the employee is also entitled to copies of all other materials/documents upon which the Notice is based. For example, memoranda, statements and documents might have been sent and obtained both prior and subsequent to the investigation.
5. Drafts of documents, which are subsequently revised and finalized, should not be included in the materials/documents, as their presence is confusing. Drafts should be destroyed once they are no longer applicable.
6. Any materials/documents, which are privileged or confidential, should not be included. If a portion of a memorandum or document is privileged or confidential, that portion should be "blacked-out" in some manner and the notation "attorney-client privilege" (or other privilege), or "confidential" should be made in the empty space.

**Materials/Documents Accompanying the Notice of Adverse Action**

SAMPLE

To: *Employee's Name*

I have compiled the following copies of the materials/documents upon which the Notice of Adverse Action is based:

- 1. *Investigation Report by (name), (date), (pages) with attachment of List of Exhibits (# of pages).*
- 2. *Supplemental Report by (name), (date), (pages) with attachment of List of Exhibit (# of pages).*
- 3. *Attendance Reports from March 1991 through June 1991 (3 pages)*

Dated:\_\_\_\_\_ by:\_\_\_\_\_

To be completed by receiving individual:

I have received a copy of this list accompanied by the materials/documents itemized above. If any of the above are omitted, or, in my opinion, unreadable, or any of the page calculations are not accurate, I will contact the appointing authority taking this Action to discuss the matter.

Date List and Materials/Documents Received:\_\_\_\_\_

Received by:\_\_\_\_\_

*For subsequent pages, place in upper left-hand corner:*

*Employee's Name*  
MATERIALS/DOCUMENTS  
Page 2

**USE LETTERHEAD OF UNIT**

***Notice of Upheld Adverse Action (Skelly Hearing)***

SAMPLE

**Personal and Confidential**

*(The information below comes from page one of the Adverse Action)*

*Name of Employee*

SSN:

*Civil Service Classification*

Department of Forestry and Fire Protection

*Work Address*

Home Address:

[If Peace Officer, show in home address space - PEACE OFFICER - CONFIDENTIAL]

To: *Employee's Name*

On *(date)*, in Room *(No.)* at *(time)*, a Right to Respond to Appointing Power meeting (*Skelly*) was held concerning the adverse action (*or probationary report*) served to you on *(date)*. In attendance were \_\_\_\_\_.

*In this second paragraph, you may indicate any additional research and/or information obtained subsequent and pertinent to the hearing.*

After considering the testimony, I conclude that the adverse action (*rejection during probation*) is appropriate and therefore stands. As indicated in the adverse action notice, this action is effective on *(date)* through *(date)*.

\_\_\_\_\_  
Name  
Skelly Officer

\_\_\_\_\_  
Date

**Note: Declaration of Service is required**

USE LETTERHEAD OF UNIT

SAMPLE

**Notice of Amended Adverse Action** (*Skelly Hearing*)

**Personal and Confidential**

*(The information below comes from page one of the Adverse Action)*

*Name of Employee*

SSN:

*Civil Service Classification*

Department of Forestry and Fire Protection

*Work Address*

Home Address:

[If Peace Officer, show in home address space - PEACE OFFICER - CONFIDENTIAL]

To: *Employee's Name*

On *(date)*, in Room *(No.)* at *(time)*, a Right to Respond to Appointing Power meeting (*Skelly*) was held concerning the adverse action (*or probationary report*) served on you on *(date)*. In attendance were \_\_\_\_\_.

*In this second paragraph, you may indicate any additional research and/or information obtained subsequent and pertinent to the hearing.*

As a result of the *(date)* meeting during which you responded to the adverse action of--(*suspension, demotion, etc.*), effective *(date)*, the following conclusions have been reached. The amended adverse action is *(suspension, demotion, etc.)* and will be effective *(date)* and concludes on *(date)*.

All other terms and conditions of the Adverse Action remain unchanged.

\_\_\_\_\_  
Name  
Skelly Officer

\_\_\_\_\_  
Date

**Note: Declaration of Service is required**

DEPARTMENT OF FORESTRY AND FIRE PROTECTION

REGION
Complete Name and address of whom is going to sign the action



PERSONAL & CONFIDENTIAL

Notice of Rejection During Probationary Period

Name of Employee
Social Security Number
Civil Service Classification
Department of Forestry and Fire Protection
Name of Unit
Work Address

SAMPLE

Home Address: Street
City, CA 00000

[If Peace Officer, show in home address space - PEACE OFFICER - CONFIDENTIAL]

I

NATURE OF ACTION

Pursuant to Section 19173 of the Government Code, you are hereby notified that you are Rejected During Probation from your position as a (civil service classification) effective at the close of your business on (effective date).

II

STATEMENT OF CAUSES

Pursuant to Government Code Section 19173, you are rejected during your probationary period for reasons relating to your qualifications, the good of the service, and/or failure to demonstrate merit, efficiency, fitness, and moral responsibility.

III

CURRENT ASSIGNMENT AND RELEVANT DUTIES AND RESPONSIBILITIES

You were appointed as a (classification) on (official date of appointment).

- A. You have spent your entire probationary period assigned to (*department/section etc.*)

**OR**

- A. During your probationary period you have had the following assignments for the dates indicated: (*list dates and assignments*).

**IV**

**STATEMENT OF ACTS OR OMISSIONS**

This rejection is being taken against you for the acts or omissions stated below.

**NOTE:** Refer to Section IV of the Adverse Action Sample (see Appendix F)

**V**

**PROBATIONARY REPORTS AND  
CORRECTIVE ACTIONS**

- A. Your first and second probationary reports specifically stated your deficiencies and areas in which you needed to improve.
- B. During your probationary period you have received timely corrective counseling on (*dates*). To facilitate your improvement, additional training and instruction was provided to you on (*date(s)*) in the area(s) of (*state the area(s)*).

**VI**

**MATERIALS AND DOCUMENTS**

Pursuant to State Personnel Board Rule 52.3, a copy of all materials and documents upon which this Notice of Rejection During Probation is based, accompany this Action with a cover sheet denoting each material/document.

Additionally, pursuant to Government Code Section 19574.1, you, or your designated representative, have the right to inspect any documents in the possession of, or under the control of, this Department which are relevant to this Action or which would constitute "relevant evidence" as defined by Evidence Code Section 210. If you have such a request pursuant to Government Code Section 19574.1, you should contact (**name**) at (**phone number**).

Work performance problems are sometime characteristic(s) of an outside problem. You are advised that the Department's Employee Assistance Program (EAP) is available to you.

## VII

### RIGHT TO RESPOND TO APPOINTING POWER

Pursuant to State Personnel Board Rule 52.3, you have the right to respond to this Notice of Rejection, either in writing or verbally, prior to **(effective date)**, the effective date of this Action. If you wish to respond verbally, please contact **(name)** at **(phone #)** to schedule your meeting so that it may take place prior to the effective date, **(effective date)**. You have the right to a representative at this meeting; however, at this stage of the proceedings you are not entitled to a formal hearing with examination of witnesses. You are entitled to a reasonable amount of State time to prepare your response to the charges/allegations. If you wish to respond in writing, please submit your response to **(name), (title)**, at **(address)**. Your written response should be mailed or hand-delivered to ensure receipt prior to **(effective date)**.

Whether you choose to respond verbally or in writing, the individual to whom you respond will be representing the appointing power and shall have the authority to amend, modify or revoke any or all of the foregoing allegations.

## VIII

### RIGHT OF APPEAL TO THE STATE PERSONNEL BOARD

Regardless of whether you choose to respond as detailed in Section VII above, pursuant to Government Code Section 19175 **(if BU8 use 19175.3)** you may appeal this Rejection to the State Personnel Board. Such an appeal must be filed in writing no later than fifteen (15) calendar days after the effective date of Rejection. The effective date of Rejection is **(effective date)**. This appeal should be sent to:

State Personnel Board  
Attention: Hearing Office  
P.O. Box 944201  
Sacramento, CA 94244-2010

You may also file your appeal in person with the State Personnel Board, which is located at 801 Capitol Mall in Sacramento, California. Business hours are 8 a.m. to 5 p.m. Monday through Friday, and closed holidays.

Your appeal shall be deemed to be a request for hearing or investigation as provided in Section 19175 (if BU 8 use 19175.3) of the Government Code. If you fail to file an appeal within the times specified, or withdraw your appeal, this Rejection shall be final.

Pursuant to Government Code Section 19175 (if BU8 use 19175.3), the State Personnel Board, or its authorized representative, may hold a hearing on your appeal of this Rejection. If a hearing is scheduled, you will be notified of the time and place of the hearing. You are responsible for notifying the State Personnel Board of any changes in your address that occur after the effective date of this Rejection.

## IX

### SEPARATE AND DISTINCT RIGHTS

Your right to respond prior to the effective date of this Rejection as detailed in Section VII, is separate and distinct from your formal State Personnel Board appeal rights as detailed in Section VIII above. You may exercise both rights as long as you do so within the time limits provided.

## X

### MANDATORY RIGHT OF RETURN TO FORMER POSITION

Pursuant to Government Code Section 19140.5 you have a mandatory right of return to your former position as a (classification) with (former department). The Department of Forestry and Fire Protection will notify your former department that you are being rejected; however, it is your responsibility to request reinstatement in writing within ten (10) working days after the effective date of this Rejection.

## OR

Pursuant to Government Code Section 19140.5 you have a mandatory right of return to your former position as a (classification) at the (*Name of Unit*) with the Department of Forestry and Fire Protection. Your former supervisor (or manager, unit chief, etc.) will be notified that you have mandatory return rights; however, it is your responsibility to request reinstatement in writing within ten (10) working days after the effective date of this Rejection.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Name  
Classification

**Materials/Documents Accompanying the Notice of Rejection During Probationary Period**

SAMPLE

To: *Employee's Name*

I have compiled the following copies of the materials/documents upon which the Notice of Rejection During Probationary Period is based:

1. *First Probationary Report*
2. *Letter from Corrective Interview (dated)*
3. *Second Probationary Report*

Dated: \_\_\_\_\_ by: \_\_\_\_\_

To be completed by receiving individual:

I have received a copy of this list accompanied by the materials/documents itemized above. If any of the above are omitted, or, in my opinion, unreadable, or any of the page calculations are not accurate, I will contact the appointing authority taking this Action to discuss the matter by \_\_\_\_\_.

Date List and Materials/Documents Received: \_\_\_\_\_

Received by: \_\_\_\_\_

*For subsequent pages, place in upper left-hand corner:*

*Employee's Name*  
MATERIALS/DOCUMENTS  
Page 2

USE LETTERHEAD OF UNIT

# SAMPLE

## Notice of Upheld Rejection During Probation

(Right to Respond to Appointing Power Hearing)

Personal and Confidential

*(The information below comes from page one of the Rejection During Probation)*

Name of Employee  
Social Security Number  
Civil Service Classification  
Department of Forestry and Fire Protection  
Ranger Unit  
Street  
City, CA 00000

Home Address: Street Address  
City, CA 00000

[If Peace Officer, show in home address space - PEACE OFFICER - CONFIDENTIAL]

On **(date)**, in Room **(No.)** at **(time)**, a Right to Respond to Appointing Power hearing was held concerning the Notice of Rejection During Probation served to you on **(date)**. In attendance were -----.

The information you provided during this hearing ----- **In this second paragraph, you may indicate any additional research and/or information obtained subsequent and pertinent to the hearing.**

As a result of the **(date)** hearing in which you responded to the Rejection During Probation, effective **(date)**, the following conclusions have been reached. The amended Rejection During Probation is appropriate and, therefore, stands. As indicated in the Notice of Rejection During Probation, this action is effective -----close of business..

\_\_\_\_\_  
Type Name  
Type Classification of Signer

Date \_\_\_\_\_

***Instructions: Declaration of Service; Mailing Procedures; Instructions for Server; Extension of Effective/Due Dates if Mailed***

The person preparing the service document(s) and giving instructions to the server, should ensure/be aware of, the following:

1. APPLICABLE TO ALL SERVICE DOCUMENTS ONCE COMPLETED EXCEPT FOR SIGNATURE AND DATES
  - a. Make one copy.
  - b. The original is served on the employee, either by personal service or by mailing, without any signature and dates.
  - c. The person who personally serves or does the service by mail then completes the copy with his or her signature and the date. This copy becomes the "original" and proof that the personal service or service by mail occurred. This "original" is sent to the State Personnel Board with a copy of the Notice. (Prior to forwarding to SPB, copies of this "original" should be made for attachment to the departmental copies of the Notice.)
  
2. DECLARATION OF PERSONAL SERVICE
  - a. The person performing the personal service must view the Notice, Materials/Documents, and List prior to these being placed in an envelope and sealed. (If the server does not view these, then he or she will only be able to testify, or complete an affidavit, that an envelope was served as he or she will have no knowledge of what was inside.)
  - b. The server is not required to review the materials/documents and the list with the employee.
  - c. The person performing the personal service should complete (date and sign) the Declaration and return it to the preparer as soon as possible.

INSTRUCTIONS:  
DECLARATIONS OF SERVICE;  
MAILING PROCEDURES, ETC.

3. DECLARATION OF SERVICE BY MAIL

- a. The business address is contained twice on this declaration.
- b. Service/mailing is by both registered and first class mail.
- c. Mailing is to the last known address of the employee, whether it is the employee's official address (the one given by the employee to the Human Resources Office) or one that is known to the supervisor as current (possibly the employee has not yet filed an official change of address).
- d. If the envelopes are returned marked "moved, no forwarding address." or some other notation indicating that delivery was not completed, a reasonable effort should be made immediately to ascertain the employee's current address where mail can be received. The "reasonable effort" should be documented. If a new address is identified, then a new Declaration of Service should be completed reflecting the new address, and service should again be attempted. The effective dates contained in the Notice should be adjusted as appropriate. The envelope(s) returned with the postal notation should be preserved and placed in the employee's "discipline" file. If no new address can be ascertained, then a copy of the envelope returned with the postal notation should be forwarded with the Notice and Declaration to the State Personnel Board.

4. EXTENSION OF EFFECTIVE/DUE DATES IF MAILED

- a. Code of Civil Procedure Section 1013 mandates that whenever service or notice is by mail, the "effective" or due date must be extended according to the location where the service or notice is to be mailed. This applies to "... any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of such document served by mail..." Regarding times to file an appeal, however, this statute states: "... the extension shall not apply to extend the time for filing ... notice of appeal." Therefore, only the effective date (Skelly period) is extended if mailed.
- b. Be sure to peruse your entire document and adjust all effective, due, or response dates accordingly.
- c. If the place of address is within the State of California, extend the date 5 calendar days.

INSTRUCTIONS:  
DECLARATIONS OF SERVICE;  
MAILING PROCEDURES; ETC.

- d. If the place of address is outside California but within the United States, extend the date 10 calendar days.
- e. If the place of address is outside the United States, extend the date 20 calendar days.
- f. If you are going to serve a Notice of Adverse Action, the effective date is 5 working days after personal service. If you serve the Notice by mail to an address in California, the effective date is 5 working days plus an additional 5 calendar days.

5. IDENTIFYING WHAT DOCUMENTS ARE BEING SERVED

- a. In completing a Declaration of Service ("Declaration") of any type, it is required that you identify what is being served with enough specificity that what documents were served will not be in dispute. If the documents have a specific title, use the title; if there is not title, identify the nature or purpose of the document. If the documents have "version" numbers or "revision" numbers or "amendment" numbers, be sure to include the appropriate number(s).
- b. By giving each document a number, you can use the Declaration to serve different documents (all relative to the same matter) on different people--or, as in the samples, you can delineate which documents were sent by one method of mailing/postage and which by another method.

**USE LETTERHEAD OF UNIT**

***Declaration of Personal Service***

SAMPLE

I, (Print Name of Server) \_\_\_\_\_, declare:

I am and was at the time of the service of the attached, described below, over the age of 18 years and not a party to the within action.

On (Date served) \_\_\_\_\_, I served originals and copies, as indicated below, on:

Name of Employee: \_\_\_\_\_

Classification: \_\_\_\_\_

- (1) Notice of Adverse Action, **OR** Rejection During Probationary Period, etc. (original)
- (2) Materials/Documents upon which the notice is based (copies)
- (3) A list denoting each of the materials/documents (copy)

Service was effected by:

\_\_\_\_\_ Personal Service. By personally delivering to and leaving with the person named above a copy at the address below:

**Address:** \_\_\_\_\_

**City, CA, Zip:** \_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, CA.

\_\_\_\_\_  
**(Signature of Person Serving)**

**USE LETTERHEAD OF UNIT**

***Declaration of Service by Mail***

SAMPLE

I  (Print Name of Server) , declare:

I am a citizen of the United States and employed in the County of \_\_\_\_\_, State of California. I am over the age of 18 years, and not a party to the within action. My business address is:

California Department of Forestry and Fire Protection,

Address: \_\_\_\_\_

City, CA, Zip: \_\_\_\_\_

On \_\_\_\_\_, I placed originals and copies, as indicated below, of the following:

- (1) Notice of Adverse Action **OR** Rejection During Probationary Period, etc. (original)
- (2) Materials/Documents upon which the notice is based (copies)
- (3) A list denoting each of the materials/documents (original to sign and return and copy to keep) in an envelope addressed as indicated below. I then sealed the envelope(s) and placed it/them for collection and mailing, in the course of ordinary business practice, with other correspondence of the California Department of Forestry and Fire Protection.

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, CA, Zip:** \_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed by me on:

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

***Distribution: Notice of Adverse Action/Rejection of Probation/etc.;***  
***Materials/Documents Notice Based on List of Materials/Documents;***  
***Declaration of Service; Skelly Response, etc.***

A. THE EMPLOYEE

1. The disciplined/rejected/etc. employee receives the original of the Notice, copies of the Materials/Documents, Copy of the List of Materials/Documents, original of the Skelly response, and a copy of any settlement agreement.
2. Except for the Skelly response and settlement agreement, all the above are served on the employee prior to the effective date of the Notice.
3. There is no requirement that the written Skelly response be served on the employee or mailed by registered mail; therefore, first class mailing is satisfactory.

B. THE DEPARTMENTAL LEGAL OFFICE

1. The Legal Office receives three copies of the Notice, the original and two copies of the Declaration of Service, and one copy of the Materials/Documents and list.
2. A transmittal memorandum should accompany the documents sent to the Legal Office.

C. THE STATE PERSONNEL BOARD

1. The Legal Office sends to the State Personnel Board (SPB) a copy of the Notice and the fully executed "original" Declaration of Service, after served but no later than 15 calendar days after. If service by mail was not completed due to no current address for the employee, a copy of the envelope returned with the notation from the Postal Service should also be forwarded to SPB. A transmittal memorandum should accompany the Notice and Declaration. If the employee could not be located, that fact should be stated in the transmittal memorandum.

DISTRIBUTION:

NOTICE OF ADVERSE ACTION/REJECTION/ETC.;  
MATERIALS/DOCUMENTS NOTICE BASED ON;  
LIST OF MATERIALS/DOCUMENTS;  
DECLARATION OF SERVICE;  
SKELLY RESPONSE; ETC.

2. The Legal Office sends SPB a copy of the Skelly hearing results and the original Declaration of Service.
3. SPB does **not** receive a copy of the materials/documents and list.

D. CDF LABOR RELATIONS OFFICE

1. The Legal Office, upon request from the Labor Relations Office will send a copy of the Notice and supporting documentation to their office for the Discipline Grievance process outlined in the appropriate Bargaining Unit contract.

E. THE HUMAN RESOURCES/PERSONNEL OFFICE WHERE THE EMPLOYEE'S OFFICIAL PERSONNEL FILE IS LOCATED

1. A copy of the Notice only should be sent to the Personnel Specialist at the employee's Unit under confidential seal.
2. A transmittal memorandum should accompany the Notice and Declaration requesting that the Notice be processed (suspension, salary reduction, demotion, etc.) and then placed in the employee's Official Personnel File. If the Notice is an Official Letter of Reprimand or if it has been agreed that the Notice will be removed from the Official Personnel File on a specific date, then this date of removal should be noted in the transmittal memorandum. Official Letters of Reprimand, by statute, are to be removed no later than three years from the effective date.
3. The forwarding of the above should be in a confidential manner.

F. OTHER

1. One copy of all documents should be sent to the Region Office.

USE LETTERHEAD OF UNIT

**Letter for Denial of Special In-Grade Salary Adjustment or Merit Salary Adjustment**

SAMPLE

Date

Name of Employee

SSN:

Classification

Department of Forestry and Fire Protection

Work Address

Home Address:

[If Peace Officer show in home address space - PEACE OFFICER - CONFIDENTIAL]

Your job performance does not meet the standards of quality and quantity expected at this stage of experience in your position. I have therefore recommended that your special in-grade salary increase effective with the (month) (year) pay period not be granted.

Specific examples of your unsatisfactory performance are:

*Appeal rights may depend upon the contract language. Please refer to the individual employee's contract for the appropriate appeal rights.*

*Granting of a special in-grade salary adjustment may be reconsidered at any time but must be reconsidered at the end of six months.*

(Supervisor's signature)

Name

Classification

### ***Adverse Action Submittal Checklist***

Upon deciding to pursue formal adverse action against an employee for disciplinary reasons the Unit Chief, or his or her designee, should:

- Notify the Region Chief Deputy Director of the nature of the action.

Reports, documents, and/or materials represented in the checklist below should be assembled and forwarded to the Region Administrative Officer with **CONFIDENTIAL AND PERSONAL** designation:

- One hard copy of the action, to include:
  1. Nature of adverse action, including recommended penalty and date action is to be implemented
  2. Statement of causes, including all applicable Government code violations
  3. Current assignment and relevant duties and responsibilities, including employee history, length of service, relevant duties and training history
  4. Statements of acts or omissions relevant to the adverse action.
  5. NOTE: If action involves dismissal or “cause w” use Sacramento’s address for letterhead and set up signature block for Director.
- Position Duty Statement (PO-199) for employee.
- Total 12-line PAR history of employee. (Not from PACMAN)
- Completed form, “MATERIALS/DOCUMENTS ACCOMPANYING THE NOTICE OF ADVERSE ACTION.”
- Three legible copies of all materials and documents upon which the action is based. Documentation must be suitable for subsequent photocopying. Documentation must include employee’s response to allegations obtained by interviewing the employee.
- Three, color prints of any photographs used to support the action. Scanned reproduction of color prints may be used.
- Diskette containing, at minimum, proposed adverse action format and form “MATERIALS/DOCUMENTS ACCOMPANYING THE NOTICE OF ADVERSE ACTION.”

Standard adverse action formats developed in Microsoft Word must use Arial 12 font. These formats may be obtained by contacting the Region Administrative Officer or your Unit Administrative Officer.



***A Guide to Firefighter I Termination with Cause***

## Overview

This Guide will assist station supervisors with progressive discipline up to and including a termination with cause. Failure of a supervisor to follow the correct procedures can cause needless extra work and follow-up for the supervisor as well as the administration and the Department's legal staff.

It is very important, when considering termination with cause of a Firefighter I, that you keep your Battalion Chief (BC) "in the loop" from the onset of the issue(s). The BC can assist you in ways to help you help your employee succeed. The BC will keep the Administrative Officer and/or Unit Chief informed throughout the process.

When progressive discipline fails, it is time to inform the Firefighter I of the termination with cause and give the employee his or her rights. This has to be done in writing. Only the Unit Chief or designee has the authority to sign the termination with cause letter to the employee. In the Northern Region only the Unit Chief has authority to terminate with cause.

There are various types of separations that occur with Firefighter Is:

**Voluntary Resignation** - Voluntary Resignation occurs when a Firefighter I decides to go back to school, goes to other employment, etc.

**Separation without cause** - Separation without cause may occur when CDF is downsizing at the end of Fire Season; the department has a need to layoff firefighters due to budget constraints; etc.

**Termination with cause** - Termination "**With Cause**" can occur when a supervisor determines and has documented that performance, behavior, or other deficiencies cannot be corrected, even though the supervisor has worked with the employee to improve his or her deficiencies.

It has been assumed that a Firefighter I, as a seasonal employee, has no rights when terminated with cause. Although seasonal employees do not have the same rights as permanent civil service employees, there are still procedures that must be followed when termination with cause becomes necessary.

**Recommendation "not to rehire"** - A recommendation not to rehire can occur when a supervisor has set appropriate standards for acceptable performance and the employee has not been able to reach those standards. There must be detailed documentation of the work-related reasons and corrective counseling sessions that the supervisor has also documented in detail.

Employees not being recommended for rehire must be counseled/informed verbally prior to separation along with detailed documentation. Those who receive a recommendation "not to rehire" have the right to appeal that decision to their BC **in writing** within 10 calendar days of receipt of the performance evaluation, CDF Form-212. The BC **shall respond in writing** to the appeal within 10 calendar days of receipt of the appeal. If the employee does not agree with the BC's decision, the employee may re-file the appeal with the Division Chief (DC) **in writing** within

10 calendar days of the BC's response. If no response is received from the BC within the 10 calendar days, the employee may re-file with the DC within 20 calendar days of the original request. The DC **shall respond in writing** within 10 calendar days.

### **Procedures for Termination With Cause**

#### **DOCUMENT! DOCUMENT! DOCUMENT! DOCUMENT! DOCUMENT! DOCUMENT!**

**Do the documentation.** Whether an employee is being terminated for one "major" incident or a series of smaller incidents, documentation must be done and it must be timely. Supervisors need to be fair and tell employees what they can do to improve.

When a supervisor is terminating a Firefighter I for one major incident the supervisor should document what happened. Be able to complete the questions--Who, What, When, Where, Why, and How, if applicable. Be specific by documenting who did what; date/ time; where it happened; what happened; who else was there; what were the circumstances; why and how.

When a Firefighter I has shown long-term performance deficiencies, the supervisor should discuss and document the performance deficiencies in a memo similar to a documented corrective counseling memo. (See sample attachment) Again, the supervisor needs to identify specific performance problems, dates and times, and how the Firefighter I can improve the performance. The department needs to be able to show what we are doing to help the employee succeed.

Once a supervisor makes the decision to terminate a seasonal Firefighter I, the supervisor writes the letter, which lists the specific reasons the employee is being terminated with cause. **For the Northern Region a termination with cause letter has to be signed by the Unit Chief (or designee).** Be sure to put the date the termination is effective. Due to a side letter agreement between CDF and the CDF Firefighters, there is new language for appeal rights of a Firefighter I who is terminated with cause. (See Sample letter attached). Be sure to include this language in all termination with cause letters to Firefighter Is. This is an opportunity for the employee to discuss the termination with the person who has the authority to render a final decision.

The employee also has the right to appeal the "with cause" portion to the State Personnel Board (SPB). The SPB will make a determination as to whether the appeal was filed timely and if the nature of the charge(s) entitles the employee to a hearing. The only remedy the SPB can provide in the event of a successful appeal is the removal of the "with cause" designation from the record. The SPB does not look favorably upon supervisors who do not give the employee his or her rights. The sample letter attached has the language you should use in your letter of termination.

Once a termination letter has been served, a copy of the letter, the original Declaration of Service along with supporting documentation, including the exit interview, will be forwarded to the appropriate Administrative Officer.

## Grounds for Terminating Firefighter I "With Cause"

Below is a list of possible reasons for terminating Firefighter I. This list is by no means complete and is only meant to provide some examples to help you determine when these actions might be necessary. In all cases, you must be fair in your assessment of the individual, and your discipline must be applied equally to all of your employees. **Do not use government code causes** when writing a termination with cause for a Firefighter I employee.

1. When you have an employee who regularly challenges you when given assignments, it may become a safety hazard in an emergency situation. If employee does not follow instructions. Employee unwilling to submit to authority.
2. Lack of physical ability to do the job: When you have an employee who is physically unable to do the job, you need to allow them a fair amount of time to meet the standard. Normally this will be a one-month time period and can be extended if you see the employee is making a concerted effort. It will also require you to work with the employee to establish a specific plan, to address the employee's area(s) of weakness. A good source for information on developing a plan is the Unit Physical Fitness Coordinator(s).
3. When the crew has to continually pick up after the employee, the employee disappears when there is work to be done, or when the employee continually asks others to assist or do the job: Employee does not have respect or pride for the station or equipment, or shows no motivation, despite your best efforts to teach the employee his responsibilities, and drags down the whole crew.
4. Multiple instances of violating safety policies: Failure to wear seat belt in moving vehicle, backing the engine with no back-up person, not wearing goggles while operating a chainsaw, etc.
5. The use of State equipment without authorization or longer than allowed at the station, after repeatedly being reprimanded, which can include telephone usage, computer usage, etc.
6. Use of inappropriate language or behavior after repeated warnings (in writing).
7. Failure to report to work on the days and/or times scheduled. The employee who does not report to work in a timely manner is not performing satisfactory work in that he or she is failing to meet one of the primary responsibilities as an employee.

# USE UNIT LETTERHEAD

## Corrective Counseling Memo

DATE: June 18, 2000  
TO: Firefighter I Steve Smith  
FROM: Captain William Wilder

SAMPLE

This memo is a follow-up of the corrective-counseling meeting we had yesterday, June 17, 2000 at which time I informed you that your performance to date has been unacceptable for the following reasons:

On 6/5/00 at 0700, you were given specific verbal instructions not to operate any of the engines without first being cleared and given approval. At 0830 on that date you were observed by myself pulling engine 2661 out of the garage. You are not to operate any State automotive equipment until you have been given instructions to do so by a station supervisor.

On 6/10/00 at 1045 you were given instructions to rake leaves at the rear of the Barracks building and to have this done by noon. When I checked on your progress at 1200, the leaves had not been raked and you were loitering in the garage area, talking to other firefighters. In the future, when given specific instructions, carry out the assignment in a timely manner, as instructed.

On 6/15/00 I observed you once again operating one of the Engines assigned to the station without prior approval. When I asked you about it, you stated that FAE Don Slurry asked you to move the engine. When I asked FAE Slurry if this was the case, he stated that it was not. As I previously discussed with you on 6/5/00, you are not to operate State automotive equipment without being cleared to do so. Your dishonesty about this incident is intolerable and cannot continue.

You need to improve in these areas. If these issues are not settled satisfactorily, I will recommend this record become part of a termination package. If you wish to write a rebuttal to this memo, I will attach it to the copy in my working file.

Bill Wilder  
Captain William Wilder

Steve Smith  
Firefighter I Steve Smith

# USE UNIT LETTERHEAD

Firefighter (**Name**)  
Home Address

Date

SAMPLE

You are hereby notified that you are being terminated with cause from your seasonal employment as a Fire Fighter I with the California Department of Forestry and Fire Protection effective (**date**).

The reasons for termination with cause is:

1. You have been absent from your duty station since (date).
2. You have not made any contact with your immediate supervisor, (class/name) since (date) and your absence has been without knowledge or approval.
3. As of this date, your unapproved absence has totaled **xx** duty days. You were told when you reported to work what your shift was, where to report and whom to contact should something come up where you would not be able to make it to work. Your absence has caused other firefighters to give up their days off to cover your absence. The department also had to spend overtime dollars to cover your absence.

If you would like the opportunity to meet with your Unit Chief (or his or her designee), you have ten (10) calendar days following the date you receive this notice to contact Chief (**Name, address, phone number**) to request a meeting.

The Unit Chief (or designee) will schedule a meeting with you and your representative within seven (7) calendar days following your request. At this meeting you will be given the opportunity to present the reasons why you should not have been terminated. The Unit Chief (or designee) shall render a final decision regarding the termination with cause within 30 calendar days following the date of the meeting.

As a temporary employee, you may appeal this termination with cause in writing to the **State Personnel Board, 801 Capitol Mall, Sacramento, California 95814** within 30 calendar days of the effective date of this termination. The Board will make a determination as to whether the nature of the charge(s) entitles you to a hearing. The only remedy that can be provided in the event of a successful appeal of a termination with cause is the removal of the 'with cause' designation from your record. You will not be entitled to return to your former position or classification.

\_\_\_\_\_  
Unit Chief (or designee)

cc: Region

# USE UNIT LETTERHEAD

Date

Firefighter (Name)

Complete Address

SAMPLE

You are hereby notified that you are being terminated with cause from your seasonal employment as a Fire Fighter I with the California Department of Forestry and Fire Protection effective **(date)**.

The reasons for termination with cause is:

1. Your performance deficiencies while at xxxxxxx station have been substandard and are in need of improvement. Since (date) you have displayed difficulty in performing fire ground tasks without supervision even though you have been given additional training by FC xxxxxxxx.
2. On (date) you were dispatched to Incident xxxxxx. While there, you appeared lethargic, even though structure protection activities were being performed around you. Around 2:00 p.m. you were found asleep by FAE xxxxxx in the back of Engine xxxx. Your safety as well as the others on your crew could have been placed in jeopardy.
3. Your attitude is disrespectful towards your co-workers. You leave station hoses unrolled apparently hoping that someone else will come along and roll it. You spill food and juice in the kitchen without taking the time to clean up the mess. FAE xxxxxx found cereal left out by you and cups half full of juice on (date and date). FAE xxxxx talked with you on (date) and (date) about the need for you to clean up after yourself. You do not do your share of the work in general and the crew resents it.

If you would like the opportunity to meet with your Unit Chief (or his or her designee), you have ten (10) calendar days following the date you receive this notice to contact Chief **(Name, address, phone number)** to request a meeting.

The Unit Chief (or designee) will schedule a meeting with you and your representative within seven (7) calendar days following your request. At this meeting you will be given the opportunity to present the reasons why you should not have been terminated. The Unit Chief (or designee) shall render a final decision regarding the termination with cause within 30 calendar days following the date of the meeting.

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Firefighter xxxxxxxxxxxx

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Unit Chief

cc: Region