

# DEPARTMENT POLICY AND PROCEDURES FOR CITIZEN COMPLAINTS

1085

(No. 50 October 1998)

It shall be the policy of the Department of Forestry and Fire Protection (CAL FIRE) to accept all citizen complaints alleging misconduct on the part of department personnel. Investigations of such complaints shall be conducted according to Section 1085.6. Investigative procedures for peace/public officers are outlined starting with Section 1085.7. Investigative procedures for non-peace/public officer employees are at the discretion of the administrative unit chief. The objectives of such investigations are:

- A. **The protection of the public:** The public has the right to expect efficient, fair and impartial service. Therefore, any alleged misconduct by Department personnel must be thoroughly investigated and properly adjudicated in order to assure the maintenance of these qualities while providing the highest level of service to the public.
- B. **The protection of personnel:** Department employees must be protected against false allegations of misconduct. This is accomplished with a thorough and uniform investigation process.
- C. **The protection of the Department:** The Department maintains public trust and a favorable public attitude and is frequently evaluated and judged by the conduct of individual personnel. It is imperative that the entire organization not be subjected to public censure because of misconduct or the appearance of misconduct by a few of its personnel.

**NOTE:** The following exhibits pertain to this handbook section:

[LE-95 Citizen Complaint Form](#)

[LE-95A Summary of Citizen Complaint Process](#)

[LE-95B Citizen Complaint Log](#)

[LE-95C Annual Report of Citizens' Complaints](#)

Initial Contact/Investigation Required Letter ([see exhibit](#))

Sample - Complainant Cover Letter ([see exhibit](#))

Misconduct Allegation Letter

Sample - Initial Notification to Employee ([see exhibit](#))

Citizen Complaint -- Witness Statement (form)

Sample - Final Letter to Complainant ([see exhibit](#))

Findings of Misconduct Allegations

Sample - Final Notification of Findings to Employee ([see exhibit](#))

Related Sections of Law ([see exhibit](#))

Sample - Witness Cover Letter ([see exhibit](#))

## **DEFINITIONS**

(No. 50 October 1998)

**1085.1**

Administrative Unit Chief: The chief officer in charge of an administrative unit. In Sacramento, the director's office; in region office, the region chief; in units, the unit chief; at the CAL FIRE Academy, the Academy administrator.

### **Complaint Categories:**

#### **Category 1:**

A complaint that alleges criminal wrongdoing which constitutes a felony violation of law.

#### **Category 2:**

A complaint that alleges criminal wrongdoing which constitutes a misdemeanor violation of law.

#### **Category 3:**

A complaint that alleges noncriminal wrongdoing including, but not limited to, the violation of any rule, procedure, policy or lawful order of CAL FIRE, or the negligence in the performance of duty.

#### **Citizen Complaint:**

A complaint is an allegation of misconduct made by any person against any individual associated with CAL FIRE and described under the definition of personnel. A complaint may be an oral or written expression of misconduct and is filed with the Department.

#### **Confidential Informant:**

A person who, by virtue of his/her position in the community or nature of profession, must remain unknown to the general evaluators of an investigation. This person must be well known to the law enforcement segment of the unit or region and must have a proven reliability as to the authenticity of the information or evidence provided. For citizen complaint purposes, information and evidence provided by a confidential informant should be substantiated by other sources of data. Every effort to maintain the informant's confidentiality must be made.

**Disposition:**

The status assigned to a citizen complaint of misconduct. The status is assigned at the completion of a case by the administrative unit chief responsible for the citizen complaint investigation process. Only the following disposition categories will be used:

- A. Not Sustained, Unfounded: The disposition assigned to a complaint where the allegation is false or not supported by the evidence.
- B. Not Sustained, Inconclusive: The disposition assigned to a complaint where there is insufficient evidence or where there are insufficient facts to prove or disprove the allegation made in the complaint.
- C. Not Sustained, Exonerated: The disposition assigned to a complaint where the alleged act or omission did occur but was lawful and proper.
- D. Sustained: The disposition assigned to a complaint where the investigation disclosed the alleged act or omission did occur and constitutes misconduct.

**Finding(s)/Conclusion(s):**

Results of the investigation including the observations and conclusions of the investigating officer based on facts brought forth after a fair and impartial investigation.

**Internal Affairs Investigator:**

The employee assigned by the administrative unit chief to investigate an individual complaint. The investigator should be senior in rank to the person who is the object of the investigation.

This may and usually would be the employee's direct supervisor. However, based on the seriousness of the complaint, the unit administrator may assign or request someone other than the employee's immediate supervisor to conduct the investigation.

**Misconduct:**

- A. The commission of a criminal offense;
- B. The violation of any rule, procedure, policy or lawful order of the department;
- C. Negligence in the performance of duty.

**Person:**

- A. A private individual.
- B. An employee of the Department of Forestry and Fire Protection (only for those occurrences or conditions not covered by departmental or employee bargaining agreement grievance procedures).
- C. An employee of any other private or public organization.

**Personnel:**

All employees of CAL FIRE, either peace officer/public officer or civilian, including volunteers, volunteers in prevention, paid call firefighters, volunteer fire wardens or any other individual associated with CAL FIRE whose action or conduct may bring discredit to the department.

**AVAILABILITY OF COMPLAINT PROCESS  
POLICY AND PROCEDURE**

**1085.2**

(No. 50 October 1998)

In accordance with Penal Code Section 832.5, a written description of the procedure for handling citizen complaints must be made available to the public. Citizens shall therefore be provided, upon request, a copy of LE-95a, Summary of Citizen Complaint Process.

**AUTHORITY FOR COMPLAINT INVESTIGATIONS**

**1085.3**

(No. 50 October 1998)

The Director's office and each region chief, unit chief, and CAL FIRE Academy administrator have the authority and responsibility to investigate citizen complaints against department employees working in their respective administrative units.

The authority for investigation of a citizen complaint lies with the administrative unit chief in which the alleged misconduct occurred. Region chiefs may assign personnel of their choice to investigate any complaint within their respective region.

If a complaint is received alleging misconduct in another administrative unit, it is the responsibility of the chief of the unit receiving the complaint to forward the information to the appropriate authority. If the citizen complaint is against a Departmental peace or public officer, as defined in Section 1085.6, the complaint will be logged in the Citizen Complaint Log (LE-95b) of the unit in which the alleged misconduct occurred. (See Section 1085.8.1)

Investigation of citizen complaints which originate while an employee is in training at the Academy will be the responsibility of the Academy administrator.

## **ACCEPTANCE OF COMPLAINTS**

**1085.4**

(No. 50 October 1998)

All citizen complaints, whether verbal or written, in-person or by telephone, or where the complainant is known or anonymous shall be documented by members of this Department. Citizens' complaints pertaining to personnel of this Department shall be accepted at any Department facility. Complaints shall be referred to the Department supervisor in charge of the facility. If a supervisor is not available, sufficient information shall be taken to allow the supervisor to follow-up on the complaint at the earliest opportunity.

## **OFF-DUTY CONDUCT COMPLAINTS**

**1085.4.1**

(No. 50 October 1998)

Citizen complaints arising from an employee's off-duty conduct or actions shall be closely scrutinized by the administrative unit chief. If the allegations meet any of the following criteria the complaint shall be investigated in accordance with Department policy:

1. The employee's alleged actions or conduct involve the Department or the employee interjected the Department into his/her actions or conduct. The fact that the complainant is simply aware that a person is employed by the Department is not sufficient to provide nexus to the Department.
2. The employee's alleged conduct is of an illegal or immoral nature, or constitutes a department policy violation.
3. The employee's alleged actions or conduct have brought discredit to the Department or are of a highly questionable nature.

## **COMPLAINT PROCEDURE**

**1085.5**

(No. 50 October 1998)

The following procedure will be followed in responding to public complaints:

1. Any citizen requesting information on the citizen complaint process shall be provided an LE-95a which explains the Department's citizen complaint policy.
2. Upon initial receipt of a citizen complaint, whether written or verbal, in person or by telephone, where the complainant is known or anonymous, an LE-95a explaining the citizen complaint policy shall be provided to the complainant if the complainant so desires.

3. All complaints alleging misconduct on the part of a department employee shall require the completion of form LE-95 (Complaint Report). Whenever possible the complainant shall complete the LE-95. Written complaints shall be attached to a completed LE-95. If the written complaint was received in the mail, an attempt to provide the complainant with an LE-95 and an LE-95a should be made.
4. If the complaint is received from an anonymous person, the receiving employee shall inform the complainant of the availability of formal complaint procedures. Additionally, the complainant shall be advised that although the complaint will be investigated, the statement of the anonymous complainant will not be used as evidence under these procedures because the information would constitute hearsay.

The employee receiving an anonymous complaint shall complete an LE-95 as completely as possible. An effort must be made to obtain sufficient information to allow the determination of the charges, since later contact with the complainant will normally be impossible. The employee receiving the complaint shall indicate "anonymous complaint" in the signature block provided for the complainant.
5. If at the time of filing a citizen complaint the complaint can be resolved to the satisfaction of all parties, the resolution shall be noted on the Citizen Complaint Report, LE-95. Although the citizen complaint has been resolved, it may still be reportable as outlined by Penal Code Section 832.5, and must be reported to the administrative unit chief or his/her designee for completion of the Citizen Complaint Log LE-95b, if applicable.
6. All citizen complaints alleging misconduct on the part of a department employee will be referred directly to the administrative unit chief or his/her appointed designee.

## **DETERMINATION OF EMPLOYEE PEACE/PUBLIC OFFICER STATUS**

**1085.6**

(No. 50 October 1998)

Upon receiving a citizen's complaint, the administrative unit chief shall determine the peace/public officer versus non-peace/public officer status of the employee(s) named in the complaint.

For each employee found to be designated as a peace or public officer for the California Department of Forestry and Fire Protection, under Penal Code Sections 830.2, 830.3, 830.37, 830.6, and/or 830.7, the procedures outlined in this handbook starting with Section 1085.7 shall be followed.

For complaints against non-peace/public officer designated employees, the procedures outlined in this handbook starting with Section 1085.7 are recommended, but not required. The administrative unit chief may modify the procedures to meet local needs. If the procedures are incorporated for a non-peace/public officer designated employee, the recording and reporting requirements of 1085.8.1 must not be included to avoid misreporting of annual citizen's complaints to the Department of Justice.

## **PROCEDURES FOR COMPLAINTS AGAINST PEACE/PUBLIC OFFICERS**

**1085.7**

(No. 50 October 1998)

This procedure for the investigation of citizen complaints complies with the requirements set forth in Section 832.5 of the California Penal Code. This section states:

"(a) Each department or agency in this state which employs peace officers shall establish a procedure to investigate citizens' complaints against the personnel of such departments or agencies, and shall make a written description of the procedure available to the public."

"(b) Complaints and any reports or findings relating thereto shall be retained for a period of at least five years."

## **RETENTION OF COMPLAINTS AND INVESTIGATIONS**

**1085.8**

(No. 50 October 1998)

All records of citizen complaints and related investigation documents shall be retained at the originating administrative unit for no less than 5 years.

Records and files that are subject to civil litigation or criminal proceedings shall be retained until the final adjudication of the matter.

## **RESPONSIBILITY TO MAINTAIN RECORDS**

**1085.8.1**

(No. 50 October 1998)

A separate Citizen Complaint Log (LE-95b) will be established at the Director's office, at each region office, unit headquarters and the CAL FIRE Academy. The Director, region chiefs, unit chiefs, and Academy administrator are responsible for logs being properly maintained and confidentially secure.

Each administrative unit chief or their designee shall submit, through their appropriate channels, to the Director's office by January 15 of each year a compiled report of citizen complaints for the previous calendar year. The Director's office will forward these reports to the Deputy Chief - Law Enforcement for final compilation and submission to the Department of Justice.

The Deputy Chief - Law Enforcement will submit an annual report to the Department of Justice as outlined in Penal Code Section 13012.

## **CUSTODIAN OF RECORDS**

**1085.8.2**

(No. 50 October 1998)

The Director's office, each region, unit, and the CAL FIRE Academy shall maintain separate personnel complaint investigation files. These files shall be under the care and custodianship of the Director or his/her designee, region chiefs or their designee, unit chiefs or their designee and the CAL FIRE Academy administrator or his/her designee.

Records and files are to be retained by the originating investigating unit and are not to be forwarded to another administrative unit when an employee who was the subject of the investigation transfers or promotes.

## **CONFIDENTIALITY OF INVESTIGATIONS**

**1085.8.3**

(No. 50 October 1998)

All personnel complaint investigations are confidential in accordance with Penal Code Section 832.7, and are discoverable only pursuant to Evidence Code Sections 1043 and 1046. All motions for discovery and issues regarding discovery of records covered by Penal Code Section 832.7 shall be forwarded to the deputy chief of Law Enforcement for appropriate action.

### **Departmental Employees:**

Complaint investigations shall not be released to any Department employees except for those employees involved in the administration of the complaint process or those employees who are assigned to investigate the complaint. The release of investigations to departmental employees who are the subject of the investigation shall only be done when coordinated with the regional chief, or the deputy chief of law enforcement when the investigation involves Sacramento Headquarters staff.

## Personnel Files:

Complaint investigations are not considered part of or to be included in an employees' personnel file. Investigative documents pertaining to complaints of misconduct will not be placed into employees' personnel file. Information documenting adverse actions that were taken as a result of an investigation of a citizen complaint that was found to be "sustained" and the appropriate findings/conclusions of the investigation will be placed in the affected employee's personnel file in accordance with appropriate adverse action policies.

## TIMELY COMPLETION OF INVESTIGATION

1085.8.4

(No. 50 October 1998)

Citizen complaint investigations shall be completed within 30 calendar days of the acceptance of the complaint. With appropriate showing of cause, the administrative unit chief may extend the investigation deadline not to exceed an additional 30 days.

## PROCEDURES FOR COMPLAINTS AGAINST PEACE/PUBLIC OFFICERS

1085.9

(No. 50 October 1998)

- A. After meeting the requirements of Sections 1085 through 1085.6 and determining the employee is designated a peace or public officer the administrative unit chief or his/her designee shall record the complaint on the Citizen Complaint log, LE-95b. The administrative unit chief will notify their respective supervisor and the deputy chief of Law Enforcement of the complaint prior to the end of the next scheduled working day.
- B. Specific instructions for completion of the Citizen Complaint Log are as follows:
  1. **Citizen Complaint Number:** This number consists of: 2 digits indicating the year; 3 alpha characters indicating the administrative unit; and 3 digits of consecutive sequence numbering the complaint. (i.e. 90-FKU-156)
  2. **Date/Time Received:** Enter the date and time the complaint was initially received.
  3. **Person Accepting Complaint:** Enter the person's name who initially accepted the complaint.
  4. **Employee Information:** If known, enter the name and rank of the employee implicated in the complaint.
  5. **Complaint Category:** Check the appropriate category of complaint.

6. **Disposition:** Upon completion of the investigation, indicate the appropriate disposition (see 1085.1 DEFINITIONS - Disposition).
  7. **Remarks:** To be used at the discretion of the administrative unit chief.
- C. When, during the course of the citizen complaint investigation, evidence of additional unrelated allegations of misconduct are discovered, they can be addressed as part of the initial complaint investigation. If the additional allegations of misconduct are of a more severe nature and would complicate the original investigation, the new allegations of misconduct may be resolved with a separate and independent investigation.
- D. Each complaint will be classified according to the following categories. The complaint categories are arranged to match the reporting procedures outlined by Penal Code Section 13012(d).
1. **Category 1:** A complaint that alleges criminal wrongdoing which constitutes a felony violation of law.
  2. **Category 2:** A complaint that alleges criminal wrongdoing which constitutes a misdemeanor violation of law.
  3. **Category 3:** A complaint that alleged non-criminal wrongdoing including but not limited to the violation of any rule, procedure, policy or lawful order of the Department, or the negligence in the performance of duty.
- If the citizen complaint alleges several acts of misconduct which are attributed to one event, the citizen complaint shall be classified according to the most serious allegation.
- E. The administrative unit chief or his/her appointed designee shall review the complaint and assign appropriate personnel to investigate the allegation of misconduct.

## **INTERNAL AFFAIRS INVESTIGATORS**

**1085.10**

(No. 50 October 1998)

Internal affairs investigators are charged with determining the validity of the complaint, establishing facts, and are equally interested in establishing innocence as well as guilt.

To successfully complete an unbiased investigation, internal affairs investigators are required to abide by all laws, policies and procedures as they apply to employee rights and rules of evidence. Internal affairs investigators are authorized to interview any employee and obtain written statements and gain access to other relevant information in regard to an ongoing investigation.

Internal affairs investigators clearly have the responsibility and authority to conduct thorough and impartial investigations of any of the following matters, and to make appropriate reports:

- A. Any allegation or complaint of misconduct made by any person against the Department or any of its personnel.
- B. All allegations of excessive force, all cases having an apparent potential for civil litigation (excluding minor traffic accidents), all questions of moral turpitude, and other investigations as directed by the administrative unit chief.

## **CITIZEN COMPLAINT INVESTIGATION REPORT**

**1085.11**

(No. 50 October 1998)

Upon completion of the investigation, the internal affairs investigator will prepare a complete written report in the Department's case report writing format. Based on the type of complaint, this may be either the normal Case Reporting Writing Format or the EEO Investigation Format. The completed report shall be delivered to the administrative unit chief responsible for the investigation. The completed investigation report is to include but not is limited to:

- A. The original complaint and all subsequent statements of the reporting party.
- B. Statements of all witnesses.
- C. Descriptions and analysis of all evidence.
- D. Statements of all involved personnel and witnesses.
- E. All other related reports.
- F. Statement of facts as determined by the internal affairs investigator(s).
- G. Findings, Opinions and Conclusions. The investigator shall state his opinions and conclusions and the reason for the findings in connection with each allegation investigated.

## **CLOSING COMPLETED INVESTIGATIONS: EMPLOYEE NOTIFICATION**

**1085.12**

(No. 50 October 1998)

The administrative unit chief shall ensure that all completed citizen complaint investigations are discussed with the employee subject to the complaint. The employee shall be afforded all rights as designated in the Government Code and the Peace Officer Procedural Bill of Rights in regards to reviewing the complaint or the final report. If the name or other reference to a confidential informant, or data classified by the Information Practices Act as personal or confidential is included in the completed report, that information will not be disclosed.

After reviewing the complaint investigation with the employee, the administrative unit chief shall provide the employee with a written closing notification. The closing notification will list each allegation, the finding, and disposition. The employee shall be furnished a copy of the closing notification. If the disposition of any allegation addressed by the investigation is "sustained," the administrative unit chief shall ensure that the written closing notification includes the reason the allegation was sustained and appropriate corrective action.

If the disposition of any allegation addressed by the investigation is "sustained," the written closing notification will also contain an advisement informing the employee that a copy of the closing notification will be placed in his or her personnel file, and of the employee's right to respond in accordance with Government Code Section 3306 and Government Code Section 19574. The employee shall be requested to sign the closing notification. Should the employee refuse to sign the notification, it should be noted on the correspondence and signed by a supervisor and a witness.

If "sustained" allegations warrant adverse action against an employee, the written closing notification shall indicate that an adverse action is being processed. Proper procedures for handling adverse actions as outlined in Personnel Handbook [Section 1090](#) shall be followed.

If "sustained" allegations warrant a criminal complaint, all appropriate constitutional protections will be afforded to the employee.

Corrective action may be in the form of employee counseling, written directive, or adverse action. In addition, the correspondence shall include any suggested methods for the proper handling of similar situations in the future.

## **CLOSING INVESTIGATIONS: COMPLAINANT NOTIFICATION**

**1085.13**

(No. 50 October 1998)

When a citizen complaint investigation is completed, the administrative unit chief shall notify the complainant that the investigation is completed. In some instances where the administrative unit chief feels contact with the complainant would not be in the best interest of the State, contact is at the discretion of the administrative unit chief. In those instances where the complainant is not contacted, the administrative unit chief shall place a memo in the complaint investigation file explaining why contact was not made. The closing notification to the complainant shall include the following:

1. A brief paragraph discussing each of the complainant's specific allegations.
2. Advise the complainant that an internal investigation was conducted. State that the findings of the investigation cannot be released by legal statute.

## **EXECUTIVE RESPONSE**

**1085.14**

(No. 50 October 1998)

In those instances where protocol mandates the complainant be contacted by the Director, Agency Secretary, Legislator, or Governor, the Director's office shall prepare the final reply. The administrative unit chief responsible for the completed investigation shall coordinate the handling of the reply with the Director's office.

## **PROCEDURE FOR ANNUAL REPORT OF CITIZEN COMPLAINTS AGAINST PEACE/PUBLIC OFFICERS**

**1085.15**

(No. 50 October 1998)

The Department is required to make an annual report to the California Department of Justice on the number and type of citizen complaints received.

Each administrative unit chief or their designee shall submit, through their appropriate channels, to the Director's office by January 15 of each year a compiled report of citizen complaints for the previous calendar year. The Director's office will forward these reports to the Deputy Chief - Law Enforcement for final compilation and submission to the Department of Justice.

The report shall be completed and submitted according to instructions on Department form LE-95c, Annual Report of Citizen Complaints.

[\(see next section\)](#)

[\(see HB Table of Contents\)](#)

[\(see Forms or Forms Samples\)](#)

## **GENERAL MEANS OF ENFORCEMENT**

**5502**

(No. 6 January 1999)

The general means of enforcement of the Forest Practice Act, forest practice rules, and the other related regulations are as follows:

- Prosecution as a misdemeanor through the judicial court (includes associated fire laws).
- Discipline of the timber operator through license denial, suspension, or revocation.
- Board of Forestry corrective action (delegated to the Director).
- Preliminary injunction.
- Discipline by a Registered Professional Forester (RPF).
- Administrative action (personal discussion with the timber owner, timber operator or agent, sending or handing of inspection reports accompanied by violation notices, warning letters, etc.).

## **MEANS OF ENFORCEMENT**

**5502.1**

(No. 6 January 1999)

Normally, when a substantive violation is found during a forest practice inspection, the inspecting officer will make a decision or recommendation as to the enforcement means to be used. Informal administrative action alone may be judged sufficient for less substantive violations, unless repetition of the violation by the same person is involved. In a case where corrective action is needed, it should be initiated in addition to the misdemeanor action.

On more substantive violations, it may be desirable to choose a misdemeanor action and a recommendation for corrective action, license discipline, or both corrective action and license discipline. The choice of misdemeanor action and corrective action or license discipline should be made after considering the nature of the violation, the attitude of the District Attorney and the court involved, and the means likely to obtain the most positive and complete corrective action to prevent repetition of the violation. The preliminary injunction should be sought in those cases where continued operation threatens to result in:

- serious violations,
- rapid, irreparable damage to the forest, soil, water, or other resources (especially water) where there is great public sensitivity to threatened violations,
- violations beginning or continuing to occur.

The violation(s) need not have occurred before seeking injunctive action, if a serious threat exists.

In case of serious or extensive violations, the forest officer should consult his/her supervisor. Consultation should be extended to include the regional staff and Director's staff, if warranted, to identify the most effective and appropriate choice of enforcement.

The Director's staff is always ready to assist with consultation or problems either in the initial stage or in a later development. However, a case file report, LE-80, or supporting documents for misdemeanor actions should not be sent to the Director's office unless the region is requesting advice or staff assistance, an area of special sensitivity is involved, or there is some other particular reason why the Director's office should have this material.

## **CDF EMPLOYEE LIABILITY**

**5502.2**

(No. 6 January 1999)

An employee who has a claim filed against him/her for alleged actions or omissions performed in the course of his/her state employment is entitled to be represented by the Attorney General's office under the terms of the Tort Claims Act, Sections 800 et seq., provided the following is true:

- The action or omission occurred within the scope of his/her employment.
- Timely request for assistance is made.
- The employee cooperates reasonably and in good faith in the defense against the claim (see GC Section 825).

Not only will the state defend the employee, but also the state will pay any judgments against the employee or the state, with one exception: the state cannot pay punitive damages won by a claimant against an individual state employee. Thus, where punitive damages are sought, the employee will be so advised and given the opportunity to retain private defense counsel. Nevertheless, the state will defend the employee in such a case if the employee so wishes. Punitive damages are rarely awarded unless there has been shocking occurrence.

"Scope of Employment" is quite liberally interpreted to include almost any action or omission occurring while an employee is doing his/her state job. It would be necessary to show that a state employee had in bad faith taken a deliberate, wanton action to hurt another person for motives unrelated to the employee's state duties, to result in a ruling that the action was not within the scope of employment. Ordinary negligence or honest errors in the performance of state duties are rarely sufficient in themselves for such a ruling, even where the actions of the employee result in discipline by the employer.

## **DOCUMENTING FAILURES OF REGISTERED PROFESSIONAL FORESTER (RPF) RESPONSIBILITY**

**5502.3**

(No. 6 January 1999)

A RPF has unique responsibilities to protect both the environment and the public interest, as well as landowner property rights. The Forest Practice Act (FPA) requires that Timber Harvest Plans (THPs) be prepared by a RPF. This includes consideration of feasible alternatives according to 14 CCR 898, et seq., and otherwise preparing a professionally adequate THP (14 CCR 1035.1). The same laws and regulations also apply to Emergency Notices and to Exemptions when prepared by a RPF, except for specifically excluded provisions.

In a THP a RPF may propose allowed alternatives or exceptions to specific forest practice rules. The RPF may also declare a supervisory capacity over logging operations, and each RPF employed by the owner or timber operator is required by PRC 4583.2 to report to the owner or operator if there are any deviations from a THP which threatens the attainment of conservation standards of the act or rules. The Department RPF also must evaluate the adequacy of the THP (14 CCR 898.1).

The RPF preparing a THP must comply (14 CCR 896) with numerous code sections in law and regulations. A list of these code sections requiring RPF responsibility is available from Foresters Licensing. [Section 5446.3](#) of this Procedures Manual addresses the criteria for determining whether plans are acceptable for filing. A THP must be accurate and complete (14 CCR 1035.1) upon signing and affixing the RPF number (14 CCR 1602.1). In addition, there are many code sections that state the RPF "shall" do something, and as a professional standard, and the RPF should know what is necessary.

Letters accompanying returned plans create documentation and provide sufficient warning preceding a Notice of Violation for subsequent failures. Differences of professional judgment which are within bounds of prudent conduct, or differing opinions of mitigation measures do not constitute licensee failures and do not warrant the following actions:

1. For errors and omissions, such as those which result in return of the plan or are discovered during plan review, Peace Officers or Public Officers may, using appropriate discretion, write a notice of violation on the plan(s) under review. Prior to writing the Notice of Violation, the RPF shall be contacted, the issues explained and discussed and the RPF clearly informed that the Notice of Violation is forthcoming.

Notices of Violation are for lesser, correctable failures to comply with the law and rules in THP or Exemption/Emergency Notice preparation (14 CCR 1035.1) and related documents or responsibilities. Because the RPF is responsible upon signing a document (14 CCR 1602.1), this applies whether or not the plan or document was accepted for filing. If such errors or omissions are discovered in the review process, the team chairperson or qualified designee will decide whether to issue a Notice of Violation.

Notices of Violation to the RPF may also be appropriate where violations have occurred on a timber operation and the RPF has some responsibility for the oversight or conduct of those timber operations.

2. If errors or omissions are glaring or blatant, OR when the RPF displays a documented pattern of inaccurate and incomplete plans, a citation or a license complaint may be written following the policy detailed in Section 5502.4. "Glaring" is defined by the American Heritage Dictionary, College and Second Edition, as conspicuous, and stands out obtrusively (undesirably noticeable). "Blatant" is also defined as conspicuous, outstandingly bad or erroneous; the conspicuousness is what gives cause for concern.

The timing on previous deficient plans may make them not appropriate for documenting a pattern. The most appropriate or current THP(s) should be used to "trigger" enforcement action.

The application of peace officer discretion to select the appropriate level of enforcement complements the reporting process. The Department's compliance with these guidelines does not result in automatic license disciplinary action. As a matter of standard practice, the Department will submit the following to Foresters Licensing:

1. Any completed personnel Adverse Action related to RPF responsibilities, including appeals and completed decisions, against a CDF employee.

2. All citations issued for failures in RPF responsibility. These shall be mailed, at the time of issue, to the Deputy Chief for Forest Practice Enforcement and Litigation at Sacramento Headquarters, who will forward them to Foresters Licensing. The copy of the citation will be followed by the decisions of the District Attorney or judges, at the conclusion of the case, along with a copy of the LE-30 file. This includes citations issued for non-THP matters, such as errors in CFIP planning, etc. (authority in PRC Section 779, and PRC 759 with 14 CCR 1062.1), and citations issued for practicing forestry without a license (authority PRC, 779, and PRC 766 with CCR 1602).

The Department is responsible for enforcing codes applying to management of California's wildlands, and Foresters Licensing is required to investigate (PRC, Section 775) any act which comes under the grounds for disciplinary action, (PRC, Section 778 and Policy #7 available from Foresters Licensing). In this process, expert witnesses are used to weigh RPF actions against what is deemed prudent conduct among the profession. With recommendations from the Professional Foresters Examining Committee (PFEC) the Executive Officer of Foresters Licensing, has the sole jurisdiction to determine whether or not to pursue discipline. Extenuating or aggravated circumstances cannot be used to excuse a failure, but may affect the extent of discipline imposed from the disciplinary process (Policy #8).

## **CITING OR FILING A COMPLAINT AGAINST A RPF**

**5502.4**

(No. 6 January 1999)

A process of notification and discussion with the RPF should be followed before considering the submission of a licensing complaint or citing the RPF. Initial notification using the documentation process outlined in procedures Section 5502.3 includes THP return letters and mitigation letters pointing out alleged failures, Preharvest Inspection Reports and violation notices. Follow-up notification includes correspondence or personal discussion with the RPF outlining the alleged professional failures and their significance. It must be made clear that continued failures could result in the filing of a license complaint or issuance of a citation. All of the above actions should be well documented for future reference.

However, where a single problem or series of problems often closely spaced in time are very significant in nature, a complaint or citation should be considered without going through the full notification process.

In those cases where, in spite of efforts to inform the RPF of the problems, the RPF continues to fail, a license complaint should be filed. A citation may be appropriate in unusual or blatant circumstances, but the courts frequently do not want to handle professional practice issues. In those cases where a citation is issued or misdemeanor action is taken, reporting the decisions of the District Attorney and/or courts as required by Procedures Section 5502.3 that might negate the need to file a separate licensing complaint.

The statute of limitations for actions subject to discipline is five years from the date of occurrence to the date that Foresters Licensing files the Accusation.

All Foresters licensing matters shall be handled as confidential (Government Code, sections 6254 (f) and 11183). The disciplined RPF's identity is publicly announced only if the Board's decision involves suspension or revocation. The identity of the person(s) filing the complaint(s) is protected by the Evidence Code, section 1041.

Anyone may file a complaint regarding failures of RPF responsibility by any RPF with the Board of Forestry by letter, or by using the Board's Report of Complaint form (not available), which can be obtained from Professional Foresters Registration. Either method should state as many specifics about the complaint as possible, and include documentation when available. The complaint process is described in Policy #8, which is available from Foresters Licensing.

CDF employees who are considering submitting a complaint against any RPF based on information obtained during the course of state employment must seek the advice and assistance of the Deputy Chief for Forest Practice Enforcement and Litigation in Sacramento Headquarters. This will ensure consistency, and any questions about the process or significance of the issues prompting the complaint will be answered. When finalized, the complaint will be submitted in an envelope clearly marked "confidential" to the Enforcement and Litigation Deputy Chief for transmittal to the Board of Forestry. A CDF employee acting in an official capacity has conditional representation in lawsuits resulting from the filing of a complaint (Government Code, Section 825).

A complaint against a RPF's failure of responsibility by a CDF employee identified outside of his/her state employment duties must be pursued on the employee's own time, and should be sent directly to the Board of Forestry. In such cases, the employee is not covered by Government Code, Section 825.

A RPF, whether employed by the state or not, is subject to discipline by the Board. No preferential status shall be conferred upon a state-employed RPF because of the Codified relationship between CDF and the Board of Forestry.

FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE  
FOR FORMS/FORMS SAMPLES SITE LINK.

[\(See next section\)](#)

[\(See Table of Contents\)](#)

## **PUBLIC COMPLAINTS**

**5529**

(No. 6 January 1999)

## **BACKGROUND**

**5529.1**

(No. 6 January 1999)

The State Board of Forestry's 208 Report asked the department to review the adequacy of its procedures for responding to public complaints regarding forest practice matters. In addition, the report asked the department to take steps to make its procedures for responding to public complaints better known.

### **NOTE:**

A "public complaint" is an oral or written expression of dissatisfaction or concern with the administration of the forest practice program by the department. Public complaints include those received during the review of THPs. A request for information about a timber operation is not a complaint. The "public" includes registered professional foresters, timber operators, and governmental agencies.

In response to the board's request, the Director found the following:

- The lack of formal procedures for responding to public complaints could permit complaints to be overlooked.
- The lack of formal procedures makes it difficult for members of the public to know what happens to their complaints.

## **COMPLAINT PROCEDURE**

**5529.2**

(No. 6 January 1999)

The following procedure will be followed in responding to public complaints:

- A complaint log will be established at the Sacramento office, at each region office, and at each field office that administers the forest practice program.
- The complaint log will contain the following:
  1. Date complaint was received.
  2. Name and address of person or group making complaint.
  3. Brief description of the complaint.
  4. Staff person to whom complaint was referred.

5. Date of first response.
  6. Date(s) of any follow-up response(s).
  7. File designation of response(s) to facilitate relocation of material, including reference to a timber harvesting plan file, if appropriate.
- Within two working days, a preliminary response will be made giving any preliminary information available to the party registering the complaint. A preliminary response could be an acknowledgment of the complaint and statement that a further response (within 30 days) will be made after the complaint has been examined. If a complaint is to be referred to a staff person who will not be able to respond within two working days, the following should occur:
    1. The person (secretary, forester, etc.) in the department who the complainant contacted initially will make a preliminary response.
    2. The preliminary response should acknowledge receipt of the complaint and indicate that the staff person involved will contact the complainant.
    3. The preliminary response can be by telephone or in writing. If the complaint can be answered completely by telephone at that time, the log will so note.
  - A final follow-up response, if needed, will be provided within 30 days of receipt of a complaint. The final response should identify the person or office to which the complainant may turn if dissatisfied with the response.
  - If the complaint is referred to the regional office or the Director's office, the log will so state and the complainant will be so informed. The regional office and the Director's office will begin their own logs of the complaint.
  - The first written response to any complaint will include an outline of the procedure for department response to any complaint. The Complaint Procedure (not available) indicates the information that will be provided.
  - A summary report of complaints and their disposition will be supplied to the Director by the regions for inclusion in the annual forest practice report.
  - The Complaint Procedure (not available) is a handout outlining the procedure and information that will be sent initially to individuals on the Board of Forestry's mailing list, to RPFs, and to licensed timber operators. The regional staffs to explain the department's response procedures to complaints may use the handout.

- Copies of any letters of complaint and responses will be sent to plan submitters if a plan can be identified.
- The complaint log is not a confidential record. Therefore, under some conditions, it may be necessary to so inform a complainant.

FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE  
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**PUBLIC SAFETY OFFICER - BILL OF RIGHTS, GOVERNMENT CODE DIVISION 4,  
CHAPTER 9.1 (1000)**

(September 1988)

**Sec.**

- 3300 Short title.
- 3301 Definition: legislative finding and declaration.
- 3302 Political activity; membership on school board.
- 3303 Subjection to interrogation; conduct; conditions; representation; reassignment.
- 3304 Protection of procedural rights; insubordination; administrative appeal.
- 3305 Entry of adverse comments in personnel file; opportunity to read and sign instrument; refusal to sign.
- 3306 Response to adverse comment entered in personnel file; time.
- 3307 Polygraph examination; right to refuse; effect.
- 3308 Disclosure of financial status; right to refuse; exceptions.
- 3309 Search of locker; storage consent; search warrant.
- 3309.5 Proceeding for violations of rights and protections; applicability of chapter; jurisdiction; remedies.
- 3310 Exemption as to public agencies providing protections of rights.
- 3311 Mutual aid agreements.
- 3300 SHORT TITLE

This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

3301 DEFINITION: LEGISLATIVE FINDING AND DECLARATION

For purposes of this chapter, the term public safety officer means all peace officers, specified in Sections 830.1, 830.2, 830.3, and 830.31 except subdivisions (f) and (i), 830.4 except subdivision (f), 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 such stable relations are continued 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.

3302 POLITICAL ACTIVITY; MEMBERSHIP ON SCHOOL BOARD

- 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.

3303 SUBJECTION TO INTERROGATION; CONDUCT; CONDITIONS: REPRESENTATION: REASSIGNMENT

When any public safety officer is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing public safety department, which could lead to punitive action, such interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action is defined as 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 such interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for such off-duty time in accordance with regular department 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 such

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/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 express consent nor shall his home address or photograph be given to the press or news media without his express consent.
- f) 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 interrogation 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 which 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 own recording device and record any and all aspects of the interrogation.
- g) If prior to or during the interrogation of a public safety officer it is deemed that he may be charged with a criminal offense, he shall be immediately informed of his constitutional rights.
- h) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters which are likely to result in punitive action against any public safety officer, that officer, at his request, shall have the right to be represented by a representative of his choice who may be present at all times during such 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 noncriminal 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.

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

3304 PROTECTION OF PROCEDURAL RIGHTS; ADMINISTRATIVE APPEAL

- 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 without providing the public safety officer with an opportunity for administrative appeal.

3305 ENTRY OF ADVERSE COMMENTS IN PERSONNEL FILE

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.

3306 RESPONSE TO ADVERSE COMMENT ENTERED IN PERSONNEL FILE; TIME

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

3307 POLYGRAPH EXAMINATION; RIGHT TO REFUSE; EFFECT

No public safety officer shall be compelled to submit to a polygraph examination against his/her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a polygraph examination, 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 a polygraph examination.

3308 DISCLOSURE OF FINANCIAL STATUS; RIGHT TO REFUSE, EXCEPTION

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 where there is a strong possibility that bribes or other improper inducements may be offered.

3309 SEARCH OF LOCKER; STORAGE SPACE; CONSENT; SEARCH WARRANT

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.

3309.5 PROCEEDING FOR VIOLATIONS OF RIGHTS AND PROTECTIONS; APPLICABILITY OF CHAPTER; VISITATION; JURISDICTION; REMEDIES.

- 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 proceedings brought by a public safety officer against any public safety department for alleged violations of this section.
- 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.

3310 EXCEPTION AS TO PUBLIC AGENCIES PROVIDING PROTECTIONS OF RIGHTS

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.

3311 MUTUAL AID AGREEMENTS

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.

[\(see Table of Contents\)](#)

## RELATED SECTIONS OF LAW - CITIZEN COMPLAINTS (1000)

(No. 37 August 1995)

### PENAL CODE SECTIONS

832.5. Citizens' complaints against personnel; investigation; description of procedure; retention of records

- (a) Each department or agency in this state which employs peace officers shall establish a procedure to investigate citizens' complaints against the personnel of such departments or agencies, and shall make a written description of the procedure available to the public.
- (b) Complaints and any reports or findings relating thereto shall be retained for a period of at least five years.

832.7. Personnel records; confidentiality; discovery

- (a) Peace officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of police officers or a police agency conducted by a grand jury, a district attorney's office, or the Attorney General's office.

832.8. Personnel records

As used in Section 832.7, "personnel records" means any file maintained under that individual's name by his or her employing agency and containing records relating to:

- (a) Personal data, including marital status, family members, educational and employment history, or similar information;
- (b) Medical history;
- (c) Election of employee benefits;
- (d) Employee advancement, appraisal, or discipline;
- (e) Complaints, or investigations of complaints, concerning an event or transaction in which he participated, or which he perceived, and pertaining to the manner in which he performed his duties; or

- (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

### **CIVIL CODE SECTIONS**

- 47.5. Notwithstanding Section 47, a peace officer may bring an action for defamation against an individual who has filed a complaint with that officer's employing agency alleging misconduct, criminal conduct, or incompetence, if that complaint is false, the complaint was made with knowledge that it was false and that it was made with spite, hatred, or ill will. Knowledge that the complaint was false may be proved by a showing that the complainant had no reasonable grounds to believe the statement was true and that the complainant exhibited a reckless disregard for ascertaining the truth.

### **EVIDENCE CODE SECTIONS**

- 1043. Peace officer personnel records; discovery of disclosure procedure
  - (a) In any case in which discovery or disclosure is sought of peace officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code or information from such records, the party seeking such discovery or disclosure shall file a written motion with the appropriate court or administrative body upon 10 days' written notice to the governmental agency which has custody and control of such records. Upon receipt of such notice the governmental agency served shall immediately notify the individual whose records are sought.
  - (b) Such motion shall include all of the following:
    - (1) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the peace officer whose records are sought, the governmental agency which has custody and control of such records, and the time and place at which the motion for discovery of disclosure shall be heard.
    - (2) A description of the type of records or information sought.
    - (3) Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that such governmental agency identified has such records or information from such records.

- (c) No hearing upon a motion for discovery or disclosure shall be held without full compliance with the notice provisions of this section except upon a showing by the moving party of good cause for noncompliance, or upon a waiver of such hearing by the governmental agency identified as having such records.

1045. Peace Officers; access to records of complaints or discipline imposed; relevancy; protective orders

- (a) Nothing in this article shall be construed to affect the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of such investigations, concerning an event or transaction in which the peace officer participated, or which he perceived, and pertaining to the manner in which he performed his duties, provided that such information is relevant to the subject matter involved in the pending litigation.
- (b) In determining relevance the court shall examine the information in chambers in conformity with section 915, and shall exclude from disclosure:
  - (1) Information consisting of complaints concerning conduct occurring more than five years before the event or transaction which is the subject of the litigation in aid of which discovery or disclosure is sought.
  - (2) In any criminal proceeding the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code.
  - (3) Facts sought to be disclosed which are so remote as to make disclosure of little or no practical benefit.
- (c) In determining relevance where the issue of litigation concerns the policies or pattern of conduct of the employing agency, the court shall consider whether the information sought may be obtained from order records maintained by the employing agency in the regular course of agency business which would not necessitate the disclosure of individual personnel records.
- (d) Upon motion reasonably made by the governmental agency which has custody or control of the records to be examined or by the officer whose records are sought, and upon good cause showing the necessity thereof, the court may make any order which justice requires to protect the officer or agency from unnecessary annoyance, embarrassment or oppression.

- (e) The court shall, in any case or proceeding permitting the disclosure of discovery of any peace officer records requested pursuant to section 1043, order that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law.

- 1046. Allegation of excessive force by peace officer during arrest, police arrest report.

In any case, otherwise authorized by law in which the party seeking disclosure is alleging excessive force by a peace officer in connection with the arrest of that party, the motion shall include a copy of the arrest report setting forth the circumstances under which the party was stopped and arrested.

- 1047. Arrests; records of peace officers; exemption from disclosure.

Records of peace officers, including supervisory peace officers, who either were not present during the arrest or had no contact with the party seeking disclosure from the time of the arrest until the time of booking, shall not be subject to disclosure.

### **GOVERNMENT CODE SECTIONS**

- 3305. Comments adverse to interest; entry in personnel file or in other record; opportunity to read and sign instrument; refusal to sign.

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 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.

- 3306. Response to adverse comment entered in personnel file; time

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.

3307. Polygraph examination; right to refuse; effect No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a polygraph examination, 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 polygraph examination.

3309. Search of locker or storage space; consent; search warrant.

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. (Note: Recent court decisions indicate this may apply to all employees).

19574. Adverse action: parties; grounds; notice. The appointing power, or its authorized representative, may take adverse action against an employee for one or more of the causes for discipline specified in this article. Adverse action is valid only if a written notice is served on the employee prior to the effective date of the action, as defined by board rule. The notice shall be served upon the employee either personally or by mail and shall include: (a) a statement of the nature of the adverse action; (b) the effective date of the action; (c) a statement of the reasons therefore in ordinary language; (d) a statement advising the employee of the right to answer the notice orally or in writing; and (e) a statement advising the employee of the time within which an appeal must be filed. The notice shall be filed with the board not later than 15 calendar days after the effective date of the adverse action.

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**DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

P.O. Box 944246  
SACRAMENTO, CA 94244-2460  
(916) 445-8286



**SUMMARY OF CITIZEN COMPLAINT PROCESS  
STATE OF CALIFORNIA  
DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

The California Department of Forestry and Fire Protection (CDF) is responsible for protecting the resources, lives and property within the state. CDF employees are among the most professional firefighting and resource management personnel available. They serve with pride and want the citizens of the State of California to share in this pride. However, as with any large organization, deviation from ideal performance may occur. For this reason, CDF has a well-defined procedure for assisting citizens who wish to voice a grievance against its operation, policies, or an employee's conduct.

Every citizen has a right to file a complaint against CDF or any of its individual members. When a complaint is received, it is forwarded to the Unit Chief in which area the alleged actions occurred. The Unit Chief is responsible for ensuring that a thorough investigation is conducted. All investigations are conducted objectively and are aimed at maintaining public confidence and Department integrity. Upon completion of an investigation, the findings and conclusions are directed through the appropriate chain of command for impartial review. After final review the citizen will normally be informed of the final disposition to the extent allowed by law.

This process is designed to accomplish three goals. First, to protect the public from inappropriate actions on the part of CDF employees. Second, to protect CDF personnel from false allegations. Last, to protect the State and CDF from public censure because of the misconduct or appearance of misconduct by a few of its personnel.

It is desirable that you contact your local CDF headquarters to initiate your complaint. While personal contact is preferred, your complaint by telephone or mail. It may be necessary to have the complainant be available for a personal interview so that the investigators may examine any relevant physical evidence, gather all pertinent information and interview any potential witnesses. By following the procedures below, your complaint can be properly and quickly addressed.

- A. Fill out the form on the reverse side of this letter. Please provide all of the information requested. The information that you provide will be handled as 'Confidential' during the investigation. You may attach additional pages, if necessary.
- B. Please read the information on the lower portion of the complaint form and sign the form. A parent or guardian's signature is required on any complaint filed by a person under 18 years of age. You may file a complaint anonymously; however, even though the complaint will be investigated, the statement of an anonymous complainant cannot be used as evidence.
- C. Provide the Complaint Form to the Unit Chief of any CDF headquarters office.

We appreciate your taking the time to assist us in keeping open lines of communication with members of our community and hope that we will be able to assist you. Should any questions or problems arise, we encourage you to contact the Unit Chief at your local CDF headquarters office or you may contact our Law Enforcement Section at the number shown above.

Director  
California Department of Forestry  
And Fire Protection

(LE-95A New 6/04))

CONSERVATION IS WISE-KEEP CALIFORNIA GREEN AND GOLDEN

PLEASE REMEMBER TO CONSERVE ENERGY. FOR TIPS AND INFORMATION, VISIT "FLEX YOUR POWER" AT [WWW.CA.GOV](http://WWW.CA.GOV).

FPC\_MGMT 1.0

## **CITING OR FILING A COMPLAINT AGAINST A RPF 5502.4**

(No. 6 January 1999)

A process of notification and discussion with the RPF should be followed before considering the submission of a licensing complaint or citing the RPF. Initial notification using the documentation process outlined in procedures Section 5502.3 includes THP return letters and mitigation letters pointing out alleged failures, Preharvest Inspection Reports and violation notices. Follow-up notification includes correspondence or personal discussion with the RPF outlining the alleged professional failures and their significance. It must be made clear that continued failures could result in the filing of a license complaint or issuance of a citation. All of the above actions should be well documented for future reference.

However, where a single problem or series of problems often closely spaced in time are very significant in nature, a complaint or citation should be considered without going through the full notification process.

In those cases where, in spite of efforts to inform the RPF of the problems, the RPF continues to fail, a license complaint should be filed. A citation may be appropriate in unusual or blatant circumstances, but the courts frequently do not want to handle professional practice issues. In those cases where a citation is issued or misdemeanor action is taken, reporting the decisions of the District Attorney and/or courts as required by Procedures Section 5502.3 that might negate the need to file a separate licensing complaint.

The statute of limitations for actions subject to discipline is five years from the date of occurrence to the date that Foresters Licensing files the Accusation.

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CDF employees who are considering submitting a complaint against any RPF based on information obtained during the course of state employment must seek the advice and assistance of the Deputy Chief for Forest Practice Enforcement and Litigation in Sacramento Headquarters. This will ensure consistency, and any questions about the process or significance of the issues prompting the

complaint will be answered. When finalized, the complaint will be submitted in an envelope clearly marked "confidential" to the Enforcement and Litigation Deputy Chief for transmittal to the Board of Forestry. A CDF employee acting in an official capacity has conditional representation in lawsuits resulting from the filing of a complaint (Government Code, Section 825).

A complaint against a RPF's failure of responsibility by a CDF employee identified outside of his/her state employment duties must be pursued on the employee's own time, and should be sent directly to the Board of Forestry. In such cases, the employee is not covered by Government Code, Section 825.

A RPF, whether employed by the state or not, is subject to discipline by the Board. No preferential status shall be conferred upon a state-employed RPF because of the Codified relationship between CDF and the Board of Forestry.

# **FILING A COMPLAINT AGAINST A REGISTERED PROFESSIONAL FORESTER**

## **Introduction**

Registered Professional Foresters in California are licensed by the State Board of Forestry and Fire Protection. This differs from most other professional licenses in the state, which are regulated by the Department of Consumer Affairs. While the governmental oversight of these licenses differ, they both share a common interest – that of consumer protection. The professional forester is licensed to assure the public of a minimum level of competence as well as assuring that the public is protected in the event of unprofessional conduct. The Board of Forestry and Fire Protection relies on the Professional Foresters Examining Committee (PFEC), a statutorily enabled committee of the Board, to facilitate this function. One of the legal mandates of the PFEC is to “Review complaints...and make disciplinary recommendations to the Board.”

To achieve that goal, the Board has established a process by which any individual may file a complaint against the license of a Registered Professional Forester. Working in concert with the Executive Officer for Foresters Licensing, the PFEC accepts, investigates, and makes disciplinary recommendations to the Board. The Board of Forestry and Fire Protection is the only statutory body that may take a disciplinary action against the license of a Registered Professional Forester. That action may range from exoneration to permanent license revocation.

## **What You Need to Consider Prior to Filing a Complaint**

Anyone who believes a Registered Professional Forester has failed to perform in a prudent professional manner may submit a formal complaint. There are specific causes of action that the Board may pursue in determining if disciplinary action is warranted. (14 CCR §1612.1) Those causes include:

- Conviction of a Felony Substantially Related to the Qualifications, Functions, or Duties of a Registered Professional Forester
- Fraud
- Deceit
- Gross Negligence
- Misrepresentation
- Material Misstatement of Fact
- Incompetence
- Fraud or Deceit in Obtaining a License
- Aiding and Abetting a Violation of, or Material Failure to Comply with, the Provisions of the Professional Foresters Law.

It is recommended that those individuals contemplating filing a complaint review [Policy Number 7 for Professional Foresters Registration](#) for guidance as to what may constitute these causes of action.

## How to File a Complaint Against the License of a RPF

If you believe the professional failing of a Registered Professional Forester falls within the scope of the prescribed causes of action, you may wish to consider filing a formal complaint. Your complaint should be submitted to:

Professional Foresters Registration  
P.O. Box 944246  
Sacramento, CA 94244-2460

The complaint must be in writing and contain an original signature. Electronic submissions will not be accepted. There is no prescribed form on which to file a complaint. Complaints must contain that information, to the extent known, contained in [Policy Number 9 for Professional Foresters Registration](#) and **must** include the verification shown in that policy as well as bear an original signature of the complainant.

A complainant may contact Professional Foresters Registration for assistance in filing a complaint. However, the Executive Officer for Foresters Licensing is unable to render legal assistance in the matter.

The complainant will receive a letter from Professional Foresters Registration acknowledging receipt of the complaint approximately 3 weeks after submittal. The complaint will then go through an initial review by the Executive Officer. You may be contacted by the Board to provide clarification or additional information. As a matter of law, the complainant's name is held in confidence. However, if a complaint results in prosecution, the complainant must be willing to testify in the case. The complainant will be notified by the Board if this is necessary. The complainant will also be notified of the final action taken on the case. Unless it is necessary, the complainant will generally not be contacted regarding the status of the complaint and investigation prior to resolution. A detailed description of the complaint process may be found in [Policy Number 8 for Professional Foresters Registration](#). Complaints are expedited as quickly as possible. However, the investigation and resolution of disciplinary cases may take from several months to several years, depending on the nature and complexity of the issues involved.

## How to File a Complaint Against an Individual Practicing Professional Forestry without a License

Complaints involving non-licensed persons using the title of, or acting in the capacity of a "Professional Forester" without being registered, or otherwise exempted, are acting illegally and are handled in a manner similar to [Policy Number 8 for Professional Foresters Registration](#). The Executive Officer for Foresters Licensing may hire expert witnesses to review investigation results and establish prudent standards of conduct.

If the investigation, expert witness, or Executive Officer's evaluation show sufficient cause, the appropriate local District Attorney's office may be asked to prosecute the case as a misdemeanor violation. Such prosecution may be based upon unfair or unlawful business practices, or false and misleading advertising. Action against a non-licensed person may include the Civil Code of Procedure, Section 1029.8 which governs cost recovery and punitive awards in the case of damages caused by an unlicensed person. A local District Attorney is not bound by the submission of a case from the Board to accept or prosecute that case. There is no legal avenue for the Board of Forestry and Fire Protection to take criminal action against unlicensed individuals.

## POLICY NUMBER 7 FOR PROFESSIONAL FORESTERS REGISTRATION

### SUMMARY OF CASE LAW FOR PURPOSE OF CLARIFYING GROUNDS FOR RPF DISCIPLINARY ACTION UNDER RESOURCES CODE, SECTION 778(b):

The failures of responsibility which subject a RPF to “Disciplinary Action” (Pursuant to PRC, 778) are summarized as below, to provide general reference and guidance only. CURRENT APPLICABLE CODES AND CASE LAW TAKE PRECEDENCE.

1. Deceit is either:
  - (a) The suggestion, as a fact, of that which is not true, by one who does not believe it be true; or,
  - (b) The assertion, as a fact, of that which is not true, by one who has no reasonable grounds for believing it to be true; or,
  - (c) The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want to communication of that fact; or,
  - (d) A promise, made without any intention of performing it. Civil Code, Section 1710.

Fraudulent Deceit: “One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damages which he thereby suffers.” Civil Code, Section 1709.

Deceit Upon the Public: “One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.” Civil Code, Section 1711.

2. Fraud is a bad faith, dishonest or overreaching act done with intent to deprive another of his right, or in some manner to do a person an injury. It includes all surprise, trick, cunning, dissembling and unfair ways by which another is cheated. As distinguished from gross negligence, it is always intentional.

Actual Fraud. See Deceit above with addition of:

- (e) Any other act fitted to deceive.  
Civil code, Section 1572.

Incompetence is a demonstrated lack of ability, skill, or knowledge to perform professional functions. Such lack may be demonstrated by a single and specific incident or by a series of lesser failures in performance. This is not to say that a single honest failing in performing his/her duties constitutes incompetence in a RPF’s practice. Because of the difficulty in defining incompetence, performance standards are established by expert witnesses and relate to specific instances, time and place.

3. Material Misstatement of Fact is a misstatement that would be likely to affect the decision of the administrative agency or reasonable person in the transaction in question. In contracts, material facts are those which constitute substantially the consideration of the contract, or without which it would not have been made. For purposes of the Forest Practice Act and Code Section 4583.5 in particular, a material misstatement in a Timber Harvesting Plan or a report submitted to the Department would thus include any misstatements which would be likely to affect the Department's decision with respect to the Timber Harvesting Plan or report.

"A 'misrepresentation' is 'material' if it would be likely to affect the conduct of a reasonable man with reference to the transaction in question." Costello v. Roer (1946) 77 Cal.App.2d 174, 175 Pp.2d 65.

4. Misrepresentation is a conduct or a representation contrary to fact made by a RPF, under circumstances in which a reasonable RPF would not have made the representation. There need not be actual or constructive intent to deceive. Misrepresentation can occur when a RPF holds himself/herself out to be specially qualified, when in fact the RPF is not; it may also occur when a RPF knowingly acts on an insufficient basis of readily available information commonly accepted by a reasonable and prudent by the RPF community in making a representation.

Negligent Misrepresentation:

- (a) The respondent must have made a representation as to a past existing material fact.
  - (b) The representation must have been untrue;
  - (c) Regardless of respondent's actual belief, the representation must have been made without any reasonable ground for believing it to be true;
  - (d) The representation must have been with the intent to induce plaintiff to rely upon it;
  - (e) The plaintiff must have been unaware of the falsity of the representation; he must have acted in reliance upon the truth of the representation and he must have been justified in relying upon the representation.
  - (f) And, finally as a result of his reliance upon the truth of the representation, the plaintiff must have sustained damage. Book of Approved Jury Instructions (BAJI), 12.45.
6. Gross Negligence is an extreme departure from the prudent standards of conduct or performance, which may be established by expert witnesses. It is the exercise of so little care that it justifies the belief that the person was indifferent to the interests and welfare of other people or natural resources. Gross negligence does not require actual or constructive intent.

“The intentional, conscious failure to do a thing that is incumbent upon one to do, or the doing of a thing intentionally that one ought not to do.” *Pilot Industries v. Southern Bell Tel. & Tel. Co., D.C.S.C., F.Supp.* 356, 362.

“The exercise of so slight a degree of care as to raise a presumption of conscious indifference to the consequences. A finding a gross negligence is made by applying an objective test: If a reasonable person in the defendant’s position would have been aware of the risk involved, then the defendant is presumed to have had such an awareness.” *People v. Soledad* (1987, 5<sup>th</sup> Dist) 190 Cal.App.3d 74, 235. Cal.Rptr. 208.

Gross – great; absolute; exists in its own right, and not as an appendage of another thing of all measure; beyond allowance; not to be excused; flagrant; gross carelessness.

Negligence – “Negligence is the doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent would do, under circumstances similar to those shown by the evidence. It is the failure to use ordinary or reasonable care. Ordinary or reasonable care is that care which persons of ordinary prudence would use in order to avoid injury to themselves or others under circumstances similar to those shown by the evidence. [You will note that the person whose conduct we set up as a standard is not the extraordinary cautious individual, not the exceptional skillful one, but a person of reasonable and ordinary prudence.]” BAJI 3.10.

Actionable Negligence: “[A] legal duty to use due care, breach of that duty, and a proximate or legal casual connection between the breach and plaintiff’s injuries.” *E.F. Hutton & Co. v. City National Bank* (1983, 2<sup>nd</sup> Dist) 149 Cal. App. 3d 60, 196 Cal. Rptr. 614).

7. CODE SECTIONS NOTED IN FELONY CRITERIA, 14 CCR §1613 that may be substantially related to the duties of a RPF:

(a) Public Contract Code

Section 10422 Corrupt performance of official act. “Any officer or employee of the department who corruptly performs any official act under this chapter to the injury of the state...”

Section 10423 Corruptly permitting violation of contract; felony. “Any person contracting with the state by contract who corruptly permits the violation of any contract made under this chapter...”

(b) Business and Professions Code

Division 7 – Part 2 – Preservation and Regulation of Competition

(c) Health and Safety Code

Division IX, Part I, Explosives

8. Failure of Fiduciary Responsibility may be tied to Grounds for Disciplinary Action.

Fiduciary Responsibility – A relation subsisting two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence. It may involve an agreement where a person delivers a thing to another on the condition he will restore it to him. Violation of fiduciary responsibility may arise from recklessness (inadequate records, etc.). It differs from fraud which is willful.

(Fiduciary Responsibility – Duty)

“In performing professional services for a client, a [forester] has the duty to have that degree of learning and skill ordinarily possessed by reputable [foresters], practicing in the same or a similar locality and under similar circumstances.” It is the forester’s “duty to use the care and skill ordinarily used in like cases by reputable members of his or her profession practicing in the same or a similar locality under similar circumstances, and to use reasonable diligence and his or her best judgment in application of his or her learning, in an effort to accomplish the purpose for which he or she was employed. A failure to fulfill such duty is negligence: BAJI 6.37.

Note: A felony conviction could occur when a contractor received payment and does not pay for materials or labor rendered – the word “fraudulent” is not mentioned in this statute. Federal or out-of-state codes may also not refer to fraud in some situations.

## **POLICY NUMBER 8 PROFESSIONAL FORESTERS REGISTRATION**

### **HANDLING OF A COMPLAINT (DISCIPLINARY PROCESS) for RPFs**

Note: The disciplinary process is governed by the Public Resources Code (PRC); Title 14 California Code of Regulation (14 CCR), Evidence Code (EC), Code of Civil Procedure (CCP), and Government Code (GC). For the benefit of interested persons, the following provides a narrative of the typical sequence followed in implementing these Codes. The attached flow charts are a visual presentation of this process.

#### **The Complaint**

A complaint can be filed by a person, in writing, with Professional Foresters Registration, or the Board of Forestry and Fire Protection (Board) can proceed upon its own (PRC, Section 775). The RPF's vested property right of the license is protected under "due process". The Executive Officer must verify that the complaint is legally subject to possible disciplinary action (i.e., fraud, deceit, misrepresentation, gross negligence, etc; PRC, Section 778). If the matter is, or becomes, a criminal court action, the Administrative action will likely be delayed until a judicial determination is rendered.

#### **Confidentiality**

A complaint is a CONFIDENTIAL matter (GC §6254(f), and §11183). The identity of the person filing the complaint remains confidential throughout the investigation (EC §1041). This may become public information if Hearing testimony from the complainant is required or if the person's identity is otherwise pertinent to the case. If the complaint does not come under the grounds for discipline, the RPF will still be notified that a complaint was received and of their subsequent exoneration. Confidentiality will likely limit the amount of information that can be provided.

#### **Processing a Complaint**

The Executive Officer may take the matter to the Professional Foresters Examining Committee (PFEC) at any stage of processing.

If the failures of RPF responsibility are well-documented (e.g. violations, citations, court records, or other documents), the RPF is given an opportunity to provide his or her side of the story in response to the issues of concern (allegations). The RPF is advised that the reply may be used against him or her in the process, and may choose not to respond. If needed, expert witnesses may be involved to establish RPF prudent standards of conduct given the same set of circumstances. If the RPF is willing to admit to any failures of responsibility, the Executive Officer may suggest the RPF sign a Stipulated Agreement implementing specified discipline (i.e., suspension, some possibly "stayed" which creates probation, or revocation).

When the issues are not well-documented, the Executive Officer initiates an investigation. This may involve professional investigators from the Department of Consumer Affairs, which is the agency most involved with California licensing boards. The investigator gathers the evidence of what occurred, and is subject to the Evidence Code. Professional forester direction and advice is provided by the Executive Officer, and in some cases, independent RPFs. The investigator interviews witnesses while stressing the confidential nature of the matter, and gathers leads as appropriate. As soon as all information necessary for professional investigation is obtained, the RPF is notified by the Executive Officer who will explain that Professional Foresters Registration

is coordinating an investigation on complaint allegations. The Executive Officer may enumerate the allegations to the RPF under investigation or the investigator may make the allegations known when presenting questions. When the RPF is personally contacted by the investigator, the RPF will be asked if he/she is willing to be interviewed to discuss facts important to the case. The RPF is also allowed to make a written statement.

If the case involves risk that evidence can be changed, or witnesses impacted, the Executive Officer may not disclose the allegations to the RPF until the investigator makes them known in presenting questions. The RPF is personally contacted by the investigator who asks the RPF if he/she is willing to be interviewed to discuss facts important to the case. The RPF may refuse to be interviewed. The investigator may ask the RPF details about occurrences important to the case. Information gathered may be used against the RPF. The RPF may also make a written statement to the investigator.

These stages in the process are sensitive because many RPFs feel they should be able to face his/her accuser at this point. Because no Accusation has been filed, there is no accuser. Many RPF's feel they should have an attorney present when talking with the investigator, but it is not required. Only facts are being gathered for consideration by the PFEC to recommend appropriate action. At any time evidence warrants criminal action, however, the investigator may read the RPF the Miranda rights prior to gathering statements. A Criminal Complaint may be independently requested by Consumer Affairs, Division of Investigation, or a District Attorney if the evidence warrants such action.

#### Peer Review

The Executive Officer reviews the RPF's response to the allegations, stipulated Agreement, or investigation report with the PFEC. Statements made and evidence presented in the review, however, could be used in an Accusation.

When incriminating evidence is sufficient at any time in the process, one or more RPF's serving as "Expert Witnesses" may examine the situations regarding the complaint.

"Standards" of performance are established using the "prudent forester concept" where the evaluation by independent RPF's of similar qualifications and experience, is used to establish proper and prudent actions in any specific situation.

The possible action recommended by the PFEC to the Executive Officer at this point can include: 1) Exoneration; no further action warranted, 2) confidential letter stating the Committee's concerns, 3) recommend to the Board that a Private Board Reprimand be issued, 4) recommend to the Board that the Stipulated Agreement be approved, or 5) proceed with an Accusation. Cases are considered closed after condition 1, 2, and 3. Cases are not considered Closed after condition No.'s 4 and 5.

#### The Accusation

If disciplinary action without a Stipulated Agreement is anticipated, the Executive Officer in coordination with counsel from the Attorney Generals' Office, prepares a Statement of Issues and the Accusation(s) included.

Filing the Accusation with the Office of Administrative Hearings makes the matter public, and the Accusation is available upon request.

Sent with the Accusation, the Statement to Respondent notifies the RPF that a Notice of Defense may be filed requesting a hearing. At this point, the RPF is advised he/she may want seek representation by legal counsel. The RPF cannot access the investigation working notes or attorney work product. The evidence which will be submitted at the hearing, including reports of any witnesses, can be obtained so he/she may prepare a defense. This is called "discovery." (GC §11507.6) If the RPF finds the evidence to be submitted at the hearing is true and complete, he/she may choose to accept, on the merits of the Accusation, possible Board disciplinary action. This is done by signing a Stipulated Agreement which imposes license suspension or revocation with conditions satisfactory to the Board as appropriate discipline.

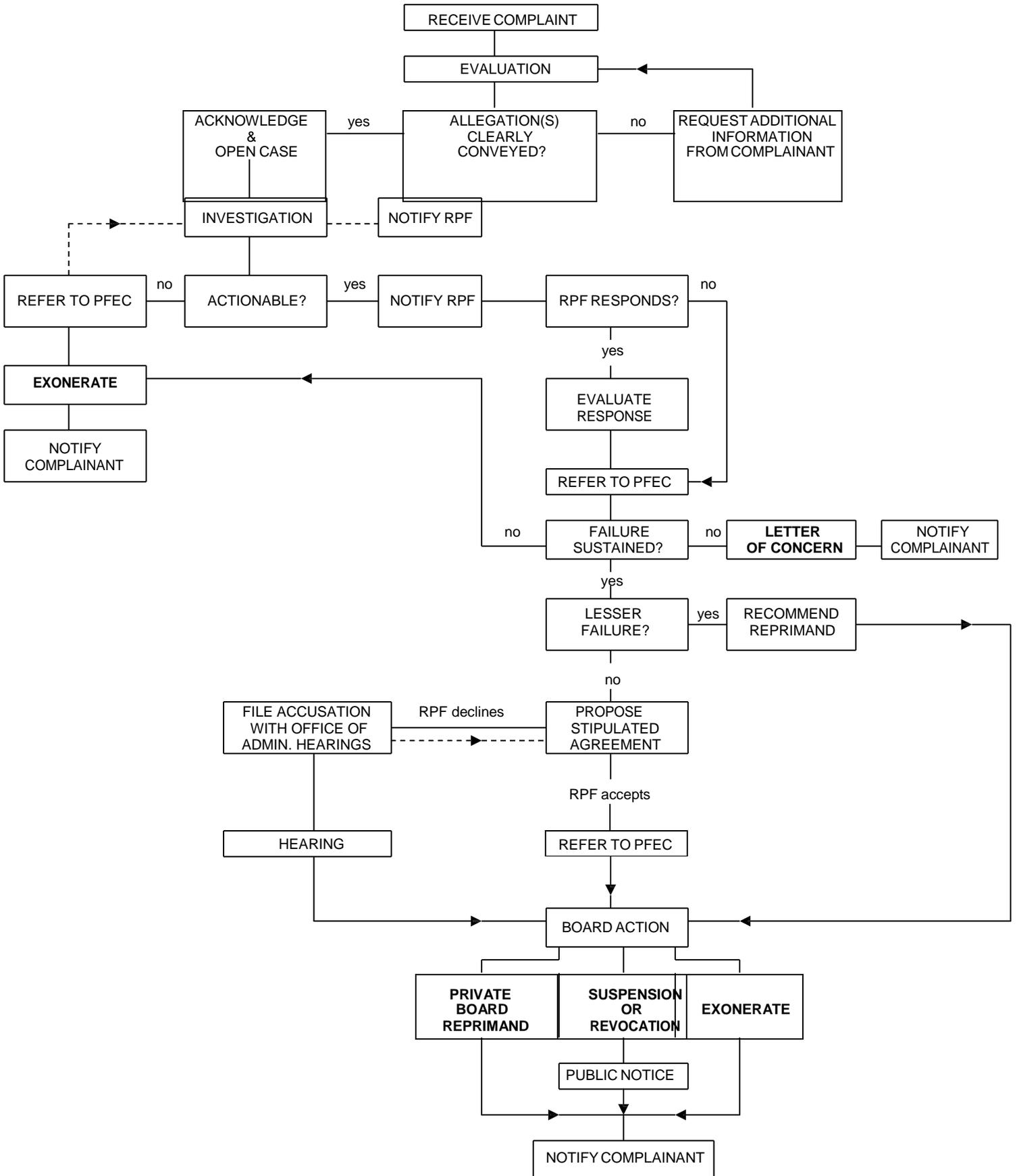
## Hearing

In the absence of a Stipulated Agreement, an Administrative Law Judge (ALJ) weighs the investigation evidence and the standards of prudent conduct established by the expert witnesses against the evidence provided by the accused RPF. The cost of each party's counsel is borne by the respective party. The accused RPF can provide self representation (no counsel). The burden of proof is "clear and convincing evidence of reasonable certainty." The ALJ prepares a recommendation for Board action. The ALJ is encouraged to utilize the Disciplinary Guidelines in 14 CCR §1612.1 and Criteria for Rehabilitation in 14 CCR §1614.

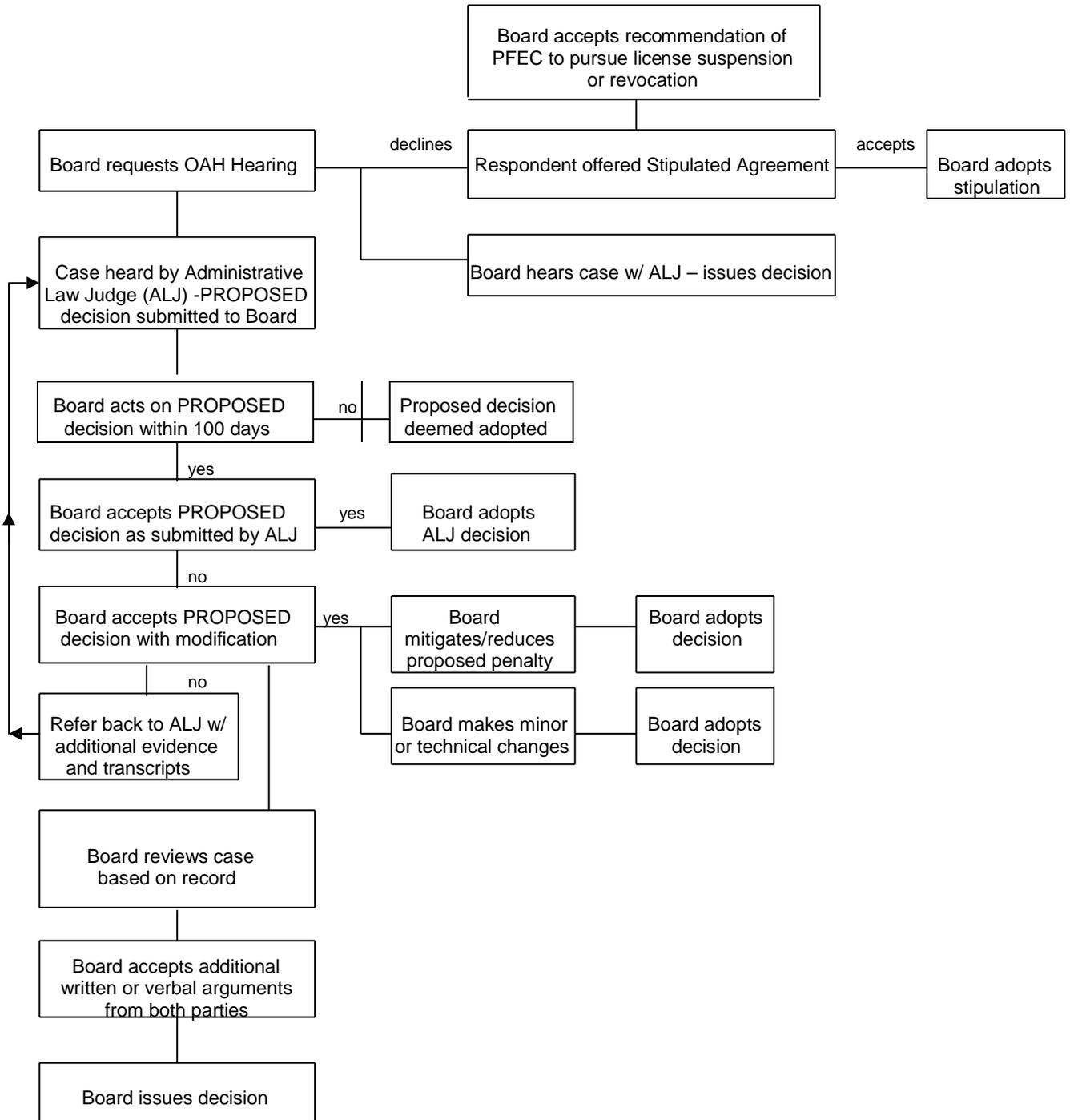
## Board Actions from Hearings Findings

A second counsel from the Attorney General's Office represents the Board in considering the decision of the ALJ. In considering the decision of the ALJ, the Board may adopt, modify the recommendations, send the entire matter back to the same ALJ, or reject the proposed decision and review the case on the record and arrive at a decision (GC §11517). The proposed decision of the ALJ is not binding, unless the Board fails to act within a specified time period. Acting within the specified time period, the Board shall render the final decision relative to suspension or revocation. The Board's final options are: 1) exoneration, 2) suspension, or 3) revocation of license. The Board may allow the RPF to complete existing contracts if action is taken. In a suspension, part can be "stayed" which creates probation; the existing employer or clients must be notified of the discipline per 14 CCR §1612.2. The Board may specify possible conditions for rehabilitation for consideration when the RPF later requests license reinstatement. The Government Code, Section 11522, requires that a minimum of one year pass before the Board can consider a petition for reinstatement. The applicant may submit evidence of rehabilitation.

## Disciplinary Process Flowchart- Complaint Against RPF



**Disciplinary Process Flowchart- License Suspension or Revocation**  
 (ref: Government Code §11517)





## **POLICY NUMBER 9 FOR PROFESSIONAL FORESTERS REGISTRATION**

### **HOW TO FILE A COMPLAINT**

If a person wishes to file a complaint of professional misconduct against a Registered Professional Forester, the complaint must be submitted in writing, and mailed to Professional Foresters Registration, P.O. Box 94426, Sacramento, CA 94244-2460, (916) 653-8031.

For purpose of providing direction to the Executive Officer of Foresters Licensing, the Board of Forestry and Fire Protection (Board) suggests that all complaints be filed in a consistent format and include the following information:

1. The identity of the person who is the subject of the complaint, including his or her license number if known;
2. A short description of the transaction or circumstances involved;
3. The date and place (city or county) where the events occurred;
4. The identity and addresses or telephone number of any other person(s) who have knowledge of the events described;
5. A description of the loss, damage or other adverse consequences of the licensee's conduct;
6. Copies of pertinent portions of any plans, reports, letters, business records or other documents which support the complaint.

All complaints shall contain the following verification:

### **VERIFICATION**

**I CERTIFY UNDER PENALTY OF PERJURY OF THE LAWS OF CALIFORNIA THAT THE FACTS STATED HEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEGE AND BELIEF.**

**DATE:**

**CITY OR PLACE:**

**SIGNATURE:**

**NOTE TO COMPLAINANTS:** The complainant will receive a letter from Professional Foresters Registration acknowledging receipt of the complaint approximately 3 weeks after submittal. The complaint will then go through an initial review by the Executive Officer. You may be contacted by the Board to provide clarification or additional information. If a complaint you file results in prosecution, you must be willing to testify in the case. You will be notified by the Board if this is necessary. You will also be notified of the final action taken on the case.