

## **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.

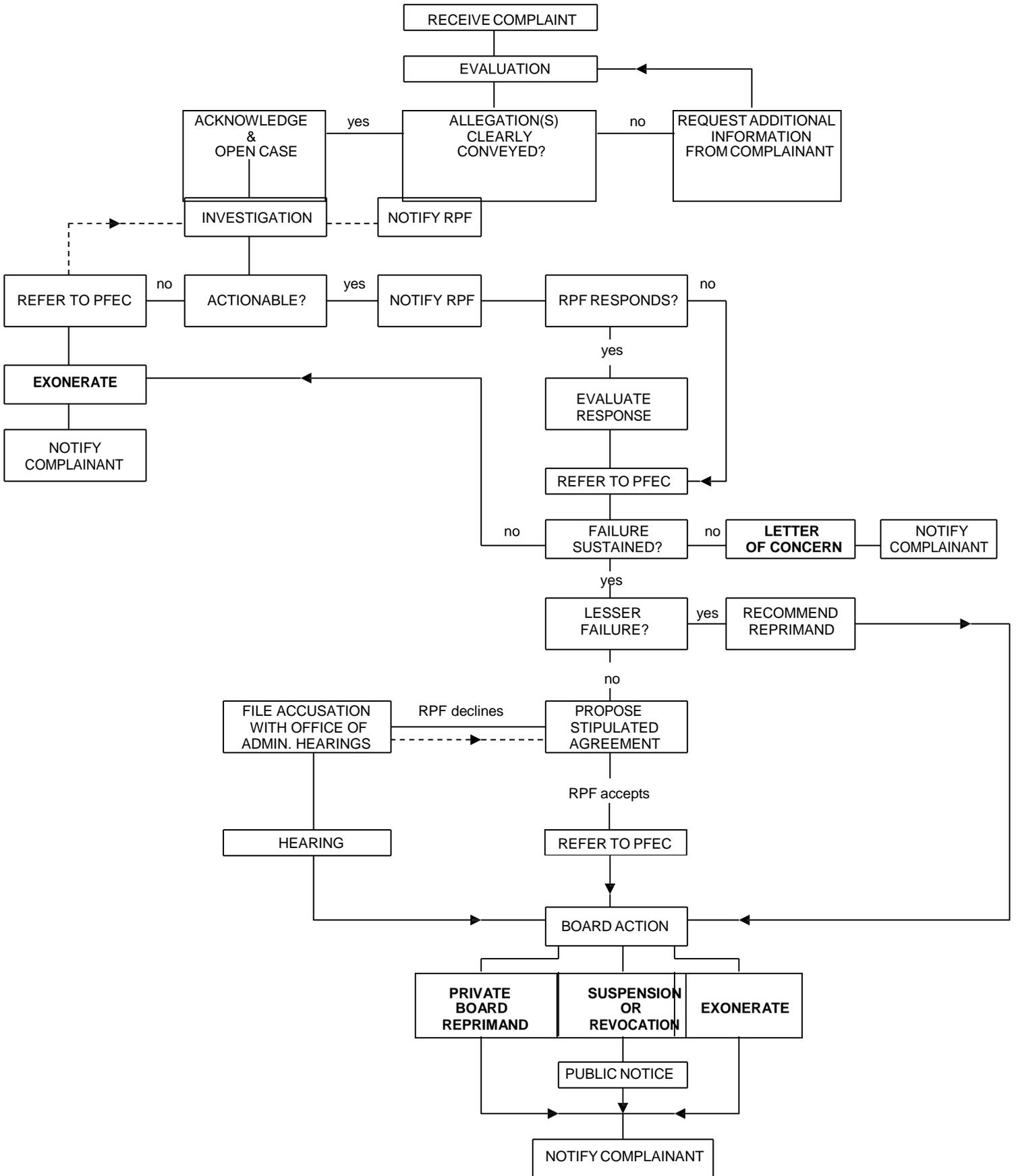
### Hearing

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)

