

## SAN BERNARDINO COUNTY PROBATION DEPARTMENT PROCEDURE

Inter-Bureau Procedures #98-05-59 - Letters of Reprimand, Notice of Disciplinary Action and Appeals

**Authority:** Raymond B. Wingerd, Chief Probation Officer

Letters of Reprimand, Notice and Order of Disciplinary Action Disciplinary Action are all part of the progressive discipline process. Discipline may be required when supervisor's training, verbal or written instruction and directions fail to modify the employee's behavior or where the severity of the act merits immediate disciplinary action. The level and sequence of discipline will be determined by the severity of the behavior and the employee's previous disciplinary actions. It may not follow sequence if the severity of the misconduct warrants otherwise.

### Reasons For Disciplinary Actions

Failure to meet reasonable work performance standards and requirements.

Willful or negligent disobedience of any law, ordinance, County Personnel Rule X Section 2, Department policy, procedure or superior's lawful order.

### Letter Of Reprimand:

A Letter of Reprimand is a formal punitive action for Peace Officers. Authority to issue is at the Supervisor's level with Division Director approval.

Letters of Reprimand will describe in detail the reasons for the disciplinary action. If work performance is involved, specific deficiencies will be supported by instances of such deficiencies.

The Letter of Reprimand will admonish the employee to adhere to County and Department policies and procedures and notify the employee that further violation may be cause for disciplinary action in the form of reduction in salary step, suspension, demotion or dismissal.

A copy of the Letter of Reprimand will become a part of the employee's Departmental personnel file and Human Resources file. The Letter of Reprimand will include an acknowledgment to this effect signed by the employee.

Notice of filing wording to be included in Letters of Reprimand issued to Peace Officers:

*I have read the material and acknowledge that it is being placed in my personnel file. I understand that my signature does not imply approval or disapproval of the action proposed, or facts contained in the material, but merely acknowledgment that it is being placed in my personnel file. I understand that I may submit a written response for attachment within 30 days.*

A Peace Officer has the right (California Government Code Section 3306) to respond in writing to any adverse comment entered into his/her personnel. Said written response is separate and

Inter-Bureau Procedure # 98-05-59 – Letters of Reprimand, Notice of  
Disciplinary Action and Appeals

apart from any appeal rights. The written response shall be attached to the adverse comment.

All other Department employees are similarly entitled to prepare a written response to be attached to the documentation in their file.

In all cases, such response must be submitted within thirty (30) calendar days of receiving notice of such adverse comment or if an administrative appeal is filed in a timely manner, within thirty (30) days of the notice of the decision on the appeal.

Any written response/appeal to a Letter of Reprimand must note areas of disagreement and can contain new information that was not considered and is directly related and relevant to the incident under consideration/appeal.

Letters of Reprimand issued to Peace Officers may be appealed to the Deputy Chief of Administrative Services. The appeal is initiated by filing a written request with the Deputy Chief of Administrative Services within thirty (30) calendar days of receiving the Letter of Reprimand. The Deputy Chief of Administrative Services may designate a Division Director I or II as Hearing Officer for the appeal.

All appeals for Peace Officers will be heard outside the Bureau's chain of command.

Authority to remove:

Peace Officers, none.

General employees may request removal of a Letter of Reprimand through the Bureau's Deputy Chief after two years providing that requirements in the Memorandum of Understanding have been met.

Suspensions, Reduction In Salary Step, Demotion Or Dismissal And For Supervisors And Management Employees, Reduction Of Vacation Leave:

Authority to serve Notice of Proposed Action: As directed by the Chief Probation Officer and coordinated by the Human Resources Officer.

All recommendations for suspension, reduction in salary step, demotion and dismissal, must be approved by the appropriate Deputy Chief before completing paperwork through Human Resources Officer.

Notice of Proposed Action will be served by supervisors and/or managers in the chain of command in the employee's assigned Bureau or by certified mail as directed by the Chief Probation Officer through the Deputy Chief.

Employees have the right to appeal the charges contained in a disciplinary action to the Chief Probation Officer or his designee within five work days.

Once action is initiated, copies are to be sent to Director II of Personnel and Training for recordkeeping. Any subsequent action (written response, appeal dates and decisions) are also to be forwarded to the Director of Administrative Services. Administrative Services will forward a copy of each action to the Office of the Chief Probation Officer, Deputy Chief Probation

Inter-Bureau Procedure # 98-05-59 – Letters of Reprimand, Notice of Disciplinary Action and Appeals  
Officer of the employees bureau and the Human Resources Officer for reference.

Authority to remove:

Peace Officers, none.

General employees may request removal of an Order of Disciplinary Action through the Bureau's Deputy Chief after two years providing that requirements in the Memorandum of Understanding have been met.

### Public Safety Officer Procedural Bill Of Rights Appeal

#### Right to Administrative Appeal

A Peace Officer who has successfully completed the probationary period must be given the opportunity for administrative appeal whenever there is a punitive action or denial of promotion on grounds other than merit (California Government Code Section 3304(b). Punitive action is defined as any personnel action "...which may lead to **dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment**" (California Government Code Section 3303).

Disciplinary actions resulting from a "Skelly" hearing before the Chief Probation Officer have no further appeal options within the Department. Such actions may be appealed to the Civil Service Commission.

#### Administrative Appeal Procedure

Appellant must complete the NCR form titled "Administrative Appeal of Punitive Action" (Attachment A) and submit the original signed form to the Department Director II of Personnel and Training within thirty (30) calendar days of the disciplinary action being appealed. Employees who can clearly demonstrate a special circumstance preventing their timely appeal may be granted additional time to complete the required procedure. Requests for extended time are to be submitted directly to the Chief Probation Officer. While forms may be filled out by the employee's designated representative, the employee's original signature is required.

The Director II of Personnel and Training will advise the appropriate Deputy Chief Probation Officer to initiate the Hearing Officer selection process.

#### Administrative Hearing Officer: Selection

Hearing Officers shall be assigned by the Deputy Chief of Administrative Services. Hearing Officers shall be selected only from the appropriate Director

levels and shall be independent of the appellant's immediate chain of command.

Management appeals to the Chief Probation Officer may be delegated to a Deputy Chief Probation Officer, an outside consultant or remain in the Office of the Chief.

#### Administrative Hearing Officer: Training

The Department shall provide training on the Public Safety Officer Procedural Bill of Rights (POBOR) for all management and administrative positions. Training will include, but not be limited to, legal and/or legislative changes, protocol, protections, procedures and role of the Hearing Officer.

## Inter-Bureau Procedure # 98-05-59 – Letters of Reprimand, Notice of Disciplinary Action and Appeals

### Administrative Appeal Hearing Panel

The Hearing Officer shall coordinate the date, time and place of the appeal and may request the participation of Department Human Resources Officer and/or the Director II of Personnel and Training. The Director of Personnel and Training and Human Resources Officer will provide their expertise, experience and guidance in interpreting the Public Safety Officer Procedural Bill of Rights (POBOR), Department and County procedures and practices and legal requirements. However, the final decision on disposition remains with the assigned Hearing Officer.

### Hearing Date, Time , Place and Record of Proceedings

It is imperative that appeals be heard in a timely manner. Barring exceptional circumstances, appeal hearings will be scheduled within 15 working days of the receipt of the Appeal of Punitive Action by the Director of Personnel and Training.

The Hearing Officer will schedule the hearing after consulting the appellant and the Hearing Panel on the best dates and times. Appeal hearings will be scheduled during the appellant's normal tour of duty whenever possible.

Appellant will be notified of the date, time and place of the appeal hearing in person or by telephone and in writing (See sample: Notice of Administrative Appeal Assignment; Attachment B). It is the appellant's responsibility to notify his/her representative of the hearing date, time and place and to arrange his/her work shift in accordance with his/her Bureau procedures.

Hearings shall be taped and a copy will be given the appellant.

Appeals by Managers will be heard by the Chief Probation Officer or his designee.

### Administrative Hearing Officer: Decisions

The Hearing Officer's decision(s) are binding on the Department. Decisions are also binding on the appellant unless changed as the result of other appeal rights, (e.g., Civil Service Hearing) available to the appellant. The Hearing Officer will hear evidence on the appellant's immediate punitive action as stated on the Administrative Appeal to Punitive Action. Appellants have the right to present evidence to establish a formal record of the circumstances surrounding the incident and to attempt to convince the Department to reverse its decision. During these proceedings, appellants have the right to be represented.

Matters of past action(s) not timely appealed, unsustained prior appeals, pending discipline(s), alleged discrimination, grievances and other complaints not directly related to the facts presenting in the immediate matter are not within the jurisdiction of the Hearing Officer. All such matters may be pursued by the appellant through other venues.

The Hearing Officer may direct the Director II of Personnel and Training to conduct such additional investigation as indicated by the evidence brought forth during the Appeal Hearing.

The appellant shall be advised of any continuance in rendering a decision on the appeal. Unless the Hearing Officer's decision is continued pending further fact-finding, the appellant will be advised of the Hearing Officer's decision within 15 working days. The decision will be noted in the appropriate section of the Administrative Appeal to Punitive Action, a copy of which will be returned to the appellant with the original signature of the Hearing Officer. Copies of the

## Inter-Bureau Procedure # 98-05-59 – Letters of Reprimand, Notice of Disciplinary Action and Appeals

decision will be provided to the Director of Personnel and Training and to the Deputy Chief of the employee's bureau. If the action is sustained, a copy of the decision shall be entered into the employees personnel file.

### **Findings Defined**

- *Action Sustained* means that the preponderance of evidence presented is sufficient to support the basis for the Department action and that the action is appropriate to the behavior.
- *Action Not Sustained* means that the preponderance of evidence presented is sufficient to reverse the original findings and action.
- *Action Modified* means the Hearing Officer, based upon information presented, finds that the original action is not consistent with past practices of the Department for the behavior demonstrated.

The Hearing Officer may decrease the punitive action imposed or recommend to the appointing authority an increase in the punitive action. Modifications require a new service of action which reflects the changed conditions in the previous action. The new service will replace the original in the personnel file. The new service will be accomplished through the Director II of Personnel and Training. There is no further Department appeal right on the modified action. Any changes in the action will be coordinated through the Director II of Personnel and Training to the responsible supervisor, manager or administrator with notice and copies of the new service to the Department's Human Resources Officer.

The Director II of Personnel and Training will maintain a file of all appeals and findings. Notice sustaining the Department action(s) will be placed in the appellant's personnel file. Changed action(s) will replace the original action in the appellant's personnel file. Sustained appeals will result in removing the original action from the appellant's personnel file.

The Director of Personnel and Training in conjunction with the Supervisor of the Personnel Services Unit will ensure that all findings of the Hearing Officer are incorporated into the employee's personnel file.

The Department's Human Resources Officer will ensure that the employees Central Human Resources' file reflects the findings of the Hearing Officer.

### **Special Hearings**

Individuals terminated during their probationary period are not entitled to an administrative appeal process under Section 3304(b). However, under the Due Process Clause they are entitled to a "liberty interest" hearing. The limited purpose of this hearing is to provide the peace officer an opportunity to establish a formal record of the circumstances surrounding his/her termination.

The hearing officer for such proceedings will be assigned in the same manner as for disciplinary appeals. The "liberty interest" hearing will be tape recorded and the officer shall be provided a copy of the tape(s). The officer may submit written statements for incorporation into the personnel file.

Inter-Bureau Procedure # 98-05-59 – Letters of Reprimand, Notice of  
Disciplinary Action and Appeals

Issued by: \_\_\_\_\_  
Raymond B. Wingerd, Chief Probation Officer

Date: 05/28/98  
Revised: March 19, 2003  
Policy Reference: Numbers 3, 18

ATTACHMENT "A"

ADMINISTRATIVE APPEAL OF PUNITIVE ACTION  
OR REQUEST FOR NAME CLEARING HEARING

Appellant's Name: \_\_\_\_\_  
(Print)

Today's Date: \_\_\_\_\_ Date of Action: \_\_\_\_\_

Nature of Action:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cause of Appeal (Statement of facts or issues to be appealed)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Appellant's Representative (If represented) \_\_\_\_\_ Telephone Number: \_\_\_\_\_

I have attached documents/statements for this appeal: Yes\_\_\_ No \_\_\_

Appellant's Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Appellant's Work Schedule/Tour of Duty: \_\_\_\_\_

Appellant's Assigned Worksite: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

FORWARD A COPY OF THIS FORM WITH ORIGINAL SIGNATURE TO THE  
PROBATION DEPARTMENT DIRECTOR OF PERSONNEL AND TRAINING  
175 West Fifth St., 4<sup>th</sup> floor  
San Bernardino, CA 92415  
Interoffice Mail Code 0460

Action Sustained \_\_\_\_\_  
Action Modified \_\_\_\_\_

Action not Sustained \_\_\_\_\_

Modifications:  
\_\_\_\_\_  
\_\_\_\_\_

Inter-Bureau Procedure # 98-05-59 – Letters of Reprimand, Notice of  
Disciplinary Action and Appeals

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Date of Appeal Hearing: \_\_\_\_\_



Hearing Officer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Hearing Panel Members: \_\_\_\_\_

Date of Findings Notice to Appellant: \_\_\_\_\_

Date of Administrative Notice of Findings: \_\_\_\_\_

cc's: Appellant  
Director of Personnel and Training  
Bureau DCPO

ATTACHMENT "B"

To: Mr./Ms./Mrs.: \_\_\_\_\_

Date: \_\_\_\_\_

From: \_\_\_\_\_, Administrative Appeal Officer

Telephone Number: \_\_\_\_\_

Your Administrative Appeal to Punitive Action was received by the Director of Personnel and Training \_\_\_\_\_.

I have been selected as the Hearing Officer.

Your appeal hearing has been scheduled for \_\_\_\_\_  
(Day of Week)

\_\_\_\_\_, at \_\_\_\_\_ in \_\_\_\_\_  
(Calendar Date) (Time) (Location)

If you are unable to make this hearing as scheduled, I need to know that immediately.

Should you have questions about the hearing process, you should contact your representative or the Director of Personnel and Training for assistance.

cc's: Human Resources Officer  
Director of Personnel and Training  
Bureau DCPO