



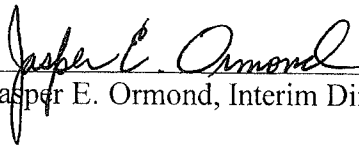
**Court Services and Offender Supervision Agency
for the District of Columbia**

*Office of the Director
Office of Human Resources*

HUMAN RESOURCES DIRECTIVE 752.1

SUBJECT: DISCIPLINARY & ADVERSE ACTIONS

EFFECTIVE DATE: February 26, 2001

APPROVED: 
Jasper E. Ormond, Interim Director

I. INTRODUCTION: A core value of the Court Services and Offender Supervision Agency (CSOSA) is that all staff members will conduct themselves in a manner that will bring credit upon themselves and the Agency. CSOSA is a law enforcement agency. All CSOSA employees are expected to conduct themselves professionally so that disciplinary actions are rarely necessary. The CSOSA Standards of Employee Conduct provide additional guidance about permissible and impermissible conduct. However, organizations will experience situations which require corrective action or possibly the removal of employees who do not comply with applicable conduct and performance standards.

Federal statutory and regulatory procedural requirements for taking such actions can be complex. This Directive provides policy and procedural guidance for CSOSA management and staff. Consistent with federal policy, this Directive covers two general types of actions: 1) *Disciplinary Actions*, which include Oral Admonishments, Letters of Reprimand and Suspensions of 14 calendar days or less; and 2) *Adverse Actions*, which consist of Suspensions of more than 14 calendar days, Demotions and Removals.

II. POLICY: It is the policy of CSOSA to deal promptly, effectively and fairly with misconduct and performance¹ problems. Three fundamental principles will be followed:

A. Progressive Action - The initial objective is to correct the problem by following the principle of progressive action. This means that, except for egregious or repetitive offenses, the minimum penalty considered sufficient to correct the problem will be taken. If progressive disciplinary actions are not effective, a discharge action will be taken.

B. Due Process - Except for Oral Admonishments and Letters of Reprimand, all actions will be taken only after providing due process. This means that the action will first be proposed in writing; the employee is then provided the right to respond; the decision is then made by a higher level of management (unless the Director proposed the action).

¹ Actions based *solely* on performance problems are normally taken pursuant to HR Directive 430.1

C. Efficiency of the Service – Any action taken pursuant to this Directive shall be for such cause as will promote the efficiency of the service (5 U.S.C. 7513(a)).

III. COVERAGE: This Directive applies to all disciplinary and adverse actions taken against CSOSA employees, supervisors and managers which are based solely or partially on misconduct. It does not apply to actions based *solely* on performance, discharge actions taken during the probationary period or any actions taken against executive staff members.

IV. RESPONSIBILITIES:

A. The Director is responsible for setting overall agency policy regarding disciplinary and adverse actions. The Director is also responsible for serving as the Proposing and Deciding Official for actions affecting staff reporting directly to him, and for serving as the Deciding Official for cases brought to his level for decision.

B. The Deputy Director is responsible for serving as the Proposing Official for actions affecting staff reporting directly to him, and for serving as the Deciding Official on suspensions, demotions and removals.

C. Associate Directors and Office Directors are responsible for serving as Proposing Officials for suspension, demotion and removal actions in their respective offices.

D. Managers and supervisors are responsible for: 1) communicating policies to staff, 2) setting the example for acceptable conduct, 3) observing employee behavior, 4) consulting with higher level management and OHR prior to taking any disciplinary or adverse actions, and 5) promptly taking or initiating appropriate action to deal with conduct problems.

E. The Office of Human Resources (OHR) is responsible for: 1) providing training to supervisors and managers on the principles and procedures for disciplinary and adverse actions, 2) providing advice and guidance to supervisors and managers on specific cases, 3) upon receipt of allegations of misconduct, coordinating the appropriate level of investigation with the Office of Professional Responsibility (OPR), 4) preparing proposal and decision letters which comply procedurally with applicable law and regulations, 5) coordinating the review of adverse action cases with the Office of General Counsel (OGC), 6) coordinating case processing with the Office of Security and 7) creating and maintaining case files.

F. The Office of General Counsel (OGC) is responsible for reviewing adverse action decision letters and providing legal advice to management and OHR regarding such actions.

G. The Office of Professional Responsibility (OPR) is responsible for the prompt investigation of allegations of employee misconduct submitted by line management, OHR or OGC and providing a report of findings and conclusions.

H. The Office of Security is responsible for assisting OPR and OHR in obtaining such information which is available and relevant to the investigation of allegations of misconduct.

V. DEFINITIONS:

A. "For Cause" - an action taken by management because of an employee's personal misconduct and/or performance deficiencies; contrasted with actions taken through no fault of the employee, such as Reduction in Force or a change to lower grade due to the reclassification of position.

B. Insubordination - refusal or failure by an employee to carry out a lawful order, directive or instruction from a supervisor or management official. All employees are required to carry out the orders of their superiors, unless compliance would require the commission of a crime, constitute a violation of federal law or regulation or compromise the employee's health or safety (unless the employee's job itself encompasses duties which put the employee at risk). A first offense of insubordination will normally result in an oral admonishment and possibly a reprimand or suspension; a second offense will normally result in removal.

C. Absence Without Leave (AWOL) - unauthorized absence from duty for which the employee is not paid; is not a disciplinary action in and of itself, but repeated instances or significant amounts of AWOL will result in disciplinary and/or adverse action being taken. AWOL is contrasted with Leave Without Pay (LWOP), which is an *approved* leave status, normally used when an employee has no accrued leave.

D. Counseling Session - private discussion between an employee and a supervisor or management official in which the employee is counseled about conduct or performance which, if continued, will likely result in formal action being taken. This does not constitute a disciplinary action and no record is kept in the Official Personnel Folder (OPF), but the supervisor keeps a written record of the counseling.

E. Oral Admonishment – lowest level of discipline, consisting of a private meeting or discussion between an employee and a supervisor or management official for the purpose of identifying a conduct or performance problem, offering assistance if appropriate and notifying the employee that recurrences will result in more severe action.

F. Letter of Caution/Direction – letter from the supervisor which either 1) warns the employee of conduct or performance issues which, if not corrected, may lead to formal discipline or 2) notifies the employee of specific procedures which must be followed.

G. Letter of Reprimand - formal discipline consisting of a memorandum, normally from the first-line supervisor, which identifies the conduct or performance problem and notifies the employee that recurrences will result in more severe action.

H. Suspension - the placement, for disciplinary reasons, of an employee in a temporary status without duties and pay.

I. Demotion - reduction in grade and pay of an employee for personal cause. Any demotion taken pursuant to this Directive must result in a loss of pay of at least 6%.

J. Removal/Discharge - synonymous terms meaning the separation of the employee from the Agency.

K. Due Process - procedure consisting of the issuance of a written proposal of action, a right to respond, and a written decision by a higher-ranking official (unless the proposal is issued by the Director); applicable to suspensions, demotions and removals.

L. Investigation - Official inquiry into allegations of misconduct, normally conducted by OPR. May include interviews, the collection of documents and records and other information. Not all allegations require formal investigations – informal inquiries to determine the relevant facts may be conducted by supervisors and/or OHR.

M. Investigative Interview - a meeting between an employee and one or more representatives of management for the purpose of obtaining facts regarding an allegation of misconduct. If the matter is administrative in nature (i.e., does not involve allegations of criminal conduct), employees must cooperate by answering questions asked during the interview. (If the matter includes allegations of criminal conduct, OGC must be consulted prior to any investigative interview.) There is no right to have an attorney or other representative present during an investigative interview which is administrative in nature; however, a bargaining unit employee (i.e., a non-supervisory employee in the Office of Community Supervision Services) may, upon request, have an authorized union representative present.

N. Representation - right of an employee, in the case of a proposed suspension, demotion or removal, to be represented by an attorney or other representative of his or her choice, so long as the choice of representative does not constitute a conflict of interest, or if an employee of the Agency, interfere with priority work assignments or impose unreasonable costs upon the Agency. The employee is required to formally designate his or her representative in writing to OHR; all communications will then be handled through that representative until the employee provides written notice that the designated representative has been terminated or replaced.

O. Proposing Official - Line management official who evaluates the available information regarding possible misconduct, consults with OHR and issues a written Proposal of Suspension, Demotion or Removal. Proposing Official authority is delegated to the Associate Director or Office Director and may not be re-delegated.

P. Advance Notice Period - the period (in calendar days) between the issuance of a *proposal* of action and the actual *imposition* of the action. For suspensions of 14 days or less, the notice period is ten (10) days; for suspensions of more than 14 days, demotions and removals, the notice period is thirty (30) days, unless shortened by using the crime provision.

Q. Administrative Leave - time off from duty, with pay, without charge to leave. As applicable to this Directive: 1) reasonable administrative leave may be provided, upon advance request, for an employee to prepare and present a response to a proposed action, meet with his or her representative or secure documents relevant and necessary to his or her defense. Supervisors should consult with OHR when considering requests for administrative leave; 2) administrative leave may also be *imposed* by the Agency while conducting an investigation, preparing a proposal or during the advance notice period when it is considered inappropriate to continue the employee in a duty status, but there is insufficient basis for imposing an indefinite suspension. When on imposed administrative leave, the employee is considered to be in an “on-call” status

and must be reachable by telephone or pager and be able to report for duty on short notice, unless annual or sick leave is approved in advance by the supervisor.

R. Indefinite Suspension - release from duty, without pay, for disciplinary reasons, during the conduct of an investigation, pending the outcome of judicial proceedings, or for similar reasons, when 1) there is a reasonable evidence to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed *or*, 2) it would be inappropriate to continue the employee in a duty status during the advance notice period in light of reasonable evidence to support the imposition of a suspension.

S. "Crime Provision" - the right of the Agency to reduce the 30-day advance notice period for adverse actions when there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed.

T. "Nexus" - relationship between off-duty misconduct and the efficiency of the service. Action may be taken based on off-duty misconduct if there is a nexus between the misconduct and the mission of the Agency and the ability to perform that mission efficiently. For example, unlawful conduct by an off-duty law enforcement officer brings into question that officer's respect for and ability to abide by the rule of law, and therefore may be grounds for discipline.

U. "Douglas Factors" - elements such as length of service, prior disciplinary record, probability for rehabilitation, etc. which must be considered in proposing and making decisions on adverse actions. (See *Douglas v. Veteran's Administration*, MSPB, 1981)

V. Deciding Official – 1) line management official, normally the first line supervisor, who issues Oral Admonishments and Letters of Reprimand; 2) for adverse actions, the line management official who reviews the Proposal, receives the employee's response, if any, and renders a decision; i.e., the Director or Deputy Director.

W. Last Chance Agreement (LCA) - Written agreement between the Agency and an employee by which a decision to remove is held in abeyance, conditioned on the employee's agreement to avoid any future misconduct. Failure to abide by the agreement will normally result in immediate termination without recourse to any complaint or appeal.

X. Official Personnel Folder (OPF) - maintained by OHR and consists of all official documents required to be retained by Office of Personnel Management regulations.

VI. PROCEDURES:

A. GENERAL

1) It is each supervisor and manager's responsibility to a) make sure that staff are aware of their general responsibilities as federal government employees held in the public trust, b) inform staff of operating policies and procedures which are to be followed and c) provide leadership by example of the kind of conduct which is expected. It is also the supervisor's responsibility to deal promptly and effectively with observed or documented instances of misconduct or performance,

or allegations of misconduct. Ignoring real or apparent instances of misconduct will not be tolerated.

2) Pre-disciplinary actions – minor misconduct can often be addressed through counseling sessions and letters of caution or direction. A letter of caution identifies the problem and puts the employee on notice that a recurrence will result in disciplinary action. The letter of direction is similar, but provides specific instructions or procedures which must be followed; again, failure to comply will result in disciplinary action.

3) It is impractical to attempt to publish a list of all possible offenses and the action which should be taken in each case. Each situation is different; each employee will have different characteristics relative to the “Douglas Factors;” and each employee will have a different explanation of the situation. Therefore, each case must be reviewed and decided on its own merits.

Disciplinary and adverse actions need to be *consistent*, meaning that similar acts of misconduct, committed by employees similarly situated, should result in reasonably similar penalties. Actions must be *progressive*. A first offense of a relatively minor nature should result in an oral admonishment or letter of reprimand.

A second offense will be grounds for suspension; however, if it involves insubordination, it may be grounds for removal. Some acts are so egregious (e.g., assault or threat of assault on a supervisor or co-worker, commission of a serious crime, embezzlement of funds, etc.) that removal may be imposed on the first offense.

The primary advisory roles of OHR and OGC are to ensure that these standards are met and that actions comply with procedural requirements.

4) One of the keys to effective discipline is to obtain all the reasonably available facts – who did what, when and the impact on the Agency. Instances as simple as AWOL need not be formally investigated; an inquiry of the employee’s whereabouts is normally sufficient to obtain the facts. On the other hand, an allegation that an employee threatened to assault a co-worker requires careful handling, formal investigation and consideration of removing the employee from duty during the notice period.

The first step for the first-line supervisor in almost every case is to discuss the situation with his or her supervisor and contact OHR, preferably someone on the Employee-Labor Relations staff. The supervisor will be given advice as to the necessity for an investigation, suggestions about fact-finding techniques, procedural guidance, drafting of proposals and decisions and expert advice as to the proper disposition of the case. OHR staff will *not* make disciplinary decisions; that is the responsibility of line management.

5) Following the completion of fact-gathering process, the first formal decision to be made is if any action is appropriate, and if so, whether the matter can be resolved by a counseling session rather than formal discipline. If a counseling session is elected, the supervisor is required to keep a brief written record of the session. The employee should be advised that a notation is being kept, and given a copy upon request.

B. DISCIPLINARY ACTIONS - If action beyond counseling is deemed appropriate, the OHR-ELR staff person will review the possible range of actions with the supervisor. The following are the types of disciplinary actions which are utilized at CSOSA:

1) Oral Admonishment - discipline consisting of a private meeting or discussion between an employee and a supervisor or management official for the purpose of identifying a conduct or performance problem, offering assistance if appropriate and notifying the employee that recurrences will result in more severe action. The supervisor must make a written notation of the discussion and retain it in his or her file for up to one year. A copy should be given to the employee. No record is kept in the OPF.

2) Letter of Reprimand - formal discipline consisting of a memorandum, normally from the first-line supervisor, which identifies the conduct or performance problem advises the employee how to correct the problem and notifies the employee that recurrences will result in more severe action. A copy is kept in the OPF for up to one year. The supervisor should also keep a copy.

3) Suspension (14 days or less) - formal discipline consisting of being placed in a non-duty, non-pay status. While on suspension, the employee is not permitted access to Agency premises (except with prior approval), and may not use leave. A permanent record (SF-50-Notification Of Personnel Action) is kept in the OPF. The supervisor should also keep a copy of the letter imposing the suspension.

a) Suspensions must be proposed in writing and provide ten (10) calendar days advance notice. OHR will prepare the correspondence. A copy of the case file containing any documents used to support the proposal must be attached. If the employee is on duty, the Proposal should be delivered by the Proposing Official or a representative, who shall ask the employee to sign an acknowledgment of receipt. If the employee is not on duty, the Proposal will be sent via an overnight/express mail service (proof of *personal* delivery *not* required), with a copy sent via First Class mail. An extra copy of the Proposal will be provided to the employee, marked, "*This copy may, at your option, be provided to your representative*"

b) The employee has seven (7) calendar days from the date of receipt (or date of mail receipt) to file a written and/or oral response to the specified Deciding Official. No response is required and no adverse inference will be drawn from the failure to file one. Upon written request and a showing of good cause, the response deadline may be extended.

c) An employee may be represented by an attorney or other representative so long as the choice of representative does not constitute a conflict-of-interest.

d) An employee may receive up to eight (8) hours of administrative leave to prepare their reply to the proposed action. To schedule use of the administrative leave, an employee must submit, in advance, an SF-71 (Request for Leave), to their immediate supervisor.

e) After receipt of the response (or after the deadline for receipt) the Deciding Official shall review the Proposal, case file and response, if any, and decide what action to take. The decision may range from closing the case with no action, up to the proposed penalty. It may not be more severe than the penalty stated in the Proposal. The decision letter must include the basis for the decision and the choice of penalty. OHR will prepare the correspondence and coordinate OGC review.

f) If the employee is on duty, the Decision should be delivered in person by the Deciding Official or a representative, who shall ask the employee to sign an acknowledgment of receipt. If the employee is not on duty, the Decision will be sent via an overnight/express mail service (proof of *personal* delivery *not* required), with a copy sent via First Class mail. An extra copy of the Decision will be provided to the employee, marked, "*This copy may, at your option, be provided to your representative*"

C. ADVERSE ACTIONS

1) Suspension (more than 14 days) - formal discipline consisting of being placed in a non-duty, non-pay status, taken in cases of serious or repetitive misconduct. While on suspension, the employee is not permitted access to Agency premises (except with prior approval), and may not use leave. A permanent record (SF-50) is kept in the OPF. The supervisor should also keep a copy of the letter imposing the suspension.

2) Demotion - involuntary reduction in grade and pay for personal cause, including performance. A permanent record (SF-50) is kept in the OPF. The supervisor should also keep a copy of the letter imposing the demotion.

3) Removal - involuntary separation taken for egregious or repetitive misconduct or performance.

4) Procedures

a) Adverse Actions must be proposed in writing and provide thirty (30) calendar days advance notice. OHR will prepare the correspondence. A copy of the case file containing any documents used to support the proposal must be attached. If the employee is on duty, the Proposal should be delivered in person by the Proposing Official or a representative, who shall ask the employee to sign an acknowledgement of receipt. If the employee is not on duty, the Proposal will be sent via an overnight/express mail service (proof of *personal* delivery *not* required), with a copy sent via First Class mail. An extra copy of the Proposal will be provided to the employee, marked, "*This copy may, at your option, be provided to your representative*"

b) The employee has ten (10) calendar days from the date of receipt (or date of mail receipt) to file a written and/or oral response to the specified Deciding Official. No response is required and no adverse inference will be drawn from the failure to file a response. Upon written request and a showing of good cause, the deadline for filing a response may be extended.

c) An employee may be represented by an attorney or other representative so long as the choice of representative does not constitute a conflict-of-interest.

d) An employee may receive up to eight (8) hours of administrative leave to prepare their reply to the proposed action. To schedule use of the administrative leave, an employee must submit, in advance, an SF-71 (Request for Leave), to their immediate supervisor. An employee may submit an additional request for administrative leave to prepare their response. Any request submitted will be considered and must provide sufficient detail regarding the reasons for the request.

e) After receipt of the response (or after the deadline for receipt) the Deciding Official shall review the Proposal, case file and response, if any, and decide what action to take. The decision may range from closing the case with no action, up to the proposed penalty. It may not be more severe than the penalty stated in the Proposal. The decision letter must include the basis for the decision and the choice of penalty. OHR will prepare the correspondence and coordinate OGC review.

f) If the employee is on duty, the Decision should be delivered in person by the Deciding Official or a representative, who shall ask the employee to sign an acknowledgement receipt. If the employee is not on duty, the Decision will be sent via an overnight/express mail service (proof of *personal* delivery *not* required), with a copy sent via First Class mail. An extra copy of the Decision will be provided to the employee, marked, "*This copy may, at your option, be provided to your representative*"

VIII. RECORDS: OHR shall establish a case file for each formal disciplinary and adverse action. The file shall contain copies of all relevant information and be maintained for up to five years from the date of the final decision, unless the case is still open, is under appeal, complaint or litigation, or the action is being used as the basis for a more severe action.

IX. CANCELLATIONS: This Directive cancels and replaces all regulatory guidance issued by CSOSA or predecessor agencies.