

UNITED STATES PROBATION DEPARTMENT
WESTERN DISTRICT OF NEW YORK

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DISCIPLINARY AND ADVERSE ACTION POLICY AND PROCEDURES

- I. Scope. This procedure is adopted by the U.S. District Court, Western District of New York, to cover reprimand, probation, discharge, suspension, demotion or dismissal of any compensated officer or employee of the U.S. Probation Office. These actions are covered under the headings of disciplinary and adverse actions.
- II. Disciplinary and adverse action's are initiated by management to reprimand, put on probation, suspend, demote, or dismiss an employee because of poor performance, misconduct, or other warranted reason. This policy is intended to provide the basis for fair and equitable procedures for correcting deficiencies in employee performance and/or conduct.
- III. The following constitutes areas where imposed corrective, disciplinary, or adverse actions would be valid. This list does not exhaust all possible grounds for disciplinary or adverse action, nor does it imply that the Chief U.S. Probation Officer is obligated to take formal disciplinary action if any employee commits any of these acts. It merely represents the kinds of activities for which action may be taken.
 - * *Failure to adhere to our Code of Conduct*
 - * *Absence from duty without leave*
 - * *Abuse of leave privileges*
 - * *Below standard work performance*
 - * *Discourteous treatment of other employees or the public*
 - * *Excessive tardiness*
 - * *Fraud in securing appointment or promotion*
 - * *Insubordination*
 - * *Misuse of Federal property, funds, or records*
 - * *Neglect of duty*
 - * *Physical violence*
 - * *Theft*
 - * *Use of intoxicating beverages on federal property (unless by specific exception granted by the Chief Judge)*
 - * *Reporting to duty under the influence of intoxicating beverages or controlled substances, and/or consuming alcoholic beverages or controlled substances during duty hours.*
 - * *Falsifying reports or records*
 - * *Violation of confidentiality*
 - * *Violation of office policies, rules, or procedures*
 - * *Violation of the Internet policy*
 - * *Violation of the Judicial Conference approved Workplace Drug Testing Policy of "Zero Tolerance" for any employee testing positive for illegal drugs/narcotics*

IV. Definitions. As used herein, the following terms have these meanings:

Appointing Officer. In the case of the probation officer, the Chief U.S. District Judge; in the case of support staff, the Chief U.S. Probation Officer.

Presiding Official. The court, or the person designated by the court, to preside at the hearing.

Hearing. The review of the incident/behavior justifying an adverse action.

Appeal. For officers; a review of the adverse action before the Chief Judge, for support staff; before the Chief U.S. Probation Officer.

V. TYPES OF ACTION

A. DISCIPLINARY ACTIONS. There are two (2) forms of disciplinary action that may be applied in this office:

1. Official Reprimand. An official reprimand is a formal disciplinary action for misconduct, inadequate performance, or repeated lesser infractions issued by the Chief or his designee. This action becomes part of the employee's personnel record and the notice of the action may be purged from the file at the discretion of the Chief U.S. Probation Officer at a future time. A reprimand may be issued in one of two forms:
 - (a) Oral Warning. The oral warning is a verbal notice to the employee that his/her performance or behavior must be improved. The warning defines the areas in which improvement is required, sets up goals to achieve improvement, and informs the employee that failure to improve performance and/or behavior will result in more serious action.
 - (b) Written Warning. A written notice is a documentation of the oral warning. It is the formal notice to an employee that unless behavior improves, it will be necessary to take further disciplinary action. The written warning contains the same information recorded in the oral warning, and advises the employee of the potential consequences of failing to improve that performance and/or behavior.
2. Probation. The purpose of probation is for the employee to be given an opportunity to correct unacceptable performance or behavior. The Chief U.S. Probation Officer may place an employee on probation for a specific or undefined period of time.

Disciplinary Action does not mandate a formal hearing.

B. ADVERSE ACTION. (Definition) There are three forms of adverse action that may be applied in this office.

1. Suspensions. The Chief U.S. Probation Officer may suspend employees for up to ten (10) working days, with or without pay, for significant misconduct or repeated lesser infractions. Since the objective is to correct and not punish, the reprimand is normally used. However, there may be facts and circumstances in an individual case which require more stringent action to impress the employee with the necessity of improvement or correction.
2. Reduction in Rank or Pay (Demotion). The Chief U.S. Probation Officer may demote an employee in lieu of dismissal when the employee is found to be inefficient in his/her position and is reduced in grade to a position where it is determined that the employee can perform competently.
3. Dismissal. The Chief U.S. Probation Officer may initiate termination proceedings against an employee who has demonstrated unsuitability for continued employment, or has demonstrated unwillingness or refusal to conform to prescribed policies and procedures of this office. The removal of a probation officer is subject to the approval of the appointing officer.
 - (a) Separation for Poor Performance. A separation for poor performance is based upon the employee receiving an unsatisfactory performance rating and having failed to satisfactorily improve under a work improvement schedule. Before initiating adverse actions against an employee for poor performance, the employee shall have been warned about his/her shortcomings and warned of the consequences of failure to improve.
 - (b) Disciplinary Dismissal. Dismissal is seldom imposed unless the conduct is of such a serious nature that no other recourse is appropriate.

Notice. The Chief U.S. Probation Officer shall give the employee, against whom the adverse action is proposed, written notice which shall include the following:

1. A description of the proposed adverse action and the reason(s) for it.
2. The proposed effective date of the action.
3. Notice of the right to respond in writing and to request a hearing, and the date by which such a request must be made.
4. Notice of the right to be assisted in the preparation of a response at an Administrative Hearing, if requested, by a representative of the employee's own choosing.

VII. Administrative Hearing

The employee involved in an adverse action has the option of an administrative hearing.

1. The presiding official shall afford the employee, or their representative, an opportunity to comment on the adverse action and to offer relevant data.
2. The administrative hearing, which need not be formal, will be conducted in such manner and at such time and place as the presiding official determines. The presiding official may determine if the hearing is to be open to persons other than the employee, their representative, and a representative of the probation department.

VIII. Appeal. The employee may request an appeal of the proposed action within ten working days following the hearing. The appeal hearing, which need not be formal, will be conducted in such a manner and at such a time and place as the presiding official determines. The presiding official may determine if the hearing is to be open to persons other than the employee, their representative, and a representative of the probation department. The presiding official shall arrange for a record of the hearing to be made.

IX. Notice of Decision. Upon a final decision, written notice of any adverse action will be provided to the employee. The notice shall contain the following:

- * The nature of the adverse action and its effective date.
- * The reason supporting the adverse action.
- * A statement that the decision is final.

X. Expedited Removal of Employee: If the appointing officer, or his designee, determines that the continued presence of the employee in the work place during the pendency of adverse action proceedings may pose a threat to the individual, fellow workers, or the public; result in loss of or damage to government property, records or documents; adversely affect the day-to-day operation of the court; or otherwise jeopardize government interests, the appointing officer, or his designee, may:

1. Assign the employee to duties where he or she is no longer a threat;
2. With the person's consent, place the employee on leave;

3. Place the employee on involuntary sick leave when the court has medical documentation demonstrating physical or mental incapacitation;
4. Place the employee on leave without pay.
5. Take other appropriate action to address the problem.

This Model of Disciplinary and Adverse Action for U.S. Probation Employees supersedes the order of this court filed 08/16/96. This procedure shall apply to a disciplinary and adverse action proposed on the date set forth. The procedure shall remain in force until further order of the court.

SO ORDERED.



David G. Larimer
Chief Judge
United States District Court

Dated: September 25, 2000
Buffalo, New York