



# CALIFORNIA STATEWIDE LAW ENFORCEMENT ASSOCIATION

THE VOICE OF LAW ENFORCEMENT, PUBLIC SAFETY & CONSUMER PROTECTION

## AFFILIATES

Association of Conservation Employees

Association of Criminalists-DOJ

Association of Deputy Commissioners

Association of Motor Carrier Operations Specialists

Association of Motor Vehicle Investigators of California

Association of Special Agents-DOJ

California Association of Criminal Investigators

California Association of Food & Drug Investigators

California Association of Fraud Investigators

California Association of Regulatory Investigators and Inspectors

California Association of State Investigators

California Fish & Game Wardens Association

California Organization of Licensing Registration Examiners

CHP-Public Safety Dispatchers Association

Fire Marshal's & Emergency Services Association

Hospital Police Association of California

State Employed Fire Fighters Association

State Park Peace Officers Association of California

October 16, 2008

## VIA REGULAR AND CERTIFIED MAIL

Diana Fouts-Guter

[REDACTED]  
Sacramento, CA 95826

### **Re: Notice of Intent to Take Disciplinary Action**

Dear Ms. Fouts-Guter:

Please be advised pursuant to Article XX of the Constitution of the California Statewide Law Enforcement Association (CSLEA) and Article X of the Standing Rules to the CSLEA Constitution, the following charges have been filed with the CSLEA Disciplinary Hearing Committee for consideration of imposition of penalties for acts in contravention to the CSLEA Constitution and Standing Rules. The charges are based on the following:

In approximately September 2007, an organization known as the Peace Officers of California (POC) initiated a campaign to sever the peace officer members of Bargaining Unit 7 who are currently represented by CSLEA. On or about October 4, 2007, the CSLEA Board of Directors expressed in writing CSLEA's opposition to the severance and determined it would diminish the bargaining strength of CSLEA on behalf of Unit 7 peace officers and non-peace officers.

In the POC June 2008 Newsletter you were quoted in support of POC.

Your acts in furtherance of the severance are deemed to violate Article XX, Section 2(e) of the CSLEA Constitution which prohibits: "Any activity which assists or is intended to assist a competing organization within the jurisdiction of CSLEA."

2029 H STREET, SACRAMENTO, CA 95811

PH: (916) 447-5262 / FAX: (916) 447-1583 / TOLL FREE: (800) 522-2873

<http://www.cslea.com>

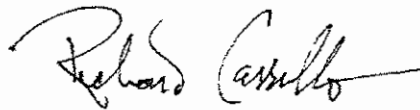
Ms. Fouts-Guter  
October 16, 2008  
Page 2

Pursuant to Article X of the Standing Rules to the CSLEA Constitution, the CSLEA Disciplinary Hearing Committee is authorized to conduct a hearing on the above charges and to determine whether to impose the following penalties: a formal reprimand, full or partial restitution, a fine of not less than \$1,000 or more than \$4,000 for each occurrence, censure, removal from office, suspension from membership for a defined period, or expulsion. A copy of the relevant provisions of the Constitution and Standing Rules are enclosed.

Should you desire to appear before the CSLEA Disciplinary Hearing Committee, you must file a request in writing to be received by CSLEA no later than the close of business on Friday, October 31, 2008. Please address any such request to the attention of CSLEA President Alan Barcelona, 2029 H Street, Sacramento, CA 95811; fax (916) 447-1583. If you elect to appear before the Committee you will receive written notification of the hearing which will occur no earlier than thirty (30) days nor later than ninety (90) days from your receipt of these charges. You may also submit a written answer to the charge.

Should you fail to exercise your right to a hearing or submit a written answer to the charge, the Committee will act on the information that is presented against you and you will be notified of any action taken by the Committee.

Sincerely,



Richard Carrillo  
CSLEA Sr. Vice-President  
Unit A Vice-President  
AMVIC President  
Chair, CSLEA Disciplinary Hearing Committee

RC/se  
Enclosure

cc: Severance Discipline File  
Disciplinary Hearing Committee

requests for political endorsements shall be made consistent with Standing Rule Article VII, Section E. Any political contribution from an affiliate or affiliate PAC must be specifically approved by the CSLEA PAC Committee.

**Disciplinary Hearing Committee** - Shall hold hearings on potential discipline of members as ordered by the Board of Directors or Executive Committee.

**Additional Committees** - Such other committees be appointed by the President as may, in his/her opinion, be necessary to serve the best interest of CSLEA. The President shall be an ex-officio member of all such committees.

## **Section 2. Quorum**

A majority of the members of any committee, exclusive of the President, except the Executive Committee and the Negotiations Committee of which the President is a voting member, shall constitute a quorum, and a majority of such quorum shall have the power to do any act which could be done by the committee.

## **Section 3. Removal of Committee Members**

The President may remove a member of any committee who is judged as not properly performing his/her duties.

## **Section 4. Expenses**

Members in standing or special committees may be allowed expenses incurred by them in attending committee meetings, in such amounts as shall be determined by the Board of Directors.

# **ARTICLE XIX**

## **Ratification of Contract**

The CSLEA/State contract (MOU) shall not be valid until it is ratified based upon the vote of the CSLEA general membership. Each full dues-paying member shall be granted one (1) vote. The contract shall be considered ratified upon a majority vote of those voting. All agreements with the State of California and CSLEA, through the meet and confer process, must be signed by the CSLEA President or his designee.

# **ARTICLE XX**

## **Discipline**

### **Section 1. Preamble**

In addition to the recall procedure or any other cause for discipline or other procedure or other defined causes for discipline contained in this Constitution, the Board of Directors, or any

member, may file charges against any individual or Affiliate Organization for acts or omissions as hereinafter described in this section, including, but not limited to, the acts or omissions of such individual while a member of CSLEA or while an officer, director or employee of CSLEA. Procedures for filing disciplinary charges shall be in accordance with procedures set forth in the Standing Rules to the CSLEA Constitution.

## **Section 2. Causes for Discipline**

Any of the following shall constitute a basis for the filing of charges:

- (a) Violation of any provision of the Constitution or the Standing Rules of CSLEA or of the Constitution or By-Laws of any Affiliate of CSLEA.
- (b) Misappropriation, embezzlement or improper or illegal use of CSLEA or Affiliate funds.
- (c) Any action by any officer, director or employee or member of CSLEA or Affiliate which results in expenditure of moneys without proper written authorization.
- (d) Acting in collusion with management to the detriment of the welfare of CSLEA or its membership.
- (e) Any activity which assists or is intended to assist a competing organization within the jurisdiction of CSLEA.
- (f) Refusal or deliberate failure to carry out a legally authorized decision of the Board of Directors, the President of CSLEA, or the governing body of an Affiliate of which the accused is a part.
- (g) Instituting or urging others to institute legal action outside of CSLEA, before any forum whatsoever, against CSLEA or any Affiliate thereof, or any officer, director or employee or member thereof, without first exhausting all internal remedies within CSLEA, provided that the foregoing shall not apply where action was instituted in order to prevent the loss of rights under an applicable statute of limitations and the member has diligently pursued his or her internal remedies.
- (h) Using the name or assets (including mailing lists or any other information deemed to be confidential) or good will of CSLEA, or of any Affiliate thereof in an unauthorized manner or for an unauthorized purpose.
- (i) Deliberately interfering with any official of CSLEA or of an Affiliate in the discharge of his or her lawful duties.
- (j) Conviction of a crime, the nature of which is such to bring CSLEA as an organization into disrepute.
- (k) Knowingly submitting any false financial report or statement to CSLEA or any Affiliate thereof or failing to adhere to the requirements of the Affiliate Standards Compliance.

- (l) Disrupting CSLEA or Affiliate meetings or disrupting CSLEA or an Affiliate thereof in its official business.

## **ARTICLE XXIII**

### **Section 1. Arbitration of Disputes, Claims and/or Controversies**

Members shall submit to final and binding arbitration any dispute, claim or controversy arising between them and CSLEA, excluding disputes or claims specifically referenced elsewhere, (for example, Article XXI Discipline), or claims alleging any violation of this Constitution or any duty or responsibility created by statute or common law, including the duty of fair representation owed to any member by CSLEA, the CSLEA Board of Directors or any Officer of the Corporation, including but not limited to any discrimination claim under Federal, State or local law.

### **Section 2. Conduct of Arbitration**

In all cases an impartial arbitrator will be selected by the parties using an alternative striking method from a list of seven arbitrators obtained from the American Arbitration Association. The arbitration shall be conducted in accordance with the arbitration rules and procedures established by the American Arbitration Association. The arbitrator's fees and expenses will be paid in full by CSLEA. In cases of discrimination claims, the arbitration procedures and payment of arbitrator fees and expenses will be in accordance with arbitration procedures set forth in the Standing Rules.

## ARTICLE X

### PROCEDURE FOR FILING DISCIPLINE CHARGES

#### **Section A. Procedure for Filing Discipline Charges Defined**

1. Charges shall be in writing and shall be signed by the member or members bringing the charge. The charges shall be specific, citing in detail the nature, the date, and the circumstances of the alleged offense and, where violation of a Constitution or Standing Rules provision is alleged, the specific sections shall be cited, along with the specific act or omission which constitutes the alleged violation. The charge shall be filed with the President of CSLEA or, if he/she is a directly interested party, the Senior Vice President of CSLEA. Such officer shall forward such charge to members of the Hearing Committee.
2. Charges must be brought within one (1) year of the occurrence of the act or omission or within one (1) year of a member reasonably learning of same.
3. The charges shall be served by registered mail, return receipt requested, to the address last made known to CSLEA by the member involved. Alternatively, service may be made personally. However, without a hearing, the Hearing Committee, by conference or conference call, may by unanimous vote determine the charges have no merit. Such decision may be appealed in the same manner as Section D, Appeals, below.

#### **Section B. Hearing Procedures**

1. The President of CSLEA shall annually and/or reaffirm a five (5) member Disciplinary Hearing Committee to serve for a one (1) year term. The Hearing Committee shall receive a copy of charges filed against a member, employee, or officer of CSLEA from the President or Vice President.
2. A copy or additional copy of the charges shall be sent to the Accused to their last known address on the books of CSLEA, or personally handed to them within fifteen (15) days after the charges are received from the President or Senior Vice President of CSLEA and at least thirty (30) days before a hearing date. The Disciplinary Hearing Committee shall similarly serve on the Accused a statement of the date, time and place of such hearing on such charges, scheduled no less than thirty (30) days nor more than ninety (90) days after the receipt of the charges by the Accused. No later than fifteen (15) days prior to the date of hearing, the Accused shall file a Statement of Defenses which sets forth in substance the Accused's position relative to the charges and which identifies any witnesses and/or documents the Accused intends to call or introduce at the hearing. At the hearing, the Accused will not be permitted to assert a position, call any witness, or introduce any document not addressed in the Statement of Defenses. The failure to file a Statement of Defenses will be deemed a waiver of the Accused's right to a hearing on the charges.

3. The Accused shall have the right to cross-examine any witnesses against them, the right to present a written answer to the charge, to present witnesses in their own behalf, the right to be presumed innocent unless proven guilty, and the right to choose either an open or a closed hearing. The burden of proof involved is the preponderance of evidence and the burden lies with the accuser. The rules of evidence shall not apply and the Disciplinary Hearing Committee may rely on any information which would be considered by a reasonable person in the ordinary course of affairs.
4. The Accused does have the right to be represented by any member or officer of CSLEA. Representation by an attorney is not allowed.
5. The charging party will have the right to present testimony, the right to select a person of his/her own choosing, who is a member or officer of CSLEA, to present the case. Representation by an attorney is not allowed. The charging party or his/her chosen representative shall present the charges, and also have the right to cross-examine any witnesses, including the Accused, who does testify on behalf of the Accused.
6. Members of the Disciplinary Hearing Committee may also be members of the Board of Directors of CSLEA.
7. The Disciplinary Hearing Committee may be advised by an attorney.

### **Section C. Penalties**

The Disciplinary Hearing Committee may, if it finds the accused person guilty, assess any one or more of the following penalties:

1. A formal reprimand, accompanied by a formal warning, against any repetition of the act or omissions of which the Accused is guilty.
2. Full or partial restitution, where the consequences of the offense can be measured in material terms.
3. A fine of not less than \$1,000 nor more than \$4,000 per occurrence.
4. Censure as defined by the CSLEA Constitution.
5. Removal from office.
6. Suspension from membership for specified period of time.
7. Expulsion from membership.

If the charges are not sustained, or the Disciplinary Hearing Committee or the appellate body is convinced that charges were not brought or were continued to be prosecuted by

the charging party even as new evidence was presented, without reasonable basis, or in bad faith, or actuated by improper malice, the committee or the appeal body may impose such penalty on the charging party as in its judgment is deemed proper under the circumstances. In any such case, the party against whom the penalty is imposed shall have the same right to appeal the imposition of the penalty if it is imposed by the Disciplinary Hearing Committee, as would exist if he/she initially had been charged and had a hearing before the Committee. The penalty imposed must be one such as set forth above in Section C.

All decisions shall be rendered by the Disciplinary Hearing Committee and transmitted to the parties within thirty (30) days following completion of the hearing except by mutual consent of the charging party and the Accused. Such decision shall be in writing and shall be transmitted by registered mail, return receipt requested, to the charging party and to the Accused, simultaneously.

Withdrawal of charges: The charging party(ies) may withdraw the charges, only if done in writing by registered mail, return receipt requested, or in person to the Hearing Committee Chair.

#### **Section D. Appeals**

1. The appeal body shall be the CSLEA Board of Directors, excluding the Accused if on the CSLEA Board of Directors.
2. Either party may, within thirty (30) days following receipt of the decision, file an appeal. The appeal shall be filed to the appeal body and the opposing party simultaneously. The appeal shall be in writing and shall be accompanied by a copy of the original charge and of the decision which is being appealed. The appeal shall set forth in substance the appellant's reasons for believing the Hearing Committee was in error and the nature of the error. The appeal shall be limited to the evidence which was presented to the Disciplinary Hearing Committee. No evidence which was reasonably available at the time of hearing by the Disciplinary Hearing Committee shall be considered on appeal. The appeal shall be served by registered mail, return receipt requested, or in person, upon the appeal body and the opposing party. The opposing party shall have thirty (30) days in which to respond to the appeal.
3. The appeal body shall determine the matter, if reasonably possible and after allowing for the time frames for a response from the opposing party, at the next scheduled meeting of the CSLEA Board of Directors. The decision of the appeal body shall be effective immediately.
4. If the appeal body grants the appeal, the matter shall be remanded to the Disciplinary Hearing Committee who shall conduct further proceedings which are consistent with the decision of the appeal body.
5. The Disciplinary Hearing Committee and the appeal body may each set forth

rules and regulations as to the procedures of a hearing and/or appeal, as long as same are not inconsistent with these procedures.

6. The appeal body shall render its decision in writing and transmit such decision to both parties within thirty (30) days following the completion of the appeal hearing except by mutual consent of the appellant and the respondent. Such decision shall be in writing and shall be transmitted by registered mail, return receipt requested, to both appellant and respondent, simultaneously. In addition, a copy of the decision shall be forwarded to the official headquarters for the appropriate action.
7. Neither the charging party nor the Accused have the right to be represented by an attorney. The CSLEA Board of Directors may be advised by an attorney.

**Section E. Exhaustion of Remedies Within CSLEA**

No officer or member of CSLEA shall resort to judicial proceedings of any kind, before any forum, with regard to any matter pertaining to this organization or its Affiliates, or his/her office, until all remedies provided for within the Constitution and Standing Rules have been fully exhausted, provided the foregoing shall not apply where the action was initiated to prevent the loss of rights under an applicable statute of limitations and the member or officer has diligently pursued his or her internal remedies.

**Section F. Member/Affiliate Organization Reinstatement**

Membership terminated under this Section shall only be restored by a three-fourths vote of the Board of Directors.

**ARTICLE XI**

**ARBITRATION PROCEDURES FOR DISCRIMINATION CLAIMS**

**Section A. Mediation of Discrimination Disputes**

1. In the event there is a dispute under Article XXII (c) of the Constitution, before invoking the arbitration procedures set forth below, the parties shall first participate in the mediation of the dispute.
2. The mediator shall be selected by mutual agreement. If mutual agreement is not reached, the parties shall select a mediator through AAA by procuring a list of seven (7) names and alternately striking names until one remains. The mediation shall be conducted informally. The cost of mediation shall be borne by the parties equally.
3. At least ten (10) business days before the date of mediation, each side shall provide the mediator with a statement of its position and copies of all supporting documents. Each party shall send to the mediation a person who has authority to