

California Department of Corrections & Rehabilitation

DUTY STATEMENT

Office	Office of Legal Affairs
Unit	Employment Advocacy and Prosecution Team
Classification	Attorney
Working Title	Vertical Advocate
Position Number	065-400-5778-XXX
Revised Date	June 1, 2015

SUMMARY:

Under supervision of the Employment Advocacy and Prosecution Team (EAPT) Chief Counsel (CC) and Assistant Chief Counsel (ACC), the Attorney (Vertical Advocate) assists in investigations and prosecutes disciplinary actions on behalf of Office of Legal Affairs (OLA) for the California Department of Corrections and Rehabilitation (CDCR). The Vertical Advocate represents the best interests of the CDCR throughout the adverse action process, from the outset of the investigation to the prosecution of the case at hearing before the State Personnel Board (SPB), and, if necessary, through the writ and/or appeal process.

ESSENTIAL DUTIES AND RESPONSIBILITIES INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING (other duties may be assigned):

- 50% The Vertical Advocate, who is assigned to one or more Hiring Authorities (HA), participates in and coordinates the adverse action process on designated cases, i.e. matters involving staff integrity and/or dishonesty, abuse of authority, sexual misconduct, use of force in which an inmate suffers death or serious injury, use of deadly force, serious allegations made against supervisors, and high profile or dismissal cases assigned to the Vertical Advocate by the CC, ACC, or supervisor. The Vertical Advocate advises the Office of Internal Affairs (OIA) Special Agents (SA) regarding the scope and thoroughness of the investigation, interfaces with the Office of Inspector General Special Assistant (SAIG) in monitored cases, coordinates with the Employee Relations Officer (ERO) with respect to disciplinary actions, and advises the Hiring Authority on penalties for disciplinary actions and other matters. Duties include, but are not limited to:
- a. Knowing and complying with Department Operations Manual (DOM), Articles 14 and 22; California Code of Regulations, Titles 2 (SPB Regulations) and 15 (CDCR Regulations); California Evidence Code; relevant Government Code sections, SPB precedential decisions; and case law.
 - b. Reviewing assigned case files; analyzing and evaluating case factors; determining if an investigation or subject only interview is needed on direct action cases and preparing an Initial Case Evaluation (ICE) for supervisory review.
 - c. Assessing the statute of limitations (SOL) within 21 days of assignment of file, noting the date of incident, date of discovery, tolling factors and documenting the analysis in the Case Management System (CMS).
 - d. Meeting with the SA and the SAIG, in monitored cases, within 21 days of assignment of a file to the Vertical Advocate. Discussing, during these meetings, the elements of a thorough investigation and providing legal consultation, including developing the investigative plan, assisting in the preparation of investigative interviews and scheduling witness and subject interviews. Documenting communications with the SA and SAIG in CMS.

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- e. Attending subject and key witness interviews. Documenting attendance or reason for not attending an interview in CMS.
- f. Reviewing electronic recordings of all interviews, prior to the Post Investigative Findings and Penalty Justification meeting with HA (402/403 Conference).
- g. Reviewing and evaluating the OIA final Investigative Report and exhibits, within 21 days of receipt, for legal sufficiency and thoroughness to prosecute an adverse action, including union contract issues; verifying that all documents referenced in the Table of Contents have been included; providing feedback to the SA, including whether additional investigation is needed; discussing the report with the HA and SAIG and documenting the thoroughness and clarity of the report in CMS.
- h. Setting the date for the 402/403 Conference within 14 days after the HA receives the OIA Report. Consulting with the ACC prior to the 402/403 Conference in all cases where the Vertical Advocate recommends termination. Meeting and advising the HA and SAIG at the 402/403 Conference regarding the sufficiency of the investigation, whether the allegations are founded or unfounded, and recommending the appropriate penalty for designated cases based on DOM Article 22's disciplinary policy and the Employee Disciplinary Matrix. Documenting the 402/403 Conference, confirming the findings and penalties.
- i. Requesting and attending Executive Review of cases when there are significant disagreements among the stakeholders regarding investigative findings, imposition of penalty or settlement agreements. Drafting an analysis and issue memorandum of OLA/EAPT's position for reference by the new HA and SAIG.
- j. Drafting Preliminary Notices and Notices of Adverse Action (NOAA) and Letters of Intent for HA signature. Coordinating with the ERO to ensure that these notices are timely served in person or by mail to the most recent address and contain all documents relied upon by the HA in making the penalty decision.
- k. Attending *Skelly* hearings and negotiating settlement agreements that are proposed during the *Skelly* process. Consulting with the ACC to obtain approval prior to any settlement. Documenting the *Skelly process and results* in CMS.
- l. Drafting Pre-Hearing/Settlement Conference (PHSC) Statements in compliance with SPB Regulations. Identifying witnesses, documents and experts needed for hearing. Identifying availability of witnesses for hearing. Consulting with the HA regarding potential settlement offers.
- m. Attending PHSCs and negotiating settlements as appropriate. Immediately consulting with the ACC once a settlement offer has been tendered to obtain approval, prior to presenting the offer to the HA and SAIG. Ensuring that the mandated Article 22 settlement terms are included in all settlements.

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- n. Coordinating with the ERO the witness subpoenas for SPB hearings, immediately following the scheduling of hearing dates at the PHSC.
- o. Retaining expert witnesses, as needed, including ensuring OLA procedures are followed to contract with the witness and obtain payment of retainers and fees.
- p. Propounding and responding to discovery in evidentiary cases. Meeting and conferring with opposing counsel regarding discovery disputes.
- q. Drafting, filing and defending pre-trial motions, including discovery motions, in compliance with the time and procedure constraints of SPB regulations.
- r. Preparing for hearings, as set forth in DOM section 33030.28, including visiting the location of the misconduct, preparing witnesses, ensuring that subpoenas have been served, compiling a trial binder or folder, securing needed transcripts, researching legal issues and preparing pocket and trial briefs.
- s. Prosecuting the NOAA at SPB either live or by video conferencing.
- t. Drafting written Closing Arguments for filing with SPB, if required by the Administrative Law Judges.
- u. Assisting managers, supervisors and EROs in drafting, preparing, presenting, and settling adverse actions, for non-designated cases.
- v. Meeting with and responding to the HA on disciplinary matters.

30% Interfaces and consults with the Office of the Inspector General, Discipline Monitoring Unit (DMU), which office monitors the CDCR disciplinary processes.

10% Drafts Petitions for Rehearing by the SPB, Petitions for Writ of Administrative Mandamus and represents the CDCR in any subsequent appeals before the SPB or in the Superior Courts or other appellate courts.

5% Conducts legal research using various electronic databases; drafts legal opinions as directed; analyzes statutes, regulations, court decisions, and policy.

5% Attends monthly mandatory EAPT Staff Meetings and monthly ACC Case Status Meetings.

Performs other duties as required by the Secretary of the CDCR or the General Counsel, the Chief Deputy General Counsels, OLA, as well as the EAPT's CC or ACCs.

This position includes travel throughout the state to state prisons and state courts any day of the week. Working hours are not 8:00 am – 4:00 pm.

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Supervisor's Statement: I have discussed the duties of the position with the employee.

SUPERVISOR SIGNATURE DATE

EMPLOYEE SIGNATURE DATE

cc: Official Personnel File
 Supervisory File