

## **MISDEMEANOR ACTION**

**5503**

(No. 6 January 1999)

A violation of any provision of the Forest Practice Act or rule or regulation of the board is a misdemeanor (PRC Section 4601), as is a violation of any other state forest or fire law that is so classified (PRC Section 4021). One-year statute of limitations are applicable to all misdemeanors (PC Section 801). Therefore, any legal action must commence within one year from the date on which the violation occurred.

A misdemeanor action consists of a custodial arrest (commonly called "arrest"), a citation (a form of arrest with release upon a signed promise to appear), or a complaint.

However, unlike a fire law (or other statutory) offense, a misdemeanor action for a violation of the Forest Practice Act, or the Board of Forestry regulations adopted pursuant thereto, cannot be brought against an employee of the timber operator, timber owner, or timberland owner, but must be brought against the timber operator, timber owner, or timberland owner (PRC Section 4528). An exception occurs when an injunction has been granted (PRC Section 4605); a violation of an injunction by any person is a misdemeanor. Necessary service or action in the case of a corporation may be made to or taken against the corporate officers or managerial representatives of the organization. The complaint against a corporation must be made in the name of the corporation. It is possible to take a misdemeanor action against the corporate officers if they have been personally notified of the violation, and the violation (or similar violation) remains uncorrected or continues. If in doubt, consult the Deputy District Attorney assigned to the case.

The local District Attorney normally is the legal counsel for the state in prosecuting misdemeanor actions. A department forest officer should become acquainted with the members of the local District Attorney's staff with whom he/she may need to work and make special efforts to develop good working relationships.

If questions or doubts arise, and especially when it is likely that a potential defendant will plead "not guilty" and request a jury trial if charges are brought, the forest officer should consult the District Attorney's office and acquaint the deputy assigned to the case with the circumstances and the charges being made. Depending upon circumstances, it is often desirable to engage in such consultation before starting a misdemeanor action so that the Deputy District Attorney can advise the action that he/she feels can be supported.

Each District Attorney has a "style" or "approach" that may be influenced by knowledge of the magistrate of the court in which an action may be brought.

If a difficult matter is not properly resolved while working with the District Attorney, the department's staff counsel and/or the resource management staff should be advised or consulted. If necessary, the Sacramento staff will consult the Attorney General's staff to resolve the problem.

In presenting documentation to the District Attorney, whether preparing for a trial or obtaining a complaint, the department's "Confidential Report--Forest Practice Enforcement Recommendations," form LE-80, with copies of supporting documents should be used, unless the District Attorney prefers a different format. The District Attorney should be informed of any concurrent administrative law enforcement action, e.g., corrective action, license discipline, injunctive action, etc.

Before presenting a case to the District Attorney for review, the forest officer should check the following points to be sure the case is properly presented:

- Is the designated court the proper court having jurisdiction for the geographic area where the violation occurred?
- Are the elements constituting the violation clearly, accurately, and completely set forth?
- Is the action being sought within one year of the date of violation (PC Section 801)?
- Is the case file complete as to necessary documents, exhibits, declarations, etc., listed and referenced therein?

The judges of the courts in the jurisdiction also should know a department forest officer. With the assistance of the lead forester for the area, the forest officer should try to spend enough time with the judges as needed to explain the nature of the cases that may be brought forth and the foundation in law and regulations on which they will be based. It is especially important to stress that the damages resulting from many types of violations are not correctable. Of course this should be done completely apart from, and without reference to, any specified case that may be before the courts.

If possible, a misdemeanor action should be used to obtain probation, with correction of the violations by a specified time as a condition. When this is done, the department should have proper follow-up and contact with the court if the correction is not made by the specified time.

## **CUSTODIAL ARREST**

**5503.1**

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"Custodial" arrest means physically taking the person who the arresting officer has probable cause to believe committed the offense into his/her custody, with the use of minimum necessary force and physical restraints in conformance with CDF policy (handcuffs), and transporting or delivering the accused to the appropriate custodial facility (such as the county jail) to be booked and held pending arraignment and trial. As soon as possible, but not later than the next court day, the arresting officer must file the formal written charges with the court of jurisdiction (CDF policy and PC Section 825).

This kind of arrest can only be made by a duly designated peace officer acting within the scope of his/her authority for the category of the offense that has been committed. (For example, a CDF peace officer normally is limited to enforcement of the state forest and fire laws, except for emergencies or other special circumstances.) Custodial arrest normally should be used only when there is reason to believe the person committing the offense could not be found or contacted again.

In deciding whether or not to make an arrest personally, the peace officer should always remember that the subject may resist with force, including deadly force, or may resist with the help of others who are present. Therefore, in forest practice enforcement, custodial arrest should be made only by an experienced peace officer exercising good judgment of the circumstances, the temperament of the subject, and the equipment and capability of the arresting officer.

## **CITATION**

**5503.2**

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A citation is a promise to appear following an arrest. The arresting officer does not take the subject, upon his/her signing a promise to appear in the appropriate court of jurisdiction on a specified date and time, into physical custody. A citation may have less of a stigma in the mind of the subject.

However, the forest officer must always consider the possibility that the subject may refuse to sign the promise to appear. The officer is then faced with the problem of a custodial arrest. If the officer has doubts about being able to carry out a custodial arrest under the circumstances, he/she should seek the aid of a sheriff's deputy or other peace officer. Otherwise, the officer should file a complaint with the court of jurisdiction.

In issuing a citation, peace officers will use the department's citation book (Notice to Appear, Form LE-33), and follow the instructions in the Law Enforcement Procedures Handbook Section 9400. A copy of the citation must be filed with the clerk of the court of jurisdiction at the earliest possible time, but before the date and time for appearance. In some cases, the court may ask the officer issuing the citation also to file a complaint specifying the charges.

## **COMPLAINT**

**5503.3**

(No. 6 January 1999)

A complaint is a sworn document filed with the court of jurisdiction by a peace officer, the District Attorney, or a citizen, and endorsed by the court. It specifies the charges and is, in effect, a request that the court issue a warrant or action to cause the person against whom the complaint is directed to appear before the court to answer to the charges.

In lieu of a warrant, some courts may prefer to telephone or mail a notice to direct the defendant to appear. Other courts may require that only the District Attorney file complaints.

In forest practice work, some of the advantages of a complaint over a citation are indicated below:

- The warrant can be served by the sheriff's office, an officer of the court, or the forest officer, or the court can notify the defendant to appear, according to the circumstances.
- The complaint procedure allows the forest officer time for reflection, review of the statutes, and legal consultation with the District Attorney's staff concerning the violations to be charged, procedure to be followed, or whether the complaint should have been filed or some other action taken. The District Attorney's staff can thus be informed of the nature of the case at the beginning. This is wise if it is known or felt the defendant may plead "not guilty" and request a jury trial, since the District Attorney's office will have to prosecute the case. In many cases, there may be no particular reason to contact the District Attorney's office in advance of filing a complaint with the court.
- The court can become familiar with the charges and the laws involved before the case has to be judged.

Therefore, if there is no particular urgency, if the possibility of a difficult arrest or citation exists, if time for review of the statutes or legal consultation is desirable, and if there is a reasonable certainty the defendant can be located readily to be served, the filing of a complaint is probably the best action to take for a misdemeanor.

The biggest disadvantage of the complaint is that the procedure takes time, may require a separate trip to the timber operation if the forest officer is the one who serves the warrant, and it may require the forest officer to contact the court office more than once to get the complaint filed and a warrant issued.

**FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE  
FOR FORMS/FORMS SAMPLES SITE LINK.**

[\(See next section\)](#)

[\(See Table of Contents\)](#)