



"TROST, TAMI"  
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05/04/2007 01:55 PM

to: 'Melvin Y. Sorduya' <msorduya@fs.fed.us>  
cc: 'Forrest Co. S. Coble' <fcoble@fs.fed.us>, 'Orleka E. Rappe-Daniels'  
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Subject: RE: Draft -- lth

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION - NOT FOR RELEASE

Meivin,

I apologize for not yet returning your call from yesterday at 2:41 PM. I have been tied up with another pressing matter and I was hoping to take advantage of the West Coast time difference and get back to you later this afternoon.

Since you appear to be on a tight deadline, I won't sugar coat it. We have found the draft removal notice woefully inadequate. It appears that the drafter neglected to include much of the information contained in the investigative report. In particular, the draft notice fails to explain the timeline regarding the release of the draft "Wildlife and Biological Diversity Resource Report" and the subsequent appeal filed using that report. This is essential information because it helps to explain why the charges are not as stale as they appear to be on their face. In addition, the notice fails to explain clearly who released the document, to whom and what evidence you have to support this charge.

More importantly, the draft removal does not address the critical Douglas factors. The draft does not adequately explain why the release of the document was so egregious as to warrant removal as the only appropriate penalty. This is a critical point that needs to be made explicitly.

As we explained by telephone last month, we strongly recommend that the Forest Service re-write the proposed removal to include much more of the substance that explains why the charges are supported by the facts and why they are so egregious. We will provide an expedited 48-hour review of any revised proposed removal. However, we cannot support issuing the document as it stands. It would be virtually impossible to defend in litigation as it is currently written.

If you have any additional questions, please feel free to contact me.

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-----Original Message-----

From: Melvin Y Shibuya (mailto:mshibuya@fs.fed.us)  
Sent: Friday, May 04, 2007 3:12 PM  
To: WALKOW, RON H.; TROST, TAMI  
Cc: Forrest Cole; O'Leke E Rappe-Daniels, DELANE, APLESAJ  
Subject: Draft -- Ith

Ron/Tami:

In early April I sent you and Gary Gilbert the draft of a proposed adverse action on an F10 employee who we believe engaged in misconduct that is not shielded by the Whistleblower Protection Act.

I asked that you let me know by the end of the week (4/6) if you could give me your comments. I did not hear from you.

During the second week of April, I sent you an email asking if you were okay with the draft. You responded by conveying reservations and concerns. You asked for the casefile. I told you I would FedEx the file to you. You informed me you would complete the review by the end of the week (4/13).

On 4/26 (Thursday) you sent an email asking to conference call on the afternoon of the next day (Friday). I informed you I was not going to be available to do that on such short notice and to have you send your comments that I would incorporate.

Since then, I've not heard from you. My phone calls and messages go unreturned.

It's been a month since you've had this for review and I and management in F10 grow increasingly concerned that it remain with you for so long without comment.

I don't know how to shake this draft loose from your review. I will be recommending we move forward. If you have comments, I ask that you send them as soon as you can. I cannot let this matter languish for much longer.

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