

Forrest Cole /R10/USDAFS  
10/08/2007 06:15 AM

To Karlene K Hale/HCM/USDAFS@FSNOTES, Denny  
Bschor/R10/USDAFS@FSNOTES  
cc  
bcc  
Subject Fw: lth

Forrest Cole  
Forest Supervisor  
R10 - Tongass National Forest  
Ph: 907-228-6281 Fax: 907-228-6292  
Email: fcole@fs.fed.us

--- Forwarded by Forrest Cole/R10/USDAFS on 10/08/2007 06:08 AM ---



Melvin Y  
Shibuya/HCM/USDAFS  
10/06/2007 06:19 AM

To Tami.Trost@ogc.usda.gov  
cc Roy M Roosevelt/HCM/USDAFS@FSNOTES, Ronald  
Banegas/WO/USDAFS@FSNOTES, Forrest  
Cole/R10/USDAFS@FSNOTES,  
Arlean.Lelan@ogc.usda.gov  
Subject Fw: lth

Counsel:

Attached is the lth decision letter would like to issue, edited as you recommended to include a detailed assessment of the Douglas factors.

Thank you for your advice on that point. If you see anything else we need to "tweak," please let me know as soon as possible.

The employee's statement on the web says he has filed a complaint with the Office of Special Counsel regarding the proposal. It is conceivable that if OSC suspects there may be merit to his claims, they might ask us to stay the action if we have not issued the decision letter by that time they decide to intervene.

We would, of course, rather not have to deal with OSC on a stay and would like to proceed as promptly as reasoned deliberation will allow.

As always we greatly appreciate your prompt attention and response.

Thank you.

Melvin Y. Shibuya  
Chief, Labor/Employee Relations Branch  
Phone # (505) 563-9500  
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Email: mshibuya@fs.fed.us

----- Forwarded by Melvin Y Shibuya/HCM/USDAFS on 10/06/2007 08:08 AM -----

Forrest Cole /R10/USDAFS  
10/05/2007 03:46 PM

To Melvin Y Shibuya/HCM/USDAFS@FSNOTES  
cc Karlene K Hale/HCM/USDAFS@FSNOTES  
Subject lth

Sorry for the delay in getting this back but I have completed the review of the draft with Douglas in it and concur.



R10 (Tongass\_Ketchikan) Gith\_Dec.doc

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File Code: 6170  
Route To:

Date:

Subject: Decision on Proposed Adverse Action  
To: Glen Ith, Wildlife Biologist

### Background

By notice dated July 20, 2007, Olleke Rappe-Daniels, Deputy Forest Supervisor, proposed to remove you for improper conduct. You were provided an opportunity to respond to the proposed adverse action.

By written reply dated July 27, 2007, you respond to the proposed adverse action. You chose not to respond orally. I consider both the proposal notice and your written response to it in my decision-making.

### Findings

Specification 1. As Wildlife Biologist on the Scott Peak Project, you drafted a "Wildlife and Biological Diversity Resource Report" dated May 2, 2005. This draft report made recommendations as to the effect of proposed land use alternatives, and was intended for use as an internal deliberative document.

You admit giving a copy of the draft report to Larry Edwards, an official of Greenpeace and an appellant challenging the agency's actions in the Scott Peak Project. Consequently, you failed to protect government property. You allowed its use for other than official purposes in a policy disagreement over which reasonable minds might differ. Standing alone, this specification would warrant termination of your employment.

I sustain this specification. Prematurely releasing your draft for public comment (to Greenpeace) without authorization hurts the internal deliberative process critical to co-workers and supervisors.

Members of the Interdisciplinary Team (IDT) – indeed, agency employees with whom you have professional interaction – are dissuaded from discussing biological and related matters with you. They fear your propensity to disclose internal deliberations to the public before they mature into policy.

In my mind, an employee who cannot be trusted to protect the integrity of the deliberative process forfeits Federal employment.

Specification 2. You admit to reviewing, editing, and approving an article published in the Forest Service Employees for Environmental Ethics magazine. In that article you identify yourself by name as



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a Forest Service employee working on the Tongass National Forest as a manager of wildlife habitat, and you requested monetary contributions to help fund your anticipated litigation against the Forest Service.

You violate ethical restrictions because you used your official position to further fundraising efforts for a personal cause.

With respect to the second specification, you draw distinction in the ethics regulations that does not absolve you of the proscribed conduct. I find you engaged in prohibited fundraising in violation of the regulations.

**Penalty Selection: *Douglas Factors***

1. The nature and seriousness of the offense and its relation to the employee's position and responsibilities, including whether the offense was intentional, or technical or inadvertent or was committed maliciously or for gain;

This is a serious offense as it undermines the confidence not only of the Forest Supervisor and your immediate supervisor but also your peers and team members. Employees are no longer willing to share deliberative work with you. You worked as an Interdisciplinary Team Leader and/or member and intentionally took draft deliberative material to the public.

You used your official title and position with the Forest Service to further the fundraising effort for personal cause. Your actions were intentional and for gain.

2. The employee's job level... including fiduciary role, contacts with the public, and prominence of the position;

You are employed by the Forest Service as a Wildlife Biologist, GS-486-9, on the Petersburg Ranger District of the Tongass National Forest. Your duties include the responsibility to engage the public and to work collaboratively with both internal and external customers. Your work is performed in collaboration with a team of resource specialists while making contact with other resource agencies and the public. Your work assignments require you to work relatively independently when representing the agency with members of the public, and to safeguard sensitive agency material within your possession.

3. The employee's past disciplinary record.

No recent prior discipline.

4. The employee's past work record, including length of service, performance on the job, ability to get along with Federal workers, and dependability.

You have a total work history of 22 years of service. You were promoted to Wildlife Biologist, GS-9 level in 2001. You have fully successful performance ratings.

5. The effect of the offense on the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned tasks;

Your job requires that you work collaboratively in a team setting for the purpose of preparing environmental documentation of development projects on the Petersburg Ranger District. Removal from the Scott Peak project and placing you on another still leaves you in a situation of

working with the same team members as before. I no longer have confidence in your ability to perform assigned duties with the integrity expected of a government employee.

In order to safeguard deliberative information by denying your access to it, your detail to the Supervisor's Office was continued.

6. The consistency of the penalty with those imposed upon other employees for the same or similar offenses;

There is no similar misconduct on record in the Tongass National Forest.

7. The consistency of the penalty with the agency's penalty guide.

The USDA Penalty Guide provides that for a first offense of unauthorized disclosure or use of (or failure to safeguard) official, sensitive, or confidential information removal is appropriate. Also, removal for improper use of official authority (improper fundraising) is an appropriate penalty in the first offense.

8. The notoriety of the offense or its impact upon the reputation of the agency.

Both offenses with which you are charged involved your communications outside the agency with members of the public. In addition, you have involved the public media in your disagreements with agency policy.

9. The clarity with which the employee was put on notice of any rules that were violated in the committing of the offense or had been warned about the conduct in question.

You were trained in ethics and conduct related to Forest Service standards.

10. The potential for the employee's rehabilitation;

You acknowledge no wrongdoing. In fact, you find your actions to be legal and justified. You deny violating any confidences. You state you would not release the document to Mr. Edwards had the state agency not agreed that it was not confidential. As a Federal employee you are bound by *federal* laws, rules, and regulations, not by state regulations. Failure to acknowledge that you engaged in the misconduct as charged leads me to believe you have no potential for rehabilitation.

11. Any mitigating circumstances surrounding the offense such as unusual job tensions, personality problems; mental impairment; or harassment, bad faith, malice, or provocation on the part of others involved in the matter;

You raise no mitigating circumstances.

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

I have considered alternative sanctions and determined that nothing less than removal will deter similar misconduct in the future.

**Decision**

Your removal is effective on close of business day of the date of this memorandum.

**Appeal rights**

You may file a grievance under Article 9 of the negotiated grievance procedure between the National Federation of Federal Employees and the agency. You have 30 days of the effective date of the action to file your grievance.

Alternatively, you have the right to appeal this action to the Merit Systems Protection Board (MSPB). You may submit an appeal no later than thirty (30) calendar days after the effective date of this action or thirty (30) days after receipt of this letter, whichever is later. The requirements for your appeal are found in Title 5 CFR 1201.24.

The board's regulations allow you to file a grievance negotiated by the parties or an appeal with the board, but not both. You will have exercised your option to file a grievance or appeal at the time you timely file a written grievance or file a notice of appeal under the applicable MSPB procedures.

You may access the board's website by the following link: [www.mspb.gov](http://www.mspb.gov). The site accesses the board's regulations and appeal form. Your appeal must be filed within 30 calendar days of today or within 30 calendar days after the date you receive this decision, whichever is later. I caution you that failure to file within the timeframe prescribed by the board could result in dismissal of your appeal for untimely filing.

Your appeal, should you elect to file with the Board, is to be sent to the following address:

**U.S. Merit Systems Protection Board**  
**Western Regional Office**  
201 Mission Street  
Suite 2310  
San Francisco, CA 94105-1831

Board regulations [5 C.F.R. 1201.25(b)(2)] require duplicates of all submissions made to the Board be served on the Agency. The address for submission of the Agency's copy is:

USDA FOREST SERVICE  
HUMAN RESOURCES  
ATTN: Melvin Shibuya  
3900 Masthead Street, NE  
Mailstop 225  
Albuquerque, NM 87109

FORREST COLE  
Forest Supervisor