

**Eastern Region, National Cave Rescue Commission  
Policy for Discipline of ER/NCRC Staff, Assistant Instructors,  
Instructors, and other Officers**

Draft Version 1.2 December 28, 1992<sup>1</sup>

- I. **Initial Charge:** Any person with a complaint against any ER/NCRC Staff, Assistant Instructor, Instructor, or other Officer shall make such complaint in writing to the Regional Coordinator. [**Options: (1) accept verbal complaints (no wording about verbal or written complaints here) (2) "Verbal complaints shall not invoke this or any other formal disciplinary process." (3) "Verbal complaints shall not invoke this or any other formal disciplinary process unless subsequently submitted in writing."**<sup>2</sup>] Anonymous complaints shall not be accepted.
- A. Complaints will only be accepted if they charge violation of NSS, NCRC, or East Region policy, procedures, or directives [**Suggested addition: "or if they involve violations of law"**<sup>3</sup>].
- B. Contents of Written Charge: The written charge must state the specifics of the violation to include specific items violated, date of violation, names of witnesses, and other information that describes the violation.
- C. If the complaint is against the Regional Coordinator, the Regional Coordinator shall immediately take a leave of absence and the Assistant Regional Coordinator shall take over the office of Regional Coordinator.
- II. The Regional Coordinator shall [**Options: (1) "immediately" (2) "upon request"**<sup>4</sup>] provide a copy of the complaint to the individual against

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<sup>1</sup>This is based on the presupposition that the Fourteenth Amendment of the U.S. Constitution may apply to disciplinary proceedings of ER/NCRC. The Fourteenth Amendment states: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Black's Law Dictionary provides the following under "due process":

". . . Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law."

"Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest. . . ."

"Embodied in the due process concept are the basic rights of a defendant. . . . and include, timely notice of a hearing or trial which informs the defendant of the charges against him or her; the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge; the presumption of innocence under which guilt must be proven by legally obtained evidence and the verdict must be supported by the evidence presented . . ."

--Keith Conover, M.D.

<sup>2</sup>I favor the third option. Due process absolutely requires that complaints against someone be documented in writing. It doesn't have to be done by the person making the complaint, though; someone in NCRC could write down the complaint based on a verbal complaint and then confirm it with the complainant.

<sup>3</sup>Chuck suggested this addition. It seems reasonable that if someone is convicted of a crime, they may need to be disciplined as far as NCRC status. However, do we want to get involved before someone is actually convicted? I'd rather leave that to the criminal justice system. And, I'm not sure if conviction of, say, a parking violation is sufficient to invoke this process.

<sup>4</sup>I favor the second option. As written notification of the charge is perhaps the most central requirement for due process, we should make it absolutely clear in our policy that we will always comply with this.

**ER/NCRC Due Process Policy**  
**Draft Version 1.2**

which the complaint is filed (the "accused individual"). The Regional Coordinator [(1)"shall" (2)"may upon request"<sup>5</sup>] provide the accused individual with copies of any known written materials, reports or documents on which the accusation is based.

- A. If the accusation is of such a nature as to possibly prevent the accused individual from safely performing his or her duties as far as participating in ER/NCRC rescue or training activities, the Regional Coordinator shall immediately place the accused individual on [**Suggested addition: leave of absence or**] suspension.
1. Notification of suspension shall require that a registered letter be sent to the accused individual, stating that
    - a) the accused individual shall not participate in any ER/NCRC rescue or training event until further notice,
    - b) the individual has been accused of a particular complaint, and that
    - c) an Investigation Board will be appointed.
    - d) Along with the letter may be copies of written materials, reports or documents on which the accusation is based.
  2. In the event of such a suspension, the Regional Coordinator shall immediately convoke an Investigation Board (see below).
- B. If the accusation is **not** of such a nature that the accused individual might not be able to safely participate in ER/NCRC rescue or training activities, the Regional Coordinator shall request, in writing, that the accused individual provide the Regional Coordinator with a written response.
1. If such a response is received within sixty (60) days, The Regional Coordinator, or a designate, shall attempt to resolve the complaint without recourse to further formal proceedings. If resolved satisfactorily, the Regional Coordinator will provide the accused individual and the complainant with identical copies of a single letter stating that the complaint has been satisfactorily resolved. If both parties are satisfied with this letter, the matter shall be closed.
- III. If the Regional Coordinator or designate cannot bring the parties to a mutually acceptable resolution, or if the accused individual does not provide a written response within sixty (60) days, the Regional Coordinator shall appoint an **Investigation Board**.
- A. The Investigation Board shall consist of three (3) individuals. One member of the Investigation Board shall be a respected person who is unrelated to either the accuser or the accused individual (or acceptable to both) but who has general knowledge of the type of complaint in dispute. This individual shall chair the Investigation Board. The other two members shall be senior Staff, Assistant Instructors, or Instructors of ER/NCRC. [**The accused individual and accuser shall have the right to reject, without**

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<sup>5</sup>I favor the first option. Providing the accused with all evidence is one of the major requirements of due process. Anything that suggests we might withhold evidence should not appear in our policy.

**ER/NCRC Due Process Policy**  
**Draft Version 1.2**

**specifying any cause, the first two appointments of the Regional Coordinator for each of the two positions.<sup>6</sup>]**

- B. The Regional Coordinator shall provide the Investigation Board with all written materials and other evidence pertinent to the case. **[The Investigation Board shall ensure that the accused individual has copies of all such materials.<sup>7</sup>** The Investigation Board shall meet in person and shall discuss the complaint. The meeting of the Investigation Board shall be open only to the Investigation Board, the accused and accuser, and witnesses for both sides. The Investigation Board shall be empowered to request additional information from either accuser or accused individual. The Investigation Board shall inform the accused individual of the sanctions that it is empowered to institute. These are:
1. No sanction.
  2. A written reprimand.
  3. A period of suspension from teaching and/or rescue activities, not to exceed one year.
  4. Revocation of ER/NCRC instructor/staff status and/or rescue certification.
  5. A period of probation, the period to be set by the Investigation Board, but not more than one year. **[At the end this time the Investigation Board shall again meet and institute one of the other options above.<sup>8</sup>]**
- C. The Investigation Board shall make no decision until the accused individual has had an opportunity to **[confront the accuser,<sup>9</sup>** and respond both verbally and in writing to all accusations.<sup>10</sup>
1. **Presentation of Case:** Each side will be permitted to present evidence in the case and will follow the rules of evidence normally used.
  2. **Examination of Witnesses:** Witnesses may be cross-examined by either side in the case.
  3. **Summary of Case:** Each side will be allowed to summarize the evidence prior to Investigation Board discussion and decision.
- D. The Investigation Board shall base all its decisions on established standards of conduct for ER/NCRC personnel. The Investigation Board shall make any such standards available, in writing, to both accuser and accused individual.

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<sup>6</sup>It was suggested that we delete this. I based this on the standard rejection of jurors used in federal trials, which helps ensure that the jury is acceptable to both sides.

<sup>7</sup>It was suggested that we delete this. However, as due process absolutely requires that the accused be able to examine all evidence against him or her, it makes no sense to me to delete this.

<sup>8</sup>It was suggested we delete this sentence. If we do, what constitutes the end of probation, and who decides it?

<sup>9</sup>It was suggested that we delete this, but it is the central provision of the Fourteenth Amendment.

<sup>10</sup>It was suggested that we delete items 1, 2, and 3. However, these codify the basic rules of due process as established by the judicial system in the U.S., and therefore I believe we should leave them in. To leave them out would make it much more likely for someone to contest our due process as not legal and not due process.

**ER/NCRC Due Process Policy**  
**Draft Version 1.2**

- E. The findings of the Investigation Board shall be final. The only recourse to Investigation Board findings and sanctions shall be through the court system.