

ATTACHMENT 3

SAMPLE ALTERNATIVE DISCIPLINE AGREEMENT  
(AFTER TRADITIONAL DISCIPLINE IS INITIATED)

ALTERNATIVE DISCIPLINE AGREEMENT BETWEEN [EMPLOYEE'S NAME]  
AND [DIVISION/OFFICE]

The PARTIES to this Agreement are [Employee's Name, title, duty station] (hereafter referred to as the EMPLOYEE) and the [Division/Office] (hereafter referred to as the USGS).

This Agreement is entered into as an alternative to proceeding with the formal disciplinary process already underway. Under the terms of this Agreement, the EMPLOYEE acknowledges that:

[He/she used a government-owned computer and printer, as well as more than 40 hours of official time, to prepare publicity and marketing materials for a personal business venture. As the supervisor of the staff, he/she is responsible for adhering to proper standards of conduct and for being a positive role model for employees.]

Based on the above, and in consideration of other factors, the USGS initiated formal [adverse] action procedures and, on [date], [issued the EMPLOYEE a notice of proposed suspension for 21 calendar days. The EMPLOYEE submitted a timely written reply to the notice of proposed suspension and, upon consideration of the EMPLOYEE'S acceptance of responsibility for his/her conduct and remorse for damaging the implicit trust placed in him/her as a supervisor, the USGS offered alternative discipline in lieu of completing the traditional disciplinary process, which would include a written decision letter and the opportunity to appeal, grieve, complain of or otherwise contest the final action.]

As a result, the PARTIES have agreed to the following as an alternative to the USGS completing formal adverse action procedures:

1. The EMPLOYEE admits that he/she committed the misconduct cited above, recognizes the misconduct was unacceptable, and promises that these acts will not occur in the future.
2. The EMPLOYEE agrees to [make restitution in the amount of \$1050.00 (the equivalent of one week's gross salary) within 90 days of the date of last signature on this Agreement and to provide his/her supervisor, [name], with proof that such a restitution was made, no later than 15 days after making the final restitution payment. Payment will be made to the USGS' finance office at [address].]
3. The EMPLOYEE agrees to [perform 40 hours of off-duty, unpaid community service with a public service organization, such as Public Television, within 90

days of the date of the last signature on this Agreement. The EMPLOYEE agrees to provide the supervisor with proof that the community service was completed.]

4. The EMPLOYEE agrees to [write and transmit an anonymous e-mail to all USGS employees at his/her location reiterating the standards of conduct with respect to his/her misconduct and describing the possible consequences of misconduct of this nature. The USGS agrees to provide necessary support to enable an anonymous e-mail to be sent. This e-mail will be sent within 14 days of the date of the last signature of this AGREEMENT.]
5. The EMPLOYEE acknowledges that his/her failure to comply with #2, #3 and #4 above will result in the automatic imposition of [a 21 calendar day suspension without pay] without [a written decision letter and] the right to appeal the USGS' action.
6. The EMPLOYEE understands that an additional offense of this nature, or any other misconduct on his/her part, may result in a proposal for more severe disciplinary action, up to and including a proposal to remove him/her from the Federal service. The EMPLOYEE further understands that the misconduct cited in this Agreement, as well as the resulting Agreement, may be cited as a first offense in determining any subsequent disciplinary or adverse action.
7. The EMPLOYEE understands that this Agreement does not preclude the USGS from initiating and/or taking appropriate action regarding any other misconduct not covered by this Agreement.
8. The EMPLOYEE agrees to waive any and all rights to appeal, grieve, complain of, or otherwise contest actions relating to or arising out of the misconduct addressed in the alternative discipline agreement. The EMPLOYEE may not in any way contest the imposition of traditional discipline arising from a breach of this Agreement; however, he/she may contest a determination that one or more terms of this Agreement has been breached. The EMPLOYEE cannot waive prospective EEO complaint rights.\*
9. The EMPLOYEE understands that this Agreement will be maintained with the disciplinary files in the USGS Employee Relations office for a period of 5 years from the date of the last signature on this Agreement in compliance with Employee Relations record-keeping requirements.
10. The PARTIES understand that this Agreement is not confidential and will be used in any manner necessary to carry out the terms. However, it will be shared only with those who have an official need to know.
11. The PARTIES understand that the terms and conditions of this Agreement are nonprecedential, meaning they are specific to the EMPLOYEE, and may not be cited for comparison to another employee's alternative discipline agreement or traditional disciplinary action.

12. There are no other terms to this Agreement other than those expressly written here.
13. The EMPLOYEE agrees that he/she has had an opportunity to consult with a representative on the terms and conditions of this Agreement and has had an opportunity to clarify any terms or conditions which were not understood by him/her.
14. The EMPLOYEE understands that he/she is fully responsible for any attorney's fees related to his/her representation in any part of this matter.
15. The PARTIES understand the terms of this Agreement and willingly enter into it. This Agreement becomes effective upon the date of the last signature of the PARTIES involved.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

FINAL DISPOSITION:

The terms and conditions of this Agreement were:

Met

Not Met (see attached violation notice)

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

\* Note: Where an employee is covered by the Age Discrimination in Employment Act of 1967 (ADEA), as amended, this term should contain an explicit waiver of an ADEA claim under the Older Workers Benefit Protection Act, as outlined in *Oubre v. Entergy Operations, Inc.*, 117 S. Ct. 1466 (1998), regardless of whether the employee has raised the issue. (Although the EEOC has stopped short of requiring this language in agreements where an employee has NOT raised an age discrimination claim, we believe it is prudent based on the wording in *Oubre*.) The following language may be used for this waiver:

Under the Age Discrimination in Employment Act and the Older Worker=s Benefit Protection Act, the EMPLOYEE has: 21 days in which to consider the terms and conditions of this Agreement and the right to consult with legal counsel. The EMPLOYEE acknowledges that he/she has been advised by the USGS that he should consult with an attorney. The EMPLOYEE has 7 days from the signing of this Agreement to rescind it. If the EMPLOYEE wishes to rescind the Agreement, he/she must notify his/her supervisor, in writing, of this decision.