

# Four

## Legal Action

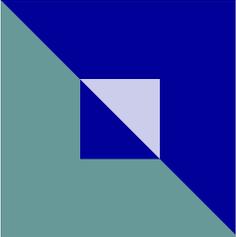
*Training for the  
Weights and Measures Official*

# TRAINING FOR THE WEIGHTS AND MEASURES OFFICIAL

## CURRICULUM

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- Module 1 - Introduction to Weights and Measures**
- Module 2 - Laws and Regulations**
- Module 3 - Enforcement Procedures**
- Module 5 - Legal Metrology**
- Module 6 - Field Standards and Test Equipment**
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# Acknowledgment

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*It is impossible to list the names of the many people who contributed to the development of this course. However, gratitude is extended to the following groups whose dedication and commitment made this training module a reality.*

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## Introduction

**Welcome to** “Legal Action”. This is the fourth module in the series “Training for the Weights and Measures Official.” It will introduce you to the legal procedures that affect weights and measures enforcement actions, the how and why of the collection and preservation of evidence, how to write an understandable investigative report and prepare it for presentation to the prosecutor, and how to prepare yourself to testify in a legal proceeding about your investigation.

At the end of each segment in this module you will find a series of self-evaluation questions to test your knowledge. Although you are not required to complete the self-evaluation, we encourage you to take a few minutes to read the questions before moving on to the next segment. Answers are provided at the end of the module. If you are unsure of a response, reread the training material and it will give you the information you need.

## Module Objectives

When you have completed this module you will be able to:

- Understand and appreciate the basic legal procedures and concepts that guide and direct weights and measures enforcement processes.
- Understand how to properly prepare your cases and yourself for presentation to the District Attorney or Administrative Hearing Officer.
- Understand how to properly prepare yourself to testify in a civil administrative hearing, criminal, or civil trial.
- Understand what evidence is, why it is important, and how to properly handle and preserve it.
- Write understandable and effective reports whether they are for civil administrative cases, criminal cases, or civil cases.

## Powers and Responsibilities of Weights and Measures Officials

As a weights and measures official you are given the responsibility to enforce the laws and regulations that oversee weights and measures activities within California. The laws are contained in the California Business and Professions (B&P) Code, Division 5, Chapters 1 through 15, and are enacted by the California Legislature. The regulations are contained in the California Code of Regulations (CCR), Title 4, Division 9, Chapters 1 through 12. Regulations are meant to explain and clarify the law and are adopted through a process overseen by the Office of Administrative Law.

Your powers as a weights and measures official come with many responsibilities. Not only are you required, by the B&P Code, to test and seal commercially used weighing and measuring equipment, verify the quantity statements of packaged goods and bulk products, and oversee the advertising, labeling and quality of petroleum products; but the law also requires that you cause the prosecution of violators of the law you enforce. This means that you must have a basic knowledge of investigations, report writing, constitutional guarantees, and the workings of the California legal system.



The duty of enforcing weights and measures law and carrying out its provisions and requirements is vested in both the State sealer and employees and also each county sealer and their employees acting under the supervision and direction of the State sealer. The jurisdiction of a county sealer extends over the entire territorial limits of the county.

Each sealer may, in the general performance of his duty, without formal warrant, enter or go into or upon, any stand, place, building or premises or stop any vendor, peddler, junk dealer, driver of a coal, ice, delivery, or other wagon or vehicle, containing commodities for sale or delivery and, if necessary, require him to proceed with the commodity to some place which the sealer may specify for the purpose of making the proper tests.

The records and reports of the activities compiled by the Department and county sealers are public records and as such shall be open to the public.

The B&P Code, in Section 12013 states that: “Any sealer (weights and measures official) has the authority as a public officer to arrest, without a warrant, any person whenever such officer has reasonable cause to believe that the person to be arrested has, **in his presence**, violated any provision of this division (Division 5), the violation of which is declared to be a public offense.” This section goes on and identifies the procedure, in Penal Code Sections 853.5 and 853.6, by which the sealer may issue a citation to the violator and release them on their promise to appear. The important thing to remember is that you are a “public officer,” not a “peace officer”. Do not use force - call a peace officer when necessary.

## Constitutional Issues

Persons who violate weights and measures laws, like any other violators of the law, are innocent until proven guilty in a court of law. Violators have the right against self-incrimination, the right to a trial, the right to be free from unreasonable searches and seizures of property, the right to representation by an attorney, and the right to confront witnesses and the evidence against them.

### United States Constitutional Amendments

#### 5th Amendment

No person shall be held to answer for a capital crime... unless on a presentment or indictment of a Grand Jury, ..., nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;...

#### 14th Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

## Due Process

The United States Constitution (Fifth and Fourteenth Amendments) and the California State Constitution both guarantee all people the right to "due process" in the questions of life, liberty, or property.

Black's Law Dictionary, Sixth Edition, defines Due Process of Law, in part, as follows:

***Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgement 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.***

***The 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, and to assert before the appropriate decision-making body the reasons for such choice.***

In 1978, the California Appellate Court addressed due process in its review of the Rath and General Mills decisions relating to removal from sale of short weight commodities. California weights and measures off-sale procedures were found **not** to meet the due process test for **perishable commodities**. The Court held that:

***The fundamental requirement of the concept of due process is the opportunity to be heard. It is only under the most unusual circumstances that a person can even be temporarily deprived of his/her property without opportunity for a prior hearing. Unusual circumstances, when the important governmental or general public interest permits postponement of notice and an opportunity for a hearing without deprivation of due process, are generally recognized as health and safety issues, i.e., mislabeled drugs, adulterated food, etc. The potential injury to the public must outweigh the potential injury to the purveyor from a temporary interference with its business.***

***The seizure or marking off-sale of highly perishable commodities is more than a mere temporary interference. The consequence is that the product may become unfit for sale and the Off-Sale Order thus constitutes a deprivation of property and property rights. In the case of highly perishable commodities, due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. The Court held that the property owner must be notified within a reasonable time prior to the issuance of an off-sale order, in writing, when a lot of perishable product is determined to be short weight; be provided with a copy of the Package Inspection Report upon which the charge is based; and be given the opportunity to dispute the charges prior to the issuance of the off-sale order.***

California weights and measures off-sale procedures were found to meet the due process test for **non-perishable commodities**.

In 1988, the California Appellate Court again addressed due process in its review of the Menefee decision relating to seizure of crops treated with an unauthorized economic poison. The Court held that:

*When significant property interest is at stake, neither the egregiousness of the alleged misconduct nor the apparent lack of meritorious defense can obviate the requirement that the defendant be accorded minimal due process protection. The due process concept, in essence, guarantees a fundamentally fair decision making process. Thus, at a minimum, notice and opportunity for a hearing is required. Normally, notice and opportunity must precede even a temporary deprivation of a property interest. However, in emergency situations, the legitimate and overriding interests of government may permit summary action. In such cases the opportunity for a hearing may be postponed but not eliminated.*

In this case, the fact that the crop had been treated with an unapproved economic poison early in the season and the ensuing 3-1/2 month time until the crop was seized, led the court to determine that this was not an emergency situation.

The 1988 Appellate Court decision appears to impose the requirement for a hearing prior to removal from sale or seizure on **all commodities**, absent a justifiable emergency or health or safety issue, not just on perishable commodities as indicated by the 1978 California Appellate Court decision.

In light of these decisions, due process hearings become a serious consideration for weights and measures officials when contemplating action that may deprive a person of his or her property rights. Several avenues are available to weights and measures officials to handle due process concerns and protect weights and measures interests at the same time.

There are three functions of weights and measures that may receive due process challenges to their off-sale/seizure procedures.

An examination of each function, their off-sale/seizure code sections, and procedural considerations are as follows:

## Quantity Control

<b>Section 12211</b>	<b>Off sale authority for short weight or measure packages.</b>
<b>Section 12606</b>	<b>Seizure of containers that facilitate the perpetration of deception or fraud.</b>
<b>Section 12607</b>	<b>Off sale authority for commodities without a statement of net quantity.</b>

Package Inspection Report (PIR) forms and Labeling Violation forms notify, in writing, the responsible party that it is a violation of the law to sell a commodity that is short weight or measure or is not properly labeled and that immediate legal action will be taken for violations of those laws.

The Business and Professions Code enables weights and measures officials to take enforcement action against persons who sell short weight/measure or incorrectly labeled commodities. Sections 12013, 12015, 12021, 12023, 12024, 12024.2, 12024.3, and 12611 cover these situations.

## Devices

<b>Section 12500.10</b>	<b>Tagging/seizure of unapproved commercial weighing or measuring equipment.</b>
<b>Section 12506</b>	<b>Tagging/seizure of incorrect commercial weighing or measuring equipment.</b>
<b>Section 12507</b>	<b>Seizure of out of order commercial weighing or measuring equipment that was not repaired.</b>

Use of a yellow tag (for unapproved devices) or a red tag (for incorrect devices) gives the owner/user 30 days in which to correct the violation.

The Business and Professions Code enables weights and measures officials to take enforcement action against persons who use inaccurate or unapproved commercial weighing/measuring equipment. Sections 12013, 12015, 12020, 12500.5, and 12510 cover these situations.

## Petroleum and Automotive Products

<b>Section 13595</b>	<b>Off sale authority for off specification petroleum products and sealing of outlets and inlets of containers</b>
<b>Section 13597</b>	<b>Resealing of outlets and inlets of containers when the petroleum product contained therein continues to fail specifications.</b>
<b>Section 13731</b>	<b>Off sale authority for adulterated or mislabeled automotive products.</b>

In 1975, the California Appellate Court stated in the Travers case:

***"The automobile is a recognized necessity in our society and the function of its engine, transmission, and brakes is a matter of vital importance to the motorist. It is in the interest of public safety to prevent the malfunction and break down of motor vehicles traveling on our crowded streets and highways."***

Furthermore, Business and Professions Code Section 13710(a) and (c) require the Secretary to adopt specifications for engine coolants and brake fluids that, "promote the public safety in the operation of motor vehicles".

Since action against these nonconforming products is considered an emergency (health and safety) situation, hearings in this area can be postponed until such time as the "emergency" is corrected.



## SELF-EVALUATION QUESTIONS

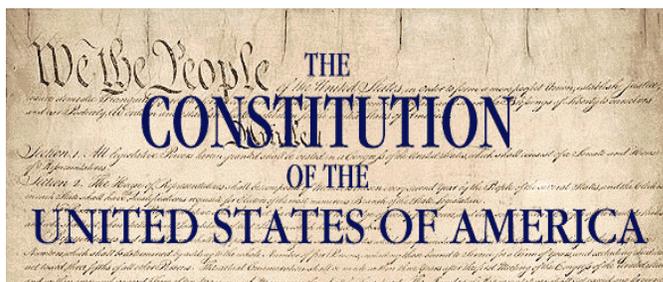
1. What is the fundamental concept of “due process”?
2. Who has the duty of enforcing weights and measures laws in California?

## Search and Seizure

By the very nature of your work, you are going to run into search and seizure issues when you go out into the field. Can you search that desk or file drawer? Can you search that back room? Can you search inside that scale house? Can you seize visible evidence once you get inside? Can you use binoculars? Do you need a search warrant? The courts and lawmakers have established a body of rules, liberally derived from the 4<sup>th</sup> Amendment, to answer your questions and govern your conduct in the area of searches and seizures. For you, as a working officer, this means that it is essential to understand the basic aspects of search and seizure law and to know what your authority and limitations are.

Search and seizure are often referred to as one concept or act. While they frequently go hand-in-hand, they are two separate and completely distinct acts. A search is an exploration to find things. If nothing is found there can not be a seizure. A seizure is the taking of custody or control over something. Although a seizure often occurs as a result of a search; you can have a seizure without a search (i.e., you find evidence of a crime in plain view).

The 4th Amendment to the United States Constitution states, in part, that: “The right of the people to be secure in their person, house, papers and effects against unreasonable searches and seizures shall not be violated.” This amendment does not prohibit all searches, just “unreasonable” ones.



The Constitution has only two kinds of provisions - those that declare duties and those that declare rights. The subject of the 4<sup>th</sup> Amendment is a right – it cannot be diminished or taken away by any statute, federal, state, or local. It has supremacy over any conflicting statute. Who has the 4<sup>th</sup> Amendment right? Everyone is subject to the U.S. Constitution. The Amendment uses the word people, not citizens. Therefore that means aliens, including illegal aliens, have the 4<sup>th</sup> Amendment rights also. Since a corporation is the legal equivalent to a person, it has 4<sup>th</sup> Amendment rights as well.

The right is to be secure from unreasonable searches and seizures in the persons, houses, papers, and effects. The courts have extended the 4<sup>th</sup> Amendment rights to every place where a person might have a reasonable expectation of privacy. Any one can tell you that the 4<sup>th</sup> Amendment forbids unreasonable searches and seizures. Not everyone can tell you what makes a search or seizure unreasonable.

### **Exclusionary Rule**

***“The exclusionary rule requires that any evidence obtained by police using methods that violate a person’s constitutional rights be excluded from being used in a criminal prosecution against that person. The exclusionary rule was first developed in 1914 and the case of Weeks v. United States...”***

If you conduct a search without a search warrant, it will be presumed to be unreasonable. If procedures followed by an officer in searching for and seizing evidence do not comply with Constitutional, statutory and judicial guidelines, the evidence will be lost and the criminal may go free. Even though the amendment does not specify a penalty for a law enforcement officer’s violation of this right, the courts have decided that the remedy for a violation is to exclude the seized item from admission into evidence. This state of affairs has been brought about by a judicially created concept known as the “Exclusionary Rule”. Since 1914 in the federal courts and 1961 in all the state courts, evidence collected by a government officer in violation of the 4<sup>th</sup> Amendment has been subject to being excluded from the criminal trial of the person whose rights were violated. The exclusionary rule also applies to violations of a suspect’s 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment rights. The exclusionary rule applies to all forms of evidence – including an officer’s observations. Additionally, under the “Fruit of the Poisonous Tree Doctrine”, the exclusionary rule extends to any evidence which was directly or indirectly obtained as a result of the initial unlawful search or seizure. Briefly stated it says that illegally seized evidence is inadmissible in court and additional evidence developed from it is also inadmissible.

What is a search warrant? It is a written order, signed by a judge, directed to a peace officer, commanding him to search a specified place for specified personal property, and to bring the items before the judge if found. Even though the general rule is that searches without warrants are presumed unreasonable, some of the established exceptions that may affect you in the performance of your duties follow.

### Plain View

If you see seizable evidence in plain view, from a place where you have a right to be, you may seize the evidence without a search warrant in most cases. If a person has exposed an item to open view, he obviously did not retain a reasonable expectation of privacy.

### Open Fields

The 4<sup>th</sup> Amendment does not protect obvious criminal activity conducted in an open place. If a criminal set up illegal operations in an unfenced, unposted, open area, which is not part of the house, garage, shed, barnyard or fenced garden, he has not exhibited a reasonable expectation of privacy.



### Public Places

If a person openly exposes criminal conduct or evidence to public view, he cannot claim a reasonable expectation of privacy. This does not mean that all public places are automatically exempt from the requirement for a search warrant though. A person is entitled to make use of public facilities and accommodations with the expected degree of privacy that would normally exist in such places.

### Eavesdropping

The general rule is that if you eavesdrop briefly from a place where anyone could overhear a carelessly exposed conversation, you have not violated any reasonable expectation of privacy. Some courts have held though that prolonged eavesdropping is not acceptable.

### Optical Aids

Anything you have a right to see with your naked eye in daylight, you also have a right to see with the aid of binoculars, telescopes, and flashlights, day or night. Reasonable expectation of privacy is not violated merely because you watch from a distant place of concealment, or because you illuminate your nighttime field of vision.



## SELF-EVALUATION QUESTIONS

1. Where does the right of the people to be free of unreasonable searches and seizures come from?
2. What is the “Exclusionary Rule”?
3. Name the exceptions to the need for a search warrant.

# Evidence

## Introduction

The Rules of Evidence as found in the California Evidence Code limit and control the information and objects that may be presented in a court proceeding. The purpose of this section is to familiarize you with a few of those rules, as well as some of the related concepts and terminology.

- Definition of Evidence

Evidence is testimony, objects, writings or other things presented to a jury to prove the existence or nonexistence of a fact, so that the jury can decide whether a defendant is guilty or not guilty.



- Purpose of the Rules of Evidence

The main purpose of the Rules of Evidence is to protect the jury from seeing or hearing evidence which is irrelevant, unreliable or unfairly prejudicial.

- Application to Officers

Many of the Rules of Evidence are confusing and complex, especially as they apply to what a lawyer may present during a court proceeding. As they apply to officers, however, the rules are not so difficult. The officer who understands the basic principles discussed below should have little problem with the rules as they apply to his or her job.

## Kinds of Evidence

There are many categories of evidence, some of which are overlapping (e.g., evidence may be direct and testimonial). Any of these types of evidence may be used to prove a defendant's guilt.

### ***Direct Evidence***

Direct evidence is testimony which proves a fact directly, without any inference or presumption. Most often, such evidence comes from an "eyewitness" who personally saw or heard something.

### **Circumstantial Evidence**

Circumstantial evidence is the proof of facts based on **inference**. Certain facts are proven, and from these facts the jury may infer **other** facts which would normally follow based on common sense and experience.

**Example: A witness testifies that the defendant went into the victim's apartment with a gun. The witness then heard a shot and saw the defendant flee from the apartment. From these facts (proven by direct evidence), the jury may reasonably infer the fact that the defendant fired the shot.**

Circumstantial evidence alone can prove the crime and is no less valuable than direct evidence.

### **Testimonial Evidence**

Most evidence presented to a jury is testimony (i.e., something a witness says under oath from the witness stand). In order for a witness to testify, he must be "competent". A witness is competent if he knows relevant information about the crime, is old enough and "sound" enough to tell the truth, and can relate it to the jury.

#### 1. Factual Testimony

Normally, a witness is limited to testimony about the **facts** which the witness can swear he or she actually saw, heard, smelled or felt (**personal knowledge**).

#### 2. Opinion Testimony

A witness normally may not give his or her **opinion** about the facts. However, there are exceptions to that rule.

- Expert Opinion

When facts are beyond the general knowledge of the jury, an "expert" is permitted to give his opinion as to the interpretation of the facts. This happens often in areas such as fingerprints, ballistics, medicine, psychiatry, etc. But experts may exist for practically **any** topic.

- Lay Opinion

In a few "everyday" areas, where there is no way for the witness to testify about an event **except** by opinion, even nonexperts ("lay" witnesses) may give their opinions.

**Examples would include the estimated speed a car was traveling, or whether a person was intoxicated.**

### ***Demonstrative ("Tangible") Evidence***

Demonstrative evidence, which is also known as "tangible" and/or "real" evidence, is evidence which can be seen or touched. It is evidence which is furnished by the object itself - on view or inspection - as distinguished from testimony out of someone's mouth. Such evidence would include viewing a scene, weapon, clothing, wound, map, diagram, photograph, model, test, experiment, x-ray, etc.

### ***Documentary Evidence***

Documentary evidence generally means a "writing". This would include a document which is handwritten, printed, photocopied, etc., as well as most forms of tangible expression, such as a movie, photograph, or tape recording.

### ***Miscellaneous Evidence***

1. Judicial Notice

Certain facts may be accepted by the courts without actual proof. These facts are those which are obviously true or of common knowledge. Examples might include (1) that July 4, 1983 fell on a Monday, (2) that the human gestation period is nine months, or (3) that Weaverville is located in Trinity County.

2. Prima facie

Evidence which is good and sufficient on its face. If not rebutted or contradicted, will remain sufficient to establish a given fact.

3. Stipulations

A "stipulation" is the name given to the agreement between the opposing lawyers concerning any fact in issue. If the court accepts the stipulation, no further proof of the facts covered needs to be presented.

***Example: Both sides stipulate that the green vegetable matter found under the front seat of the defendant's car was marijuana. Because of this stipulation, the prosecutor will not have to call the chemist or expert witness who analyzed the substance to testify that it was marijuana.***

### **Miscellaneous Evidence** (continued)

#### 4. Presumptions and Inferences

While they are not technically "evidence" at all, presumptions and inferences also play a role in many trials or court decisions.

- Presumptions

A "presumption" is the assumption of a fact without proof, on the basis of other proven facts.

***Example: A 17-year old minor who has committed murder is presumed unfit to be tried as a juvenile.***

- Inferences

An inference is a conclusion or deduction which the jury may arrive at based on other established facts.

***Example: A jury may not draw an adverse inference from the failure of a defendant to testify at his trial. However, if he does testify and fails to explain or deny evidence against him (like how his fingerprints got on the weapon), an adverse inference may properly be drawn. [Saddler (1979) 24 Cal.3d 671.]***

## **Collection of Evidence**

Evidence which you gather will be admissible at trial only if the prosecutor can lay a "foundation" for it.

### **General Rules**

Generally, a prosecutor is required to give a complete background for the evidence he wishes to show to the jury or tell the jury about. This includes who seized it, when, where, how, etc., as well as in whose custody it has been in the meantime.

## Collection of Evidence

If the prosecutor cannot prove who collected what evidence where and when, the evidence is often ruled inadmissible.

### "Finders"

It is usually much easier for a prosecutor if only one officer has seized all of the evidence found at the scene. That way, even if another officer actually found the evidence, only the officer who seized and tagged the evidence needs to be called as a witness.

Always gather and mark the evidence very carefully if identification is an issue.

NOTE: You have no affirmative duty to gather or collect evidence that might be helpful to the defense.



### "Keepers"

Do not pass evidence around. Let the "finder" keep the evidence in his possession until the evidence is turned over to an evidence custodian. Meantime, be sure to protect evidence that is subject to further examination, such as laboratory analysis or dusting for latent fingerprints.

## Documentation of Evidence

An officer who collects evidence must carefully document where, when and how the evidence was seized.

### Labeling the Evidence

When you collect evidence, be sure to label or tag each piece according to departmental policy (usually your initials, date, case number, etc.).

***Example: An officer is about to testify that the shirt handed to him was the same shirt worn by the defendant at the time of the arrest. The officer is asked the location of the officer's identifying marks. When he cannot find the label, the admissibility of the evidence is questionable. Even if the evidence is eventually admitted, its strength is diminished. Furthermore, the defense attorney, on cross-examination, will make the officer appear incompetent as an investigator. Finally, the defense attorney will argue to the jury in closing argument that the sloppy collection of evidence is just another illustration of the hit-and-miss police work characterizing the investigation.***

As an example, the Petroleum Program has developed an identification tag. That tag includes space to record the name of the product, the name of the place where it was obtained, the date and time, condition of the sample, and other pertinent information.

STATE OF CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE DIVISION OF MEASUREMENT STANDARDS	1. Date	2. Time - Military	3. IRS No.	4. Seal	5. Sample No.
	6. Name of Firm			7. Address (Number - Street)	
	8. City		9. County		10. Zip Code
	11. Product		12. Brand		13. Grade
	14. Price / Unit	15. Posted Octane Number		16. Batch or Lot Number	
	17. Retail Package <input type="checkbox"/> Drum <input type="checkbox"/> Tank <input type="checkbox"/> Dispenser _____ Other _____				
	18. (Check one box only)				
	Follow-up <input type="checkbox"/> Complaint <input type="checkbox"/> Survey <input type="checkbox"/> Routine <input type="checkbox"/>			19. Other <input type="checkbox"/> Under Cover <input type="checkbox"/>	
	20. Nature of Complaint / Tests Requested			21. Sample Obtained By	

For evidence that is perishable or may tend to change in composition, it is important to also note relevant conditions of the evidence while in custody.

NOTE: Before you testify, **always** check the evidence you seized in order to locate your identifying mark.

### Documenting the Evidence in a Report

You should always carefully document in your report all of the evidence you seized.

You should also document exactly where the evidence was seized (or from whom) and any identifying marks on the evidence (e.g., serial number, scratches, broken or missing parts), as well as where and how you placed any identifying marks or initials on the evidence.

***Example: The suspect's prints are found on the passenger window of the victim's car. The investigating officer carefully notes and documents that the suspect's prints pointed downward. The suspect could not testify that he was not in the car because the prints could only have been applied when the suspect grasped the top of the window from inside the car.***

## Preservation of Evidence

Some evidence must be properly "preserved" in order to be admissible.

### Best Evidence Rule

The "best evidence rule" states that, with certain enumerated exceptions, no evidence is admissible to prove the contents of a **writing** (e.g., checks, notes, documents) except the original writing itself. [Evid. Code, § 1500 et seq.]

Commencing in 1986, however, the rule became all but obsolete when Evidence Code Section 1511 was reenacted to state:

***"A duplicate is admissible to the same extent as an original unless (a) a genuine question is raised as to the authenticity of the original or (b) in the circumstances it would be unfair to admit the duplicate in lieu of the original."***

For a discussion of the current code section, see Garcia (1988) 201 Cal.App.3d 324.

### Chain of Custody

- Definition

A "chain of custody" is the combination of documented "links" between the moment a piece of evidence is seized and when it is offered into evidence at trial. These "links" are the officers and others who handled the evidence and the times, places and purposes of the handlings. The chain of custody is the written record of the individuals who had possession of an item retained as evidence. In order for a piece of evidence to be accepted by a court, it must be proven that it has not been altered or substituted. This document is used to establish proof that the item collected is the same unaltered item presented. This form will normally contain the names of each person who had possession of the evidence and the date and time of transfer.

As an example, the Petroleum Program has developed a Chain of Possession tag. That tag includes space to record the name of the person relinquishing custody, the name of the person obtaining custody, the date and time, and condition of the sample at the time of transfer.

CHAIN OF POSSESSION						
22. From	23. Agency	24. To	25. Agency	26. Date	27. Time-Military	28. Seal Cond.
Remarks:				Single Hose Delivery <input type="checkbox"/>		Blender <input type="checkbox"/>

41-008  
  
(Rev. 9/98)

For evidence that is perishable or may tend to change in composition, it is important to also note relevant conditions of the evidence while in custody.

- Evidence Which Can Easily Change in Composition

When evidence can change, dissipate or be adulterated (e.g., petroleum products), the courts are very strict in requiring a chain of custody.

From the time evidence is first collected to the time it is presented to the court it must be preserved to prevent contamination or tampering. The collector should consider the impact of heat, cold, humidity and other physical conditions, which could impact the evidence when selecting the proper packaging. In order to prevent tampering, when practical, the package should be sealed in a manner to detect possible tampering.



For example, the Petroleum Program uses both metal and glass containers for sampling. They also use both lead and wire seals and paper seals to prevent tampering while the sample is being transported.



When not in the direct possession of an individual the evidence should be placed in a secured location that includes locked boxes, refrigerators and evidence rooms.

- Evidence Which Does Not Change in Composition

Many officers, some lawyers and a few judges are confused about the necessity of maintaining a chain of custody when the evidence does **not** normally change in composition. In the vast majority of cases, it is not necessary to establish a chain of custody for such evidence, as long as the seizing officer can testify that the evidence to be admitted is the same evidence that he seized. He does that by testifying that:

- he can recognize the evidence (by the label or tag); and
- the evidence is in the same or substantially the same condition as when it was seized.

### **Duty to Seize and Preserve Evidence**

Cases have made it quite clear that you have no affirmative duty to **gather** or **collect** evidence which might be helpful to the defense. [Farmer (1989) 47 Cal.3d 888.]

### **Lost or Destroyed Evidence**

Once you have seized or otherwise come into possession of evidence, serious problems may result if you or your agency loses or destroys it. For example, the most severe penalty will prohibit you from giving any testimony at all about the evidence, although lesser penalties also exist.

*EXAMPLE: An officer was prohibited from testifying about the contents of a tape recorded statement which he took from a witness, which had been accidentally erased because of a secretarial mix-up, and which was disputed by the defendant. [Goss (1980) 109 Cal.App.3d 433; Murtishaw (1981) 29 Cal.3d 773.]*



## SELF-EVALUATION QUESTIONS

1. Where are the rules of evidence applicable to legal proceedings in California found?
2. Why is it necessary to document evidence that you obtain?
3. What is the “Chain of Custody” and why is it important?

## Case Report

Most officers underestimate the importance of their reports. It is very important to remember that as far as the investigation of a case is concerned; you are what you write in your reports – no more and no less. Great investigators and "testifiers" have often been made to appear incompetent because they failed to take the time to write clear and accurate reports and because they failed to review them before going to court.

Many officers hate to write, especially at the end of a working day. They are tired and want to go home. It is crucial, though, to the success of the case that you think clearly in order to report clearly. You must realize that if your report is inadequate or confusing, it can have a devastating effect upon the case.

Judges, prosecutors and defense attorneys will tell you the officer's report is often the most powerful weapon in the defendant's arsenal at trial because of its inaccuracy or incompleteness. In many cases, the only defense the defendant has is to show the jury that there is a reasonable doubt that you were correct or truthful in your report or your testimony. Even one misstatement may lead a juror to become convinced that nothing you say is true or accurate. Therefore, at the trial or other hearing, a good defense attorney will make you "eat" every conclusion, inconsistency, opinion, and exaggeration in your report.



## Report Writing

***I keep six honest serving men  
They taught me all I knew;  
Their names are What and Why and When  
and How and Where and Who***

***Rudyard Kipling***

The above quote reminds us that an investigative report is used to address the same basic elements whether the subject of the report is a homicide or a weighmaster violation, an arson or a petroleum infraction, an armed robbery or a scanner complaint. The investigator needs to establish early on:

**Who?**

Who was the respondent?  
Who made the initial contact with your agency?  
Who heard or saw something of importance?  
Who committed the alleged violation?  
Who helped him or her?  
Who was interviewed?  
Who investigated the complaint?

**What?**

What violation was alleged?  
What happened?  
What witnesses were (or were not) contacted?  
What time (date) did the alleged violation occur?

**When?**

When did the alleged violation occur?  
When was it discovered?  
When were the authorities first notified?  
When did the investigation begin?

**Where?**

Where did/do the complainant, respondent and witnesses live?  
Where did the alleged violation occur?  
Where was the complainant (respondent)?  
Where is the evidence related to the alleged violation?

**Why?**

Why did the subject take the actions he/she did?  
Why did the violation occur?  
Why was it not prevented?

**How?**

How did you obtain information regarding the alleged violation?  
How was the alleged violation discovered?  
How did the alleged violation occur?

Remember, the purpose of the investigative report is to communicate details of the facts discovered during the investigation and answer “The Five W’s” (above) as well as provide sufficient information to aid with the decision making process.

All of these facets of the investigation must be documented, and the facts presented in the form of a report that may be read by everyone from fellow investigators to attorneys, judges, members of the news media, and even certain factions of the general public. This segment on report writing will endeavor to set forth simple yet all-encompassing guidelines which, when followed by both the new and veteran investigator, will result in reports that are complete, logical, relevant and concise.

Reports are crucial for documenting and preserving information about an incident or condition and the subsequent investigation surrounding it. On a more informal level, reports serve as written reminders to investigators who are preparing to testify about a case that they may have worked on months or even years previously. Consider what would happen if you did not write a report documenting your investigation and chronicling your acquisition of evidence, witness statements and court documents? Would you, six months after the fact, recall *all* the facts of the case, remember *verbatim* everything a certain witness told you, or be able to reconstruct *accurately* the steps you took from receipt of the initial complaint to submission of a prosecutorial referral to the District Attorney's Office?



A report is a permanent written record that communicates important facts to be used in the future.<sup>1</sup> It can serve a variety of purposes, but primarily provides a record of the past, prepares the investigator for testifying in upcoming civil or criminal trials or penalty hearings (i.e., providing a hearing officer, administrative law judge or other court official with the relevant facts, and refreshing the investigator's memory), is used in evaluating an investigator's performance, and is submitted as a mechanism for creating or changing policies, procedures, rules, regulations or laws.

The professional style and accurate content of a report are important because it will most likely be read by more than your fellow investigators. Besides your immediate supervisor and other managers in your department's "chain of command," the report is likely to be read by representatives of other municipal, county, state and/or federal agencies, members of the news media, attorneys representing both sides of the matter being investigated, hearing officers or judges, civic action groups, activist organizations, or simply concerned citizens.

The majority of the readers who inspect your report will probably have at least a high school education, but many will be professionals with law or science degrees. Regardless of the reader's "sophistication," it is best to keep your writing style simple. Always remember that your potential reading audience, for the most part, were not

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<sup>1</sup> Source: Investigative Report Writing for Pesticide Enforcement, CDPR, Karen Stahlman

present at the scene of the incident or violation; you need to communicate through the written word so the reader can “see” what you or the witness(es) saw, and can get some sense of what happened at the scene.

## Elements of Good Report Writing

A well written report contains the following elements: factual, accurate, objective, complete, concise, clear, easy to understand and follow. Investigative reports are used to record facts into a permanent record, to provide coordination of follow-up activities and investigative leads, and to provide a basis for prosecution. In addition, they are used by the defense for impeachment and provide a source for investigator evaluation, statistical data and reference material. Characteristics of a good report include accuracy, conciseness, completeness, clarity, legibility and objectivity. All words should be accurately spelled and the text should be grammatically correct. A good investigator is able to spot and record the facts as they are presented to him or her, often times while performing multi-task functions both in the field and the office. A fact is a statement that can be proven. An inference is a conclusion based on reasoning. An opinion is a personal belief. A well written report does not contain opinions unless they are specifically solicited; i.e., a confidential report to management (which is not a public record) or a consultation with an industry representative.



It should also be noted that facts and inferences of a case can be discussed and debated logically and usually those involved can reach some type of agreement on them. Opinions, however, reflect personal beliefs and there is seldom agreement between representatives of the two sides. A competent investigator is able to distinguish between the above types when writing their investigation. It is sometimes difficult to distinguish between the facts and inferences in a case. The investigators must ask themselves: “Can the statement be proven true or false, or do we need

additional facts to make the conclusions reasonable?” For instance, is the statement “John Doe is a good pilot” inference or fact? An inference is not really true or false, sound or unsound. The only way to make an inference believable is to provide facts to support it.

A safe rule for any investigator is to “stick to the facts.” Make references only when sufficient facts are presented or when inferences are clearly labeled.

Accurate reports are crucial. If you are unable to determine exact dates, times and locations, state this in your narrative. The full name, date of birth and driver’s license number, as well as both residential and business addresses and phone numbers should be obtained from all complainants, witnesses and subjects. Personal identifiers may seem unnecessary in the body of the report, but can be helpful when interviewing various individuals, or refreshing the investigator’s memory when it comes time to testify in court or other hearings. An attorney who first detects a simple mistake or omission will no doubt commence a relentless search for more glaring errors that may reflect poorly on your overall investigation.

***Always remember: A fact is a statement that can be proven; an inference is a conclusion based on reasoning; an opinion is a personal belief.***

## Objectivity

A professional investigator prepares objective reports that are non-opinionated, fair, impartial and, whenever possible, include “both sides” of the story. A lack of objectivity can be reflected in poor word choice or the omission of certain facts. The investigator should strive to use words with non-emotional overtones. Although you want to be specific, you must be aware of the effect of your words on the reader.

Consider the following statements. Which statement is objective? (1) The man wept; (2) The man cried; (3) The man blubbered. The second sentence is the most objective, as the words “wept” and “blubbered” could be based on opinion or a biased observation from a questionable or even hearsay source. The words also carry a lot of emotion with them as well. “Slanting” a report may also make it non-objective. Do not present only the complainant’s side of a case, or that of the subject under investigation. Omitting important facts that you feel may be irrelevant may skew the report and cause you to lose objectivity.

## Editing and Style

Reports should be worded as succinctly as possible. Quality is not reflected in the length of a report. There are few supervisors, defense attorneys or prosecutors out there who want to read a wordy report (although some journalists enjoy them because they afford more opportunities for the reporter to find fault with your investigation).

Often times, combinations of words can be condensed to a single word (i.e., the simple word “about” could be used in place of “regarding,” “in regards to” or “in reference to”; “because” could replace “due to the fact that” or “in light of the fact that”). A report writer should simply omit “at this point,” “at this time” or “at this point in time.”

Keep your reports clear. Use specific, concrete facts and details. Keep descriptive words and phrases as close as possible to the words they describe. Use diagrams, charts, graphs and even sketches, if applicable. Do not use abbreviations. Use short sentences, organized into short paragraphs. The more facts and details there are, the clearer the statement. Whenever possible, include photographs of the scene, evidence, etc. (This is one instance where the phrase “a picture is worth a thousand words” is not a cliché.) Use everyday language, but never slang (unless quoting a complainant, witness or subject).



When making reference to an individual, identify them by full name and category (i.e., Complainant John Q. Public), the first time, then at least their last name and category (Complainant Public) on each subsequent occasion.

Place descriptive words next to words they modify. For example: “He placed the gas pump device from the station in the car trunk he had just removed.” would be improper. Instead: “He placed the gas pump device he had just removed from the station into the car trunk.” would be proper.

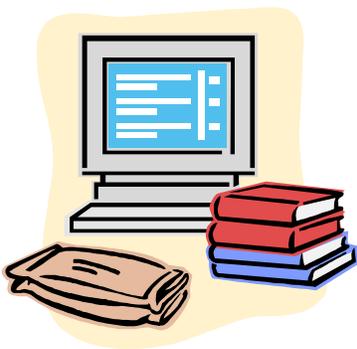
Keep your report easy to read, follow and understand. Writing in the first person (i.e., “This investigator proceeded to the Chevron service station at [location] on [date] in response to [specific complaint].”) is preferable to the third person (i.e., “Investigators then proceeded to...”), and makes your report easier to understand and write. Writing in the third person should only be used (if at all) in summary paragraphs; it should not be used in witness statements or your general narrative.



Using active sentences reduces “wordiness” and assists with clarity. In active sentences, the subject performs the action. You should identify the subject (who), identify the verb (what was done), and determine if the subject performed the action (i.e., “The laboratory assistant tested the gasoline sample.”). Some editors refer to this as the “active voice.” A professional investigator has the ability to automatically review a sentence as he or she is writing it and determine what the subject is, what the verb is, and whether or not the subject performed the action. (Note: an example of a passive sentence, as opposed to an active sentence, would be: “The onions were picked by the worker.” The active form is: “The worker picked the onions.”).

## Report Format

Follow your department’s standard format with regard to report layout (sections and categories). This will result in uniformity and make it easier for the reader to find information, and for you to write and review your work-in-progress.



Know your department’s policies and procedures governing the use and implementation of all types of formats. The use and style of formats may vary between units such as Petroleum/Weighmaster Enforcement and Quantity Control, but the contents should remain basically the same. Likewise, investigation reports pertaining to citations may only be a half page long, contain a summary of the offense committed, the names and contact information of the defendant(s) and issuing officer involved, along with the offense date, citation number and appearance date.

Report styles have varied greatly through the years, but the following is an example of an “all-encompassing” format that strives to cover all the bases.<sup>2</sup> (Note: based on the size of the investigation, the number of witnesses interviewed, and the amount of

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<sup>2</sup> Source: Sample reports by Senior Special Investigators Elaine Fenton and Kari Carrillo, Special Investigation Unit, CDFA/D.M.S.-Anaheim, Quantity Control Specialist II Marianne Delperdang, Quantity Control, CDFA/D.M.S.-Anaheim and Investigator Nicholas Cain, Criminal Investigations Branch, CDI-Santa Ana

evidence collected, these “template examples” could vary greatly, with some expanded or reduced to fit the criteria involved. The basic cover letter should include, but is not limited to, the following examples.)

The first page is known as the “Title Page,” “Cover Page” or “Face Sheet,” and begins with the agency’s letterhead with local address and phone number of the investigator’s unit.

### **Reviewing your Preliminary Report before Submission**

Report writing review, editing and enhancements should include the following reminders:<sup>3</sup>

***Most investigators underestimate the importance of their reports. It is very important to remember that as far as the investigation of a case is concerned, YOU ARE WHAT YOU WRITE IN YOUR REPORTS - NO MORE AND NO LESS. Great investigators and "testifiers" have often been made to appear incompetent because they failed to take the time to write clear and accurate reports . . . and because they failed to review them before going to court. Concern yourself with summarizing the facts. You are not submitting a creative writing class assignment. You are not writing the great American novel.***

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<sup>3</sup> Source: D.M.S. Branch Chief David Lazier

**Example of Investigation Report (Page 1 of 2)**

State of California  
 Department of Food and Agriculture

Division of Measurement Standards  
 8500 Fruitridge Road  
 Sacramento, CA 95826

[DATE]

**INVESTIGATION REPORT**  
**CITATION NO. \_\_\_\_\_ or CASE NO.: \_\_\_\_\_**

**INVESTIGATION OF:** [Company Name/Person]

**TITLE:**

**BUSINESS ADDRESS:** [Address of Business]

**INVESTIGATOR:** [Name, Title, Address, Telephone Number]

**CODE SECTION(S) VIOLATED:** [Identify Code Sections Violated]

**VIOLATION TYPE:** [Type of Violation]

**WITNESS:** [Name, Title, Address, Telephone Number]

**EVIDENCE:** [Summarize Evidence Attached or Secured By]

**HISTORY:** (if applicable) [Previous Violations]

**SUMMARY OF TESTS:** [Statements of Factors or Key Points of  
 (if applicable) Testimony]

**SUMMARY:** [A condensed summary of the allegations, facts and investigation results, with recommendations for further investigation, referral to District Attorney's Office, etc.]

## Example of Investigation Report (Page 2 of 2)

Page Two

### **SUMMARY OF VIOLATIONS:**

This section will include a brief description of the section involved, as quoted from the Business and Professions Code, California Code of Regulations, etc.

### **WITNESSES:**

Lists of all witnesses and their respective titles.

### **INVESTIGATIVE PROCEDURES:**

A brief description of the methods used by investigator(s) to conduct their investigation; i.e., "Investigator(s) will testify that on the date indicated (see Laboratory Report) gasoline samples were obtained from (suspect name and business location)".

### **INVESTIGATION CHRONOLOGY:**

A step-by-step time line detailing the investigator's actions from receipt of complaint to field investigation, acquisition of records and documents, interviewing of witnesses, book-in of evidence, etc., presented in a simple yet concise manner with special emphasis on "Who, What, When, Where, Why and How": (1) receipt of complaint; (2) records check for previous complaints and license(s) on file; (3) preliminary field investigation, observations and findings; (4) Notice of Violation, if issued; (5) Results of Laboratory Samples summarized.

### **ENCLOSURES:**

Attachments such as: (1) Charts, graphs and/or spread-sheets; (2) Laboratory Reports; (3) Notices of Violation; (4) Copies of applicable Business and Professions Code Sections; (5) Copies of applicable Code of Regulations Sections; (6) Suspect Business' Articles of Incorporation and other applicable documents such as Business License, Fictitious Name Statements, etc.; (7) Invoices, Delivery Tickets, etc.; (8) Complaint Letter(s); (9) Photographs; (10) Witness Statements and/or audio tapes; (11) Reports from other Agencies. (Note: The above examples do not appear in any type of priority order.)

## Field Notes

Notes taken in the field are the basis for many formal reports written later. They reduce the need to re-contact people involved and provide a greater degree of accuracy about times, statements and events than memory alone will provide.

Information that should be entered on field notes includes: names and descriptions of suspects, victims and witnesses, dates and times of occurrences, exact location of occurrences and persons involved, and any other important information. These include but are not limited to case number, location and chain of evidence, assisting investigators' activities, and type of incident.



Concerning retention of your field notes, case law has quite consistently held that it is proper for you to throw away your field investigation notes as long as:

- you destroy them in "good faith."
- you incorporate them into a formal report.
- the formal report accurately reflects the contents of the notes.
- the prosecutor turns over a copy of your formal report to defense counsel before trial. (Gary G. [1981] 115 Cal.App.3d 629; Seaton [1983] 146 Cal.App.3d 67; Angeles [1985] 172 Cal.App.3d 1203)

In light of Proposition 8 and the United States Supreme Court's decisions in Trombetta (1984) 467 U.S. 479 and Youngblood (1988) 109 S.Ct. 333, there is essentially no risk involved if you meet those criteria. However, if your department has a policy of retention, or if you want to be completely on the safe side, it can never hurt to retain your field notes, particularly if they reflect "crucial" evidence, such as an admission, confession, alibi, eyewitness account, etc. Tape-recorded interviews should always be preserved for trial. (Murtishaw [1981] 29 Cal.3d 733)

Your notes serve as an index to your memory of a case.<sup>4</sup> This is significant when you are asked to testify in court, at an administrative hearing, or just answer questions at a pre-filing with the District Attorney and the defendant. Complete and accurate notes will also simplify the writing of the investigative report.

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<sup>4</sup> Source: Regulatory Investigative Techniques, Sacramento Regional Criminal Justice Training Center.

Take notes on everything you do and number each item. Record the date, time and substance of each conversation. The first time you mention a person, list the person's full name, address, phone number, date of birth, and driver's license number. These people may be called upon to testify later, but may have moved. A date of birth and driver's license number will help locate them.

There are a variety of note-taking methods: notebooks, 3X5 index cards, printed forms, tape-recorded reports and notes. At a minimum, each document should be labeled with complaint number, the date and location where it was made, and your name or investigator number.

The use and importance of Kipling's old mainstay of "who, what, when, where, why and how" cannot be overemphasized. However, even veteran investigators, toward the end of a long duty shift, toiling in 100 degree heat, may repeat this mental checklist yet fail to comprehend requirements of fulfilling each word's test. Before concluding an interview with a witness, before leaving the scene of a violation, before exiting the courthouse with reams of certified documents under your arm, look through your notes and ask yourself whether or not you have sufficient information for your investigative report:<sup>5</sup>

## Documentation

Documentation means including in your reports the specific facts that occurred, usually in chronological order, so that everything is "tied down" and no obvious questions are left unanswered. The following are important principles of documentation.

### A. Personal Knowledge

If you personally see, hear, smell, etc., whatever happened, say so.

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<sup>5</sup> Source: Regulatory Investigative Techniques, Sacramento Regional Criminal Justice Training Center

B. Hearsay

If someone else saw, heard, smelled, etc., whatever happened, say who the person was and explain the circumstances fully.

EXAMPLE	
"It was learned that the subject has been seen in the area recently."	Who told you? When did they tell you? How did they know? How recent is "recently" - two minutes, two hours?

EXAMPLE	
"It was 'indicated' to me that the subject was driving the vehicle."	Who told you? When did they tell you? How did they know?

EXAMPLE	
"It was learned that two individuals, neither of whom matched the description of the licensee, had been seen in the area fifteen minutes before the air compressor was vandalized."	Who learned? Who saw them? Who told you? When did they tell you?

The above sentences are not only virtually worthless to the prosecutor, they provide great ammunition for the defense. They also are in the "passive voice" instead of the "active voice". Also remember that hearsay is admissible in an administrative hearing.

### C. Statements

You should always take statements from all persons who were in any way involved in the incident. Statements relating to facts surrounding a case are often crucial to the success of the prosecution's case and are seldom harmful.

### D. "Non-Facts"

An investigative report should document only facts - not assumptions, opinions, conclusions or theories of the investigator. If you have an opinion or theory about the case, always tell the prosecutor in person, so that the opinion will not have to be disclosed to the defense.

- Opinions

A report should not contain opinions, except under limited conditions, such as (1) where required by departmental directives, or (2) where an observation and your opinion support probable cause for certain action, such as for a search warrant. Typically, the report should state only the facts underlying your opinion.

- Theories

Your documented factual or legal theories of the case often come back to haunt you at trial. Instead of stating a theory, just state what you did (i.e., your actions).

- Assumptions

When writing your report, never assume anything - include only facts that you saw, heard, smelled, etc. If you are not absolutely certain something occurred, find out for sure or leave it out.

- Conclusions

Be careful how you handle conclusions in your reports. Sometimes they are necessary, but usually a factually and substantially documented report will cause others to arrive at appropriate conclusions.



## SELF-EVALUATION QUESTIONS

1. What is a report used for?
2. Who might read your report?
3. What are the basic elements of a report?
4. A well written report contains what components?
5. Is it better to write the report in “third person” or “first person”?
6. Why is it preferable to use “active sentences”?
7. Why should a standard report format be used?
8. Why is the taking of notes critical to the writing of accurate investigative reports?
9. When is it proper for you to throw away your old field investigation notes?
10. How should individuals be identified in an investigative report?
11. Should tape-recorded interviews be preserved for trial even if you do not intend to use them as potential evidence?

## Enforcement

### Levels and Types of Enforcement and Appropriate Use

After you conduct your investigation you must determine what to do with the information. As previously stated, Business and Professions Code Section 12015 requires weights and measures officials to cause the prosecution of violators of weights and measures law.

Enforcement actions generally start at the lowest level and work up to higher levels. The first step may be a verbal warning for a minor technical violation that can be corrected immediately. A Notice of Violation should be issued for any violation that you observe that can not be corrected immediately, to document a violation, or if you feel the violator will not maintain compliance after you leave.

In situations where the commercially used weighing and measuring equipment is found to be out of tolerance, the use of a “red tag” to prevent the equipment’s use until it is repaired is required. Packaged commodities that fail to meet the labeled net quantity statement are removed from sale by the use of an “Off Sale Order” until the violation is corrected. Petroleum and automotive products that fail to meet the minimum quality specifications or that are mislabeled are removed from sale by the use of a “Condemned Product Tag and Order”.



The Civil Administrative Penalty (CAP) process allows the sealer to impose a penalty upon a violator for weights and measures violations without having to go through the District Attorney’s Office and the court. As a general rule, all the legal requirements that apply to a case handled in the court system also apply to a CAP. The rules of evidence are somewhat relaxed and if a hearing is requested, it is much less formal than in a courtroom. Lawyers are not required to represent the respondent in the CAP process. Technical violations of the law are an appropriate use of this tool.

For serious violations that involve monetary loss to consumers or are fraudulent in nature, a Notice to Appear (direct court citation) or a criminal filing with the District Attorney is appropriate.

Businesses that are operating in violation of weights and measures law such that they are involved in unfair business practices or unfair competition with other businesses may be appropriately considered for a civil filing with the District Attorney or California Attorney General.

The bottom line to keep in mind is that you are trying to gain compliance with the law. Your enforcement action should be appropriate for the magnitude of the violation you observed.

## Types of Crime

The California Penal Code deals with a multitude of criminal violations and in Section 16 defines crimes and public offenses to include:

### 1. Felonies; 2. Misdemeanors; and 3. Infractions.

Weights and measures violations are misdemeanors unless otherwise specified to be infractions. The penalty for a misdemeanor is spelled out in Penal Code Section 19:

<b>Section 19</b>	<b>Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both.</b>
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The penalty for an infraction is spelled out in Penal Code Sections 19.6 and 19.8:

<b>Section 19.6</b>	<b>An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail.</b>
<b>Section 19.8</b>	<b>Except where a lesser maximum fine is expressly provided for ... any violation which is an infraction is punishable by a fine not exceeding two hundred fifty dollars (\$250).</b>

Both misdemeanors and infractions have the same statute of limitations attached to them as spelled out in Penal Code Section 802. This means that you must conduct your investigation, prepare your report, present it to the prosecutor (City Attorney, District Attorney, Attorney General), and have the prosecutor file the case within the established time frame. For misdemeanors and infractions that time is within one year after the commission of the violation, **not** from the time you discovered the violation.

<b>Section 802(a)</b>	<b>Except as provided in subdivision (b), prosecution for an offense not punishable by death or imprisonment in the state prison shall be commenced within one year after commission of the offense.</b>
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The prosecutor may decide to file your action as a civil case using the Business and Professions (B&P) Code Section 17200 (Unfair Business Practices) and/or Section 17500 (False or Misleading Advertising) statutes. These sections carry penalties of \$2,500 per violation and have either a 4 year statute of limitations (B&P Code Section 17200) or a 3 year statute of limitations (B&P Code Section 17500).

### How Do I Decide Which Type of Filing is Appropriate?

Weights and measures officials have several types of legal action avenues available to them to handle violations of the Business and Professions Code. Those avenues can be generalized as Civil Administrative Penalty Actions, Criminal Actions, and Civil Actions. The following are the general guidelines for determining which type of action may be appropriate.

#### **Civil Administrative Penalty Actions (Sealers Decision)**

Typical Civil Administrative Penalty cases involve:

- infraction and/or misdemeanor charges only, generally technical violations;
- a preponderance of evidence proof burden;
- penalties in the \$50 - \$1,000 range as specified in regulation;
- relatively minor resources needed for investigation and prosecution (as most cases are settled with a stipulated plea).



### ***Criminal Actions (Investigator/Sealers Decision)***

Typical Criminal cases involve:

- infraction and/or misdemeanor charges only;
- beyond a reasonable doubt proof burden;
- fines in the \$25 - \$1,000 range and possible incarceration;
- probation, usually summary probation, with a maximum term of three years;
- relatively modest resources needed for investigation and prosecution;
- agency costs may be recovered.



Law about...

### ***Civil Actions (District Attorney's Decision)***

Typical Civil cases involve:

- deceptive practices and unfair competition allegations, under Business and Professions Code Sections 17200 and 17500;
- preponderance of evidence proof burden;
- a limited term or a permanent injunction prohibiting the unlawful practices;
- potential civil penalties of \$2,500 - \$ millions;
- agency costs may be recovered;
- restitution for injured consumers or businesses;
- substantial investment of resources in relatively complex civil litigation process; most cases are settled through negotiations, but litigated cases require extensive discovery and trial preparation.

## **Summary**

Weights and measures laws, in California, are found in the Business and Professions Code, Division 5. The regulations that further explain these laws are found in the California Code of Regulations, Title 4, Division 9.

All weights and measures laws are criminal in nature and many are strict liability laws. That means that intent is not an element of the crime. The fact that the act occurred is enough to establish a violation of the law. Weights and measures violations are classified as misdemeanors unless otherwise specified in the law as infractions. Misdemeanors are punishable by a fine up to \$1,000 and/or six months in a county jail. Infractions are punishable by a fine and do not include jail time.

The Business and Professions Code (and the Penal Code) allows weights and measures officials to issue a direct court citation (Notice to Appear) to violators. Either a county district attorney's office or the California Attorney General's Office may prosecute violations of weights and measures laws. They may choose to file the violation under civil statutes alleging unfair competition or unfair business practices.

The Business and Professions Code also allows a sealer of weights and measures to handle violations as a civil administrative hearing and impose a specified penalty for the violation.

## Sealer Civil Administrative Penalty Hearings

The evidentiary requirements of a sealer's Civil Administrative Penalty (CAP) hearing are quite similar to the requirements of most other courtroom hearings. Policy considerations as well as judicial decisions dictate the rules of evidence used. It must be remembered that a CAP hearing is not a criminal or civil trial in a court of law.

### Administrative Evidence

The statutes, rules and regulations governing CAP hearings within State agencies generally provide that the hearing officer shall not be strictly bound by common law or statutory technical rules of evidence.

While a hearing officer may receive certain evidence which might be excluded under evidentiary rules in a court of law, a knowledge of these exclusionary rules of evidence is extremely useful in determining upon what evidence the hearing officer may rely in order to arrive at a fair decision. Although the hearing officer may receive almost any evidence, there must be a reasonable limitation on the admission of evidence. Courts have held that evidence such as letters, affidavits and other material not admissible in a court trial may be admitted in an administrative hearing.

To admit any and all evidence that may be offered, however remote from the issues and however unreliable or untrustworthy, means not only delay, but results in intolerably long and confused hearings.



The hearing officer must, in the written decision, state the reasons for the determination and the evidence that was relied on. The focus of the hearing is not whether particular evidence should be admitted or excluded, but upon the value and trustworthiness of the offered evidence. Therefore, a dependence on the formal rules of evidence to exclude certain evidence is not the task of the hearing officer. All relevant evidence should be received and given the appropriate consideration by the hearing officer.

The hearing officer's evidentiary guidelines can be summarized by these three guiding rules:

- (1) The replacement of the evidence rules with discretion.
- (2) The admission of all evidence that seems to be relevant and useful in making the decision.
- (3) Relying upon the kinds of evidence which responsible persons are accustomed to rely on in serious affairs.

## **County Advocate**

While the Sealer has the ability to decide to issue a Notice of Proposed Action, if the respondent requests a hearing in the matter, it must be granted. The county's advocate will then present the Sealer's case to the hearing officer during the hearing process.

The same general principles apply here. It is important to meet with and thoroughly discuss your case with the county advocate before the hearing. Make sure to study your report(s) thoroughly before this meeting. Always be prepared in this conversation to discuss not only the strengths but also the weaknesses in the case, such as discrepancies in reports. Never withhold information from the advocate, even if it may hurt the case. The advocate must know what all the evidence will be in order to properly prepare the case.



## SELF-EVALUATION QUESTIONS

1. What are the three types of crime and which types do weights and measures violations fall into?
2. Which type of enforcement procedure is appropriate for technical, non-fraudulent violations of weights and measures laws?
3. What are the three general legal action avenues available to weights and measures officials?

## Presenting the Case to the Prosecutor



After you have gathered all your evidence, interviewed your witnesses, completed your investigation, and written your report, you arrive at the point when you must present your case to the prosecutor. The prosecutor may be your County District Attorney, the California State Attorney General, or your county's advocate in the case of a Civil Administrative Penalty hearing. The following guidelines will assist you in preparing for this task.

### District Attorney

It is important to call and make an appointment with the District Attorney's Office so that you are assured of being able to meet with and discuss your case with a Deputy District Attorney. Remember that your personal appearance is important. Always "dress up" by wearing a conservative coat and tie or dress as appropriate.

It is crucial that you thoroughly discuss the case with the prosecutor. Make sure to study your report(s) thoroughly before this meeting. Always be prepared in this conversation to discuss not only the strengths but also the weaknesses in the case, such as discrepancies in reports. Never withhold information from the prosecutor, even if it may hurt the case. A prosecutor must know what all the evidence will be in order to properly prepare the case.

Except for infractions and certain misdemeanors that are charged by issuance of a citation, the District Attorney makes the decision of whether or not to file formal charges against a suspect. He also decides exactly which offense(s) to charge.



The prosecutor usually makes these decisions after reviewing the officers' reports. Being as objective and impartial as possible, the prosecutor must decide: Can the state, using only admissible evidence, prove to a jury that the defendant is guilty beyond a reasonable doubt? Obviously, the prosecutor must consider whether certain evidence was obtained legally and whether obvious defense(s) can be rebutted. This is why it is so important that your report(s) be complete and accurate. If the Deputy District Attorney asks you to do further investigation such as gathering additional facts, doing additional interviews, or making further purchases or sales, do not refuse to accomplish those tasks and do them in a timely manner.

NOTE: In some large cities, the City Attorney's Office handles all or certain misdemeanors. Also, if the District Attorney has a conflict of interest, the California Attorney General's Office may handle any misdemeanor or felony prosecution.

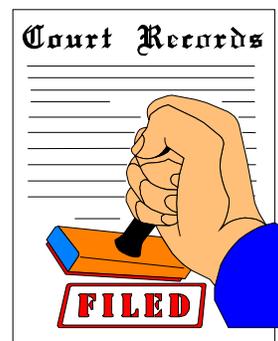
After you have presented your case and the Deputy District Attorney has agreed to file it with the court, your involvement is hardly over. You should make yourself available to the Deputy District Attorney assigned to your case for the arraignment, pretrial, and of course, the trial if one is necessary.

If the case goes to trial, generally the lawyers will ask that all of the prospective witnesses be "excluded" from the courtroom so that no witness will hear what the other ones have to say. [Evidence Code, § 777]

### ***Filing of Charges***

Except for infractions and certain misdemeanors, which are charged by issuance of a citation, the District Attorney makes the decision of whether or not to file formal charges against a suspect. He also decides exactly which offense to charge, and in cases where it could be either, whether it should be a felony or a misdemeanor.

The prosecutor usually makes these decisions after reviewing the officers' reports. Being as objective and impartial as possible, the prosecutor must decide: Can the state, using only admissible evidence, prove to a jury that the defendant is guilty beyond a reasonable doubt?



Obviously, the prosecutor must consider whether certain evidence was obtained legally and whether obvious defense(s) can be rebutted. This is why it is so important that your report(s) be complete and accurate.

### ***Pretrial Interviews***

A defense attorney has the right to talk to all witnesses who will testify against his client. It is improper for a prosecutor to tell a witness not to talk to the defense attorney. However, a prosecutor may properly advise a witness that he does not have to talk with the defense lawyer if he does not want to. The only purpose a defense attorney has in interviewing prosecution witnesses (including officers) is to gather information that the attorney can use against the witness at trial.

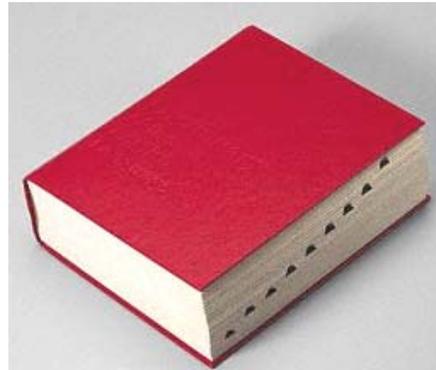
Many competent defense attorneys will try to get to you (or any other state's witness) before the prosecutor does, to gather information which he hopes to use against you at trial. He has the right to try to interview you, but you have the right to decline altogether, or to select the time, place, and who will be present. The prosecutor will want to be present at any such interview.

Therefore, the best technique when you are approached by defense counsel (or his investigator) for an interview is to tell him you will be happy to talk to him, but that he should contact the Deputy District Attorney assigned to the case so that a mutually convenient time and place can be arranged.

## Discovery

Discovery, as defined in Black's law dictionary is: "In a general sense, the ascertainment of that which was previously unknown; the disclosure or coming to light of what was previously hidden." Discovery is, in its basic form, the right of both sides in a legal proceeding to have access to the evidence and witnesses involved in the proceeding.

Discovery in criminal proceedings is reciprocal and applies to both the prosecution and the defense. Discovery entitles them to receive relevant evidentiary information, from the opposing counsel, that will help them prepare their court case. Discovery shall be made at least 30 days prior to the court proceeding (trial) unless good cause is shown why a disclosure should be denied, restricted, or deferred. While both the prosecution and defense are entitled by law to discovery, there are differences as to what is discoverable to both parties. Additionally, there are discovery differences between criminal cases and civil actions.





## **SELF-EVALUATION QUESTIONS**

- 1 What steps must you take before presenting your case to the prosecutor?
- 2 As a general rule, in a non Civil Administrative Penalty action, who decides what charges to file against a defendant?

## On the Witness Stand

**APPEARANCE** - The jury's impression of your personal appearance is important. Always "dress up" by wearing a conservative coat and tie or dress as appropriate. It should go without saying that you should never wear sunglasses or any articles of apparel that may be offensive to any jurors. If you have any questions about what to wear, ask the prosecutor.

**OATH** - As you approach the clerk to take the oath, walk with your head up and your shoulders back. While taking the oath, stand at attention. The only thing the jurors have to do during this time is watch you. If their initial impression is that you are serious and professional, they will be much more receptive to your testimony.

**DEMEANOR** - Your demeanor in court is as important as your appearance and testimony. It is often difficult for officers to walk the "demeanor tightrope". For example, you should be neither cocky nor timid - you should be confident. The best way to avoid extremes is to remember that you are a professional. If you act like a professional, the jurors will perceive you as a professional. After you have taken the witness stand, assume a relaxed position, but do not slouch. If you cannot figure out what to do with your hands, fold them. There is great disagreement about whether and when an officer should direct his answers to the jurors rather than the questioning attorney. The best approach is to ask the prosecutor before trial.



You can help the prosecutor best by not trying to help the prosecutor. Be as professional and impartial as you possibly can. Answer questions specifically and directly. Do not elaborate unless asked to do so. You will hurt the defense the most by not trying to hurt the defense. Just answer defense questions frankly and confidently. Often, even experienced officer-witnesses readily and eagerly answer the prosecutor's questions, but immediately become defensive or hostile when the defense attorney begins his questioning. This attitude helps the defense by giving the jury the impression that the officer is so biased against the defendant he cannot be believed.

If a defense attorney asks a question which takes you by surprise and hurts the case, never show your surprise. If you keep your poise and answer frankly, the jury often will not make as big a deal of it. This will rarely occur if you are prepared. Never get angry or argue with the defense attorney, no matter how hostile or offensive his questions are. If you ignore the hostility and continue to answer with confidence, you will make points with the jury. If the jury believes you have been unjustly abused, they will take it out on the defense attorney in their verdict.

## Ten Commandments for Witnesses

<b>1 Tell The Truth</b>	In a Criminal Case, as in all other matters, honesty comes first. Telling the truth, however, means more than refraining from telling a deliberate falsehood. Telling the truth requires that a witness testify accurately about what he knows.
<b>2 Do Not Guess</b>	If you do not know, say you do not know.
<b>3 Be Sure That You Understand The Question</b>	You cannot give a truthful and accurate answer unless you understand the question. If you do not understand the question, ask the lawyer to repeat it.
<b>4 Take Your Time And Answer Only The Questions Asked</b>	Give the question sufficient thought to understand it, formulate your answer, and then give your answer. If you can answer the question "yes" or "no," then do so. Do not talk at the same time as the lawyers and do not answer a question before a lawyer has completed asking it. Do not volunteer information – just answer the question and stop. If one of the attorney's objects to a question, you must pause until the judge rules on the objection.
<b>5 Give A Loud, Audible Answer</b>	Everything you say is being recorded. Do not nod your head yes or no. Speak up so that the judge, jury, and court recorder can hear you. Speak naturally and do not use jargon.
<b>6 Do Not Look For Assistance When You Are On The Stand</b>	If you think you need help, request to speak to the judge.
<b>7 Be Careful Answering Questions Involving Distances And Times</b>	If you use an estimate, make sure that everyone understands that you are estimating. When asked about distances, it may be helpful to refer to persons, furniture, or items in the courtroom and compare to the distance about which you are testifying.
<b>8 Be Courteous</b>	Be sure to address the judge as "Your Honor." Do not lose your temper. Treat all of the attorneys with the same courtesy.
<b>9 Admit Speaking To Investigators Or Lawyers</b>	If asked whether you have talked to the lawyer on your side or to an investigator, admit it freely if you have done so.
<b>10 Avoid Joking And Wise Cracks</b>	Testifying is a serious matter. Smart talk or evasive answers are not appropriate. Officers must be aware of the effect their conversations can have upon the trial. You must be extremely careful about your conduct around jurors. The goal is for jurors to perceive you as a professional off the stand as well as on the stand.



## SELF-EVALUATION QUESTIONS

1. List several of the “Ten Commandments” for witnesses.

## In the Court Room

### Court Procedures

#### **Arraignment**

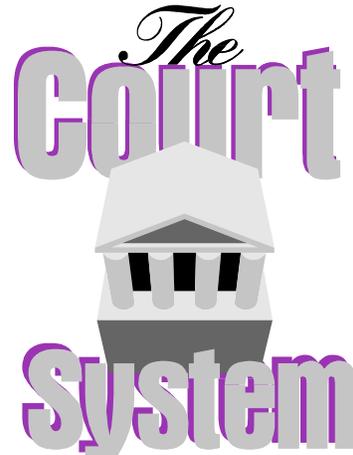
The purpose of the arraignment is:

- to advise the defendant of the charges (complaint) filed against him;
- to advise the defendant of his right to an attorney;
- to determine the defendant's plea;
- to either set bond or release the defendant on his own recognizance.

#### **Plea Bargains**

In a great number of cases, the case is "plea-bargained". A plea bargain is an agreement between the defendant and prosecutor in which the defendant agrees to plead guilty or "no contest" to:

- a lesser included offense (i.e., one carrying a lesser penalty than the original charge);
- some of the charges, on condition that the remaining charges be dismissed at the time of sentence;
- a charge on the condition that not more than a specified sentence be imposed. This type of agreement is more accurately called "sentence bargaining".



#### **Trial**

The order of a criminal jury trial is as follows:

##### A. Jury Selection and Voir Dire

In cases where the defendant has not agreed to be tried by a judge, potential jurors are called and may be questioned first by the court and then by the attorneys. This process is called "voir dire". Jurors who are not challenged and excused for "cause" (prejudice or bias) remain in the jury box. Both attorneys are then given a limited number of "peremptory challenges" (no cause or reason need be given) which they may use to dismiss certain jurors and achieve the jury composition they desire.

## B. Opening Statements

After jury selection, attorneys are permitted to make opening statements. The purpose of these statements is to inform the jury of evidence, which the attorneys believe will be presented by their side in the case. The defense attorney often waits until the completion of the state's "case-in-chief" before giving his opening statement.

## C. The State's Case

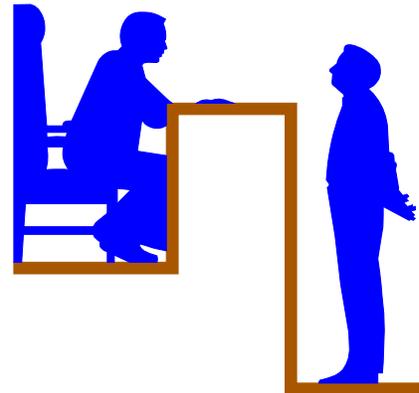
The state's case-in-chief is presented after opening statements.

- Direct Examination

The prosecutor, during his case-in-chief, calls the state's witnesses to the witness stand and asks them questions about the crime.

- Cross-Examination

After the prosecutor asks questions, the defense attorney is permitted to cross-examine the witness. The purpose of cross-examination is either to bolster the defense case by eliciting additional information, or to "impeach" the witness by attacking his credibility, knowledge or recollection, by bringing out inconsistencies, showing bias, a motive to lie, etc.



Generally, an attorney may not cross-examine on irrelevant or incompetent matters or in areas, which were not brought up during the direct examination. However, if the purpose of the question is to "impeach" the witness' credibility, the attorney is allowed to ask about virtually anything. Furthermore, it is always proper to ask "leading" questions during cross-examination.

- Redirect Examination

After cross-examination, the prosecutor is permitted to again question the witness in order to "clear up" any problems created by defense questioning. Both sides may then reexamine (redirect or recross) the witness as many times as it takes until all their questions have been asked and answered.

#### D. The Defense Case

After the prosecutor has completed ("rested") his case, the defense attorney may call witnesses to testify for the defendant. The sequence of questioning is the same as that in the state's case. However, since the burden of proof is on the prosecution, occasionally the defense attorney will "rest" without putting on any defense case at all.

#### E. Rebuttal, Surrebuttal, Etc.

After the defense case, the prosecutor, if he chooses, may put on witnesses to rebut what defense witnesses said.

The defense is then permitted to "surrebut" what prosecution witnesses said in rebuttal.

#### F. Arguments

After the selection of jury instructions, the prosecutor makes his "opening" argument; the defense attorney makes his argument; and, lastly, the prosecutor makes his "closing" argument. The prosecutor gets two arguments to compensate for having the burden of proof.

During these arguments, attorneys have the opportunity to persuade the jury how the law and facts show that the defendant is guilty or not guilty.



#### G. Instructing the Jury

After the closing arguments, the judge gives the jury the applicable law of the case by reading "instructions" which have been agreed on at an earlier meeting of the judge, the prosecutor and the defense counsel.

#### H. The Verdict

After hearing the instructions, the jury goes to a separate room to deliberate. After discussing the case, the jury returns a verdict of guilty (unanimous), not guilty (unanimous), or "hung" (all cannot agree). If the defendant is found guilty, the judge orders a probation report and sets a date for sentencing. If the verdict is not guilty, the case is over - there can be no retrial. If the jury is unable to agree, the prosecutor must decide whether or not to retry the defendant.



### ***Sentencing***

For infraction and misdemeanor cases, the judge decides at the time of sentencing which penalty choice shall be imposed. For misdemeanors, the sentence usually consists of time in the county jail, a fine, or probation, or some combination thereof.

### ***Appeals***

Every defendant convicted of a misdemeanor may appeal to the appellate department of the Superior Court. Usually, the case will go no further. Contrary to a felony situation, bail must be granted during a misdemeanor appeal.



## SELF-EVALUATION QUESTIONS

1. What is the purpose of the arraignment?
2. What is meant by “voir dire”?
3. Who presents their case first?



## GLOSSARY

### *A LISTING OF TERMINOLOGY AND ACRONYMS MOST COMMONLY USED BY WEIGHTS AND MEASURES OFFICIALS.*

**California Business and Professions Code** – A body of California law, first enacted in 1937, which in general, governs the manner in which businesses and professionals conduct their business.

**California Code of Regulations** – A body of California rules adopted by State agencies and approved by the Office of Administrative Law that explains, clarifies, and carries out provisions of California law.

**California Evidence Code** – A body of California law, first enacted in 1965, that consolidated and revised various State laws found in other codes relating to the collection, preservation, and presentation of evidence during a court proceeding.

**California Penal Code** – A body of California law, first enacted in 1872, that identifies the common law penal (criminal) statutes within the State.

**Citation** – Also known as a Notice to Appear; a written notification given to a person or business accused of misdemeanor or infraction violations, issued by a law enforcement officer, which by signing, the accused promises to appear in court at a date and time specified.

**Civil Administrative Penalty** – A monetary penalty imposed on a person or business by an agency for a violation of laws or regulations which that agency has the responsibility to enforce.

**Civil Case** – An action brought in a court to enforce, redress, or protect private rights, generally any case other than a criminal case.

**Civil Litigation** – A court action brought about to enforce, redress, or protect private rights, generally any case other than a criminal case.

**Civil Penalties** – Monetary assessments and/or injunctive language imposed by a court to enforce, redress, or protect private rights in any case other than a criminal case.

**Criminal Case** – An action brought in court in which the accused is charged with a violation of a law that is identified as a crime. The accused can be brought to trial and found guilty or not guilty and may be sentenced to a monetary fine and/or imprisonment.



## GLOSSARY

### *A LISTING OF TERMINOLOGY AND ACRONYMS MOST COMMONLY USED BY WEIGHTS AND MEASURES OFFICIALS.*

**Criminal Fines** – Monetary assessments and/or imprisonment imposed by a court upon an accused found guilty of a criminal act(s).

**Due Process** – A United States Constitutional right of a person to be notified of the actions to be taken by a law enforcement officer and the options the person has, the right to review procedures and the authority of the law enforcement officer, and the opportunity to be heard and present their side of the case in any hearing regarding alleged violations.

**Exclusionary Rule** – A “rule” or decision handed down by the U.S. Supreme Court in 1961 which provides that evidence which has been illegally obtained will be excluded from use at a trial.

**Infraction** – A violation of a California law that is punishable by a monetary fine only of up to \$250.

**Liaison and Training Unit** – One of three units that make up the Weighmaster Enforcement/Petroleum Products Branch that works directly with county weights and measures officials to provide uniform training and assistance in weighmaster and petroleum inspection techniques.

**Misdemeanor** – A violation of a California law that is punishable by a monetary fine of up to \$1,000 and/or 6 months in county jail.

**Notice to Appear** – Also known as a citation. A written notification given to a person or business accused of misdemeanor or infraction violations, issued by a law enforcement officer, which by signing, the accused promises to appear in court at a date and time specified.

**Peace Officer** – A law enforcement officer, as defined in Chapter 4.5 of the California Penal Code, with general authority to enforce the laws of the State of California.

**Permanent Injunction** – A court order prohibiting a person or business from violating conditions identified in the order permanently or ordering a person or business to undo a wrong or violation. Violations of the injunction can carry monetary penalties.

**Petroleum Products** – Gasoline, diesel fuel, liquefied petroleum gas when used as a motor vehicle fuel, kerosene, solvent, thinner, liquefied natural gas, white gasoline, engine oil, motor oil, and gear oil.



## GLOSSARY

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### *A LISTING OF TERMINOLOGY AND ACRONYMS MOST COMMONLY USED BY WEIGHTS AND MEASURES OFFICIALS.*

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**Preponderance of Evidence** – A body of evidence that proves the alleged violation(s) beyond a level of more than 50%. This level of proof is applicable in civil administrative penalty hearings.

**Public Officer** – A law enforcement officer, who is not a peace officer, with specific authority and responsibilities defined in the statutes the official is charged with enforcing.

**Weighmaster Enforcement** – The Division of Measurement Standards' program that oversees the licensing and regulation of persons or businesses required to license as a weighmaster.



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Rath Packing Company v. Jones – 430 U.S. 519 (1977)



## SELF-EVALUATION ANSWERS

### Segment 1

1. The right to be heard and answer charges against oneself. (page 4)
2. The State sealer and his employees and the County Sealers and their employees. (page 2)

### Segment 2

1. The 4<sup>th</sup> Amendment to the U.S. Constitution. (page 9)
2. It says that illegally collected evidence is to be excluded from a criminal trial. (page 10)
3. Plain view, open fields, public places, eavesdropping in a public place, and optical aids. (page 11)

### Segment 3

1. The California Evidence Code. (page 13)
2. So that when the evidence is presented at a trial, you can testify that you obtained it, when you obtained it, where you obtained it, how you obtained it, etc., so that it can be admissible during the trial. (page 16)
3. The chain of custody is the written documentation of the people who handled the evidence between the time it was obtained and the time it is presented at trial. In order for the court to accept a piece of evidence, it must be proven that it has not been altered or substituted. (page 19)



## SELF-EVALUATION ANSWERS

### Segment 4

1. A report is a permanent written record containing important facts to be used in the future. It provides a record of the past, and prepares the investigator for testifying in an upcoming legal matter. (page 26)
2. Your immediate supervisor, other managers in your department, the District Attorney, the defense attorney, state and federal agencies, the news media, or others. (page 26)
3. Who, What, When, Where, Why, and How. (page 25)
4. A well written report contains the following elements: it is factual, accurate, objective, complete, concise, clear, easy to understand and follow. (page 27)
5. First person. (page 29)
6. Using active sentences reduces wordiness and assists with clarity. (page 30)
7. It results in uniformity, making it easier for the reader to find information and for you to review your work. (page 30)
8. Notes taken in the field are the basis for writing a formal report at a later date. They reduce the need to re-contact people involved and provide a basis for greater accuracy about times, dates, and statements. (page 34)
9. You destroy them in good faith, you have incorporated them into a formal report, the formal report accurately reflects the content of your notes, and the prosecutor turns over a copy of your formal report to the defense attorney. (page 34)
10. When making reference to an individual, identify them by full name and title the first time. Use their last name and title in subsequent occasions. (page 29)
11. Tape recorded interviews should always be preserved for trial. (page 34)



## SELF-EVALUATION ANSWERS

### Segment 5

1. Felonies, misdemeanors, and infractions. Weights and measures violations are misdemeanors and infractions. (page 40)
2. Civil Administrative Penalties. (page 41)
3. Civil Administrative Penalty Actions  
Criminal Actions  
Civil Actions (page 41 and 42)

### Segment 6

1. Gather the evidence, interview the witnesses, complete the investigation, and write the report. (page 46)
2. The District Attorney's Office. (page 46)

### Segment 7

The "Ten Commandments" are: (page 51)

1. Tell the Truth
2. Do not guess
3. Be sure you understand the question
4. Take your time and answer only the questions asked
5. Give loud, audible answers
6. Do not look to the prosecutor for assistance while on the stand
7. Be careful in answering questions involving distance and times
8. Be courteous
9. Admit speaking to investigators, witnesses or lawyers
10. Avoid making jokes or wise cracks



## SELF-EVALUATION ANSWERS

### Segment 8

1. To advise the defendant of the charges against him; to advise the defendant of the right to an attorney; to determine the defendant's plea, and to either set bail or release the defendant on his own recognizance. (page 53)
2. It is the questioning of potential jurors before a trial prior to their being selected for a particular trial. (page 53)
3. The prosecution. (page 54)



**We would appreciate your taking a few moments to complete our training evaluation feedback form. We welcome your comments and any suggestions you might have regarding Training Module 4. You may E-mail your response to us at [DMS@cdfa.ca.gov](mailto:DMS@cdfa.ca.gov) or mail to Division of Measurement Standards at 6790 Florin Perkins Road, Suite 100, Sacramento CA 95828-1812.**

1. Did this module fulfill your expectations?
2. What did you like/dislike about this module?
3. What areas would you like to see improved?
4. What specific changes, if any, would you recommend?
5. How could this module be better organized to make it easier to follow and learn from?
6. Was this module too basic or too advanced for someone with an entry level background in weights and measures?
7. Additional comments or suggestions.