



County of Calaveras Board of Supervisors

**ADMINISTRATIVE POLICY**

**DISCRIMINATION, SEXUAL HARASSMENT, AND**

**SEXUAL MISCONDUCT**

Revision Date: 11/25/14

**POLICY STATEMENT**

The County of Calaveras maintains that all employees shall be treated in a fair and nondiscriminatory manner. The County maintains a zero tolerance for unlawful discrimination and harassment.

Discrimination and harassment in all its forms, including discriminatory harassment, sexual harassment, and sexual misconduct (including sexual assault and other sexual violence), destroys mutual respect and a trusting environment, can bring substantial personal harm to individuals, and violates rights guaranteed to employees under both Federal and State laws. Such behaviors are prohibited at the County of Calaveras. This Policy expresses the County of Calaveras' commitment to maintain an environment free of all forms of discrimination and harassment.

Any County officer or employee who violates this policy shall be subject to discipline, up to and including the possibility of dismissal to the extent permitted by law, including the provisions of Chapter 2.64 of the Calaveras County Code, the County's Personnel Ordinance.

This Policy applies to all County employees and others having an association with the County.

**DISCRIMINATION PROHIBITED**

This policy prohibits discrimination on the basis of the following protected classes and/or characteristics:

- Race;
- Sex/gender;
- Sexual orientation;
- Gender identity/expression;
- Religion;
- Age;
- Color;

- Creed;
- National or ethnic origin;
- Physical, mental or sensory disability, including disability requiring the use of a trained service animal;
- Marital status;
- Genetic information; and/or
- Status as veteran or member of the military.

Discriminatory harassment, a form of discrimination, is also prohibited. (See “Sexual Harassment Prohibited: below). Discriminatory harassment is improper conduct toward a particular individual, individuals, or groups on the basis of one or more of the protected statuses indicated above, that is sufficiently severe, persistent, or pervasive that it has the purpose or effect of:

- Creating an intimidating, hostile, or offensive environment; or
- Unreasonably interfering with the work or personal security of an individual.

Examples of behaviors that may constitute discrimination include, but are not limited to:

- Denying someone an employment opportunity, promotion, or benefit on the basis of one or more of the protected statuses indicated above; or
- Making or using derogatory, degrading, or condescending comments, slurs, jokes or epithets; or
- Assaulting, touching, impeding, or blocking movement, making derogatory gestures, any physical interferences with normal work movement; or
- Displaying derogatory, degrading, condescending, or offensive posters, letters, poems, graffiti, cartoons, drawings; or
- Jokes or derogatory, disparaging, derisive or offensive comments, or inappropriate/unprofessional use of slang or foul language which can be heard by those in the vicinity; or
- Persistent or frequent questions or comments without excuse or justification delving into an employee’s private life which are reasonably viewed as invading the employee’s privacy; or degrading, condescending or impudent comments about an employee’s appearance, dress or anatomy; or
- Circulating material by any method which tends to ridicule, or other forms of ridicule or insults, regardless of whether the ridicule is directed at specific individuals; or
- Retaliation or retaliatory action directed against an unlawful harassment complainant or one who facilitates the investigation of unlawful discrimination/harassment.

## **SEXUAL HARASSMENT PROHIBITED**

Sexual harassment is a form of discrimination based on sex and/or gender and is prohibited by this policy. Sexual harassment encompasses unwelcome verbal or physical conduct of a sexual nature. Sexual misconduct, which includes sexual assault and other sexual violence, is a form of sexual harassment and also is prohibited by the policy (see below). Sexual harassment also encompasses “gender-based harassment,” which means harassment of a non-sexual nature that occurs because of a person’s sex and/or gender. It includes harassment based on the person’s nonconformity with sex and/or gender stereotypes.

**Quid pro quo** sexual harassment occurs when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of any individual’s employment or education; or
- Submission to or rejection of such behavior by an individual is used as the basis for employment or promotional decisions affecting the individual.

Sexual harassment creates a hostile environment when behavior is sufficiently severe, persistent, or pervasive to interfere with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment.

Examples of behaviors that may constitute sexual harassment include, but are not limited to:

- Physical assault;
- Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotions, work references, or letters of recommendation;
- Sexual behavior that is unwelcome. Such behavior may include, but is not limited to:
  - Comments of a sexual nature;
  - Sexually explicit statements, questions, jokes, or anecdotes;
  - Unnecessary or undesirable physical contact;
  - Repeated social invitation when the invitee has previously indicated that he or she is not interested;
  - Unwanted, offensive, and/or uninvited comments about another’s physical appearance;

- Display of pictures, calendars, cartoons, or computer applications with sexual content;
- Persistent, unwanted attempts to change a professional relationship to an amorous relationship;
- Subtle propositions for sexual activity or direct propositions of a sexual nature;
- Uninvited letters, e-mails, telephone calls, or other correspondence referring to or depicting sexual activities; and/or
- Any of the above carried out via the Internet, Social Media, (“cyber harassment”), or text message (“Sexting”).

Other offenses that may constitute sexual harassment when based on sex and/or gender include, but are not limited to:

- Threatening or causing physical harm, extreme verbal abuse, or other conduct, which threatens or endangers the health or safety of any person;
- Intimidations, which is defined as implied threats or acts that cause a reasonable fear of harm in another;
  - Bullying or workplace violence
  - Domestic violence and dating violence
  - Stalking

### **SEXUAL MISCONDUCT PROHIBITED**

Sexual misconduct is a form of sexual harassment and is prohibited by this Policy.

- Sexual misconduct is an egregious form of sex discrimination/sexual harassment. A number of acts may be regarded as sexual misconduct including, but not limited to, nonconsensual sexual contact (including sexual intercourse) and sexual exploitation. Sexual misconduct includes sexual assault and other sexual violence.
- Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, actual words or conduct demonstrate clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

- Force or coercion is threatened or used to procure compliance with the sexual activity.
  - Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.
  - Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to obtain consent from another. When an individual makes it clear through words or actions that he or she does not want to engage in sexual contact, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail or extortion to overcome resistance or gain consent to sexual activity.
  
- The person is asleep, unconscious, or physically unable to communicate his or her unwillingness to engage in sexual activity; or
  
- The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if she or he cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or he or she lacks the capacity to reasonably understand the situation and to make rational, reasonable decisions.
  
- Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (or clothing covering any of those areas), or by causing another person to touch his or her own or another person's intimate body parts without consent and/or by force. Sexual contact also can include any intentional bodily contact in a sexual manner with another person's non-intimate body parts. It also includes nonconsensual sexual intercourse.
  
- Sexual exploitation occurs when a person takes nonconsensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above. Examples of sexual exploitation may include, but are not limited to:
  - Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person;
  - Invading another person's sexual privacy;
  - Prostituting another person;

- Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, records, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where he or she has a reasonable expectation of privacy;
- Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection;
- Exposing one's intimate parts in nonconsensual circumstances;
- Sexually based stalking and/or bullying.

### **INVALID DEFENSES**

Use of alcohol or other drugs is not a valid defense to a violation of this policy.

Signing this policy without reading it is not a defense to a violation of this policy.

### **UNPROFESSIONAL/UNETHICAL CONDUCT**

This Policy is not meant cover other conduct specifically articulated as unprofessional or unethical under the County Code of Ethics or County Code Prohibited Activities , although the County reserves the right to refer any such violations to appropriate managers for potential discipline or cure as part of any disposition, if necessary.

### **TAKING STEPS TO STOP THE PROBLEM/SELF-HELP**

***The County of Calaveras strongly encourages reporting of all forms of discrimination, sexual harassment, and sexual misconduct. They County of Calaveras takes such reports very seriously.***

Some discrimination and/or harassment may be stopped by the complainant taking the initiative and telling or informing the harasser to stop the unwanted conduct. This process is known as “self-help.” Nevertheless, no complainant should engage in self-help if doing so could result in an unacceptable level of tension or a physical altercation, or the threat of either one.

Discrimination and harassment are serious matters. No one is expected to tolerate it. However, some people who engage in harassment are unaware that their conduct is offensive and will stop if told to do so. Therefore, whenever it is reasonably possible under the circumstances, a complainant should tell the harasser in person, in clear and unambiguous

words, that the conduct is offensive and ask the harasser to stop. If, under the circumstances, it is not possible to do this in person, then the complainant should do so in writing.

In either case, as an aid to any future investigation, the complainant is strongly encouraged to inform his or her immediate supervisor or the Human Resources Division within the County Administrative Office that he or she had to engage in self-help. Failure to do so could limit the options available to management in assisting the complainant should the need arise in the future, and failure to do so may prevent a complainant from securing all legally available recourse in the future.

## **COMPLAINT AND INVESTIGATIVE PROCEDURE**

1. If a complainant who has a complaint about unlawful harassment, including sexual harassment, is not able to satisfactorily resolve the complaint using the self-help procedures (or if the self-help procedures are not appropriate under the circumstances), that person shall then file a formal written complaint with Human Resources Division. The name, address and telephone number of the Human Resources division and any designee(s) for receipt of unlawful harassment complaints shall be posted in all departments.
2. All filings must be made as soon as possible after the date of the alleged incident of unlawful harassment. Also, if employees keep a written record of alleged harassment/discrimination or sexual harassment, they also must notify the Human Resources Division or other appropriate manager of the facts and of their efforts at self-help, if any. Otherwise, the County cannot take steps to protect the employee as a “complainant” and the County’s ability to respond to the complaint and/or take any corrective action may be hampered.
3. If the alleged harasser is employed within the County Administrative Office, including the Human Resources Division and the Technology Services Division, the formal complaint should be filed with County Counsel’s office.
4. The Human Resources Division shall provide model complaint forms, which complainants are encouraged but are not required to use. (A copy of the complaint form is attached to this Policy). However, should a complainant feel more comfortable reporting the matter to management staff in the Human Resources Division, by letter, orally in person or by telephone, then the complainant should and is encouraged to do so. However, regardless of the form the complaint takes, in order to properly investigate the matter, the following information, at a minimum, will need to be provided as soon as possible after the alleged incident:
  - a. The name and job title of the complainant, the department where he/she works, and the department’s address.

- b. The name of the harasser or person who is the alleged cause of the unlawful harassment and a specific description of the incident.
  - c. A clear and complete description of the specific act(s) or omission(s) which are alleged to have caused the unlawful harassment.
  - d. A clear and complete statement of the relief or corrective action being sought.
  - e. The name of all witnesses, employees, or other persons, if any, who saw or heard the unlawful discrimination/harassment or sexual harassment.
5. County Officers, managers, and supervisors must lodge a complaint with the Human Resources Division (or County Counsel, if appropriate) if they witness or are apprised of an incident reportable under this policy.

Any employee who witnesses any incident of unlawful harassment is **strongly** encouraged to report the matter to Human Resources by lodging an unlawful harassment complaint. Failure to do so may impair a proper and satisfactory resolution of the problem.

6. The County shall strive to conduct an investigation promptly. Every investigation shall be undertaken by a designee of Human Resources Division. At a minimum, a senior member of the Human Resources Division or designee shall meet with the complainant, alleged harasser, and other witnesses. Before completion of the investigation, a designee of the Human Resources Division shall meet with the complainant to discuss the preliminary findings and preliminary disposition.
7. After completing the investigation, a designee of the Human Resources Division shall issue a written, final disposition with specific recommendations to the Complainant's Department Head (or other County Officer acting in capacity superior to the alleged harasser) and to the County Administrative Officer.
8. The final disposition and recommendations shall be mailed or delivered to the complainant.
9. If the final disposition reflects a finding of no harassment, or a finding that is inconclusive, no documentation relating to the investigation shall be placed into the personnel file of the alleged harasser. However, the County reserves the right to reaffirm this Policy with the alleged harasser and/or warn the alleged harasser in writing that subsequent accusations may not be without consequences. Such written reaffirmations or warnings shall not become part of the alleged harasser's personnel file but shall be filed separately and kept confidential by the Human Resources Division.

10. Any officer or employee who if found, after investigation, to have engaged in unlawful harassment will be subject to appropriate sanctions depending on the circumstances – from a Counseling Memo up to and including termination. Final documentation of such sanctions shall become part of the officer’s or employee’s personnel file.
11. Generally Applicable Conditions:
  - a. All documents, communications, and records dealing with the processing of a complaint shall be filed in a separate complaint file and shall not become part of a personnel file of the complainant. Such documentation will not become part of the file of an alleged harasser unless the harasser is disciplined, upon which the harasser is entitled to all documentation relied upon as a basis for discipline. Certain communications and documentation may be covered by attorney-client privilege or work-product rules, and therefore, is not subject to disclosure.
  - b. The complaint procedure described above shall be in force as of the effective date of this Policy. Complaints of unlawful discrimination/harassment, sexual harassment, or sexual misconduct should be filed under this Policy before resorting to other existing procedures including the County Personnel Ordinance or the County’s MOU. Failure to do so can only hamper or delay the County’s ability to take corrective action, if necessary, it is the County’s intent to process complaints of unlawful discrimination/harassment , sexual harassment or sexual misconduct exclusively under this policy, although such process and outcome may be relevant and/or utilized in other forums chosen by a complainant.
  - c. All verbal and written communications by a complainant, harasser, and/or witness with a designee of the Human Resources Division in connection with an investigation shall be treated with respect and discretion in order to avoid undue embarrassment or distraction; however, there should be no expectation of secrecy or privacy in connection with such communications because of their potential relevance in current or future internal, administrative, or judicial proceedings.
12. Within a reasonable period of time (considering the nature of and circumstances surrounding the complaint) following the disposition of the unlawful harassment complaint, a designee of the Human Resources Division shall inquire into the status of any corrective action taken and report the status of the matter to the County Administrative Officer (or designee). When appropriate, a designee of the Human Resources Division shall make further status inquiries and shall report the status to the County Administrative Officer and/or County Counsel.

## **EMPLOYEE REPORTING RESPONSIBILITIES**

### **Incidents Involving Sexual Harassment or Sexual Misconduct**

All County of Calaveras employees who have information regarding an incident or situation involving sexual harassment or sexual misconduct are required to promptly report the incident to Human Resources.

The only exceptions to this requirement are those employees who are statutorily barred from reporting (for example, mental health care and health care providers who are acting in their capacities as mental health care or health care providers).

### **Incidents of Discrimination That Do Not Involve Sexual Harassment or Sexual Misconduct**

County of Calaveras employees with supervisory responsibility must report all incidents of discrimination and harassment to Human Resources, including incidents that do not involve sexual harassment or sexual misconduct. All other County of Calaveras employees are strongly encouraged to report incidents of discrimination and harassment that do not involve sexual harassment or sexual misconduct.

## **INVESTIGATIONS UNDER THIS POLICY ARE SUBJECT TO THE FOLLOWING:**

### **Enforcement and Disciplinary Action**

The County of Calaveras vigorously enforces this policy. Persons determined to have violated this policy are subject to sanctions imposed using the due process protections of application MOU's, and /or County Code, Personnel Ordinance.

### **Malicious or Frivolous Allegations Prohibited**

The County of Calaveras disciplines employees who knowingly make false or frivolous allegations of discrimination, sexual harassment, or sexual misconduct. No complaint is considered malicious or frivolous solely because it cannot be corroborated.

## **COMPLIANCE**

The County may be held liable for unlawful discrimination/harassment, including sexual harassment, if its management or supervising officers knew, or should have known, of such unlawful discrimination and/or harassment and failed to take immediate and appropriate corrective action to end the unlawful conduct. Therefore, all County officers and employees shall comply with the provisions of this Policy. Any violation of this Policy shall be cause for imposition of discipline, up to and including the possibility of dismissal to the extent permitted by law.

## **REPORTING CRIMINAL BEHAVIOR**

The County of Calaveras encourages employees and others to report incidents of sexual misconduct, sexual assault, or other crimes or potential crimes to Law Enforcement. The County of Calaveras' process under this policy is separate from the criminal process and can be pursued simultaneously. The County of Calaveras does not wait for the conclusion of a criminal case to investigate possible violations of this Policy. In some cases, a temporary suspension of the County's investigation may be necessary when requested by law enforcement. However, the County's investigation resumes promptly once we are notified by law enforcement that we may proceed. An outcome reached in a criminal process does not necessarily determine the outcome of the County's process.

## **CONFIDENTIAL CONSULTING**

Anyone who believes they are a victim of any violation of this Policy is encouraged to consult with a licensed health care provider, psychologist, or counselor. By law, such professionals are able to assist victims confidentially and are exempt from legal obligations to report incidents for investigation, with some exceptions (for example, child abuse, elder abuse, and certain threats of harm).

## **INTERIM MEASURES**

In some cases, County of Calaveras employees with supervisory responsibility must take immediate action to end offending conduct and protect the well-being of the complainant. Supervisors must take such interim measures in consultation with the County Administrative Office and County Counsel.

The County of Calaveras takes appropriate interim steps before a final resolution to support and protect the complainant, as needed. Such steps may be taken regardless of whether complainant wishes to pursue the complaint. The County may impose a "no contact" order, which may include a directive that the parties refrain from having contact with one another. When taking such steps, the County seeks to minimize unnecessary or unreasonable burdens on either party; however, every reasonable effort is made to allow the complainant to continue in his or her employment. Violations of such protective measures may lead to disciplinary action.

## **OTHER REPORTING**

In addition, all employees should:

- Consider reporting incidents to law enforcement if suspicion exists that a crime was committed;
- Report alleged incidents to a higher level supervisor and/or Human Resources; and

- Encourage complainant/third –party reporting individuals to consult with Human Resources.

## **SEXUAL HARASSMENT AND DISCRIMINATION AWARENESS TRAINING**

All County of Calaveras employees are required to complete sexual harassment and discrimination awareness training. All supervisory employees are mandated by AB 1825 to complete sexual harassment training every two years.

## **RETALIATION PROHIBITED**

This Policy prohibits retaliation. Retaliation includes any act that would dissuade a reasonable person from making or supporting a complaint, or participating in an investigation, under this policy. It includes any action or threat of action that could negatively affect another’s employment, reputation, or other interest. **Retaliation is separate and a distinct violation of this Policy.** Retaliatory acts should be reported immediately to Human Resources and are handled promptly, effectively, and equitably.

## **INDEPENDENT CONTRACTORS**

This Policy shall also apply to persons employed to do work for the County as independent contractors, and to County vendors and suppliers. Persons who believe they have been harassed by such an independent contractor, vendor or supplier should utilize the procedures described in this Policy to resolve such complaints.

## **STATE AND FEDERAL PROCEDURES**

In addition to the procedures described in this Policy an employee or complainant may direct complaints about discrimination/harassment or sexual harassment to the California Department of Fair Employment and Housing (DFEH), California Labor Commissioner, or the Equal Employment Opportunity Commission (EEOC). Please note, however, that reporting incidents of harassment to these outside agencies does not relieve officers and supervisors from their obligations under this Policy. Moreover, employee’s reporting an alleged incident of unlawful harassment to an outside agency, but not following the complaint procedures under this Policy, can result in impairment or delay in taking corrective action on the part of the County to the detriment of the complainant, for which the County will not be responsible.

## **PRIVATE CONTRACT OR OUTSIDE AGENT INVESTIGATION AUTHORITY**

If a complainant involves the County Administrator’s Office and subdivision, the County Counsel’s Office, or the Board of Supervisors, the complainant procedures described above also shall apply. However, investigation of the matter will occur through private contractor or outside agency.

## CONFIDENTIALITY

The County of Calaveras takes confidentiality seriously, but limitations exist. Investigative information is shared with others on a need-to-know basis, including with investigators, witnesses, the accused individual, and relevant County of Calaveras officials, or as required or permitted by law. In some cases, the investigative file may be subject to requests for public records. When a complainant requests confidentiality, the County of Calaveras respects that request to the extent possible while meeting its legal obligations.

## Contact Information

**County of Calaveras Administrative Office  
Human Resources & Risk Management Division**

891 Mountain Ranch Road  
San Andreas, CA 95249  
Phone: 209-754-6303  
Email: [hr@co.calaveras.ca.us](mailto:hr@co.calaveras.ca.us)

**Department of Fair Employment and Housing**

Phone: (800) 884-1684 or TTY (800) 700-2320

Email: [Contact.center@dfeh.ca.gov](mailto:Contact.center@dfeh.ca.gov)

Local Office

2218 Kausen Drive, Suite 100  
Elk Grove, CA 95758  
(916) 478-7251

**Equal Opportunity Employment Commission**

Phone: (800) 669-4000 or TTY (800) 669-6820

Email: [info@eoc.gov](mailto:info@eoc.gov)

Local Office

450 Golden Gate Avenue  
5 West, POB 36025  
San Francisco, CA 94102-3661

**California Labor Commission**

Local Office:

31 E. Channel Street, Room 317  
Stockton, CA 95202  
(209) 948-7770

**COUNTY OF CALAVERAS**  
**Discrimination/Harassment Complaint Form**

1. \_\_\_\_\_  
Complainant's Full Name

\_\_\_\_\_

Job Title Department

\_\_\_\_\_

Department Address Work Phone

\_\_\_\_\_

2. \_\_\_\_\_  
Name of the person who is accused of causing the harassment.

\_\_\_\_\_

Date on which the alleged harassment took place.    Month            Day            Year

Check all that apply below for the basis you believe you were harassed.

<input type="checkbox"/> Race	<input type="checkbox"/> Ancestry	<input type="checkbox"/> Sex
<input type="checkbox"/> Religion	<input type="checkbox"/> Physical or Mental Disability	<input type="checkbox"/> Sexual Orientation
<input type="checkbox"/> Color	<input type="checkbox"/> Medical Condition	<input type="checkbox"/> Age
<input type="checkbox"/> National Origin	<input type="checkbox"/> Marital Status	<input type="checkbox"/> Military or Veteran's Status

3. Explain how you believe the harassment towards you took place. (Attach any additional sheets if necessary). \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Note Date(s), Time(s), and Location(s) of incident(s). \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Name(s) of witnesses, if any. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. What corrective action or remedy you are seeking? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**WAIVER OF CONFIDENTIALITY**

I, \_\_\_\_\_, have read Paragraph 11(c) and consent to the release of information by the County only as it deems necessary to investigate and prosecute any disciplinary proceedings.

\_\_\_\_\_

Signature Date

When completed, please return to the Calaveras County Director of Human Resources or designee for receipt of unlawful harassment complaints (see departmental postings as well as posting in County Administrative Office).

## **ACKNOWLEDGEMENT**

I have received the Discrimination/Harassment/Sexual Harassment/Sexual Misconduct Policy, read and understand its contents and am aware that copies of County policies regarding unlawful discrimination and harassment are available from the Human Resources Division and that if I have any questions, I may contact the Human Resources Division at (209)754-6303

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**Date**

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**Signature**

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**Print Name**