

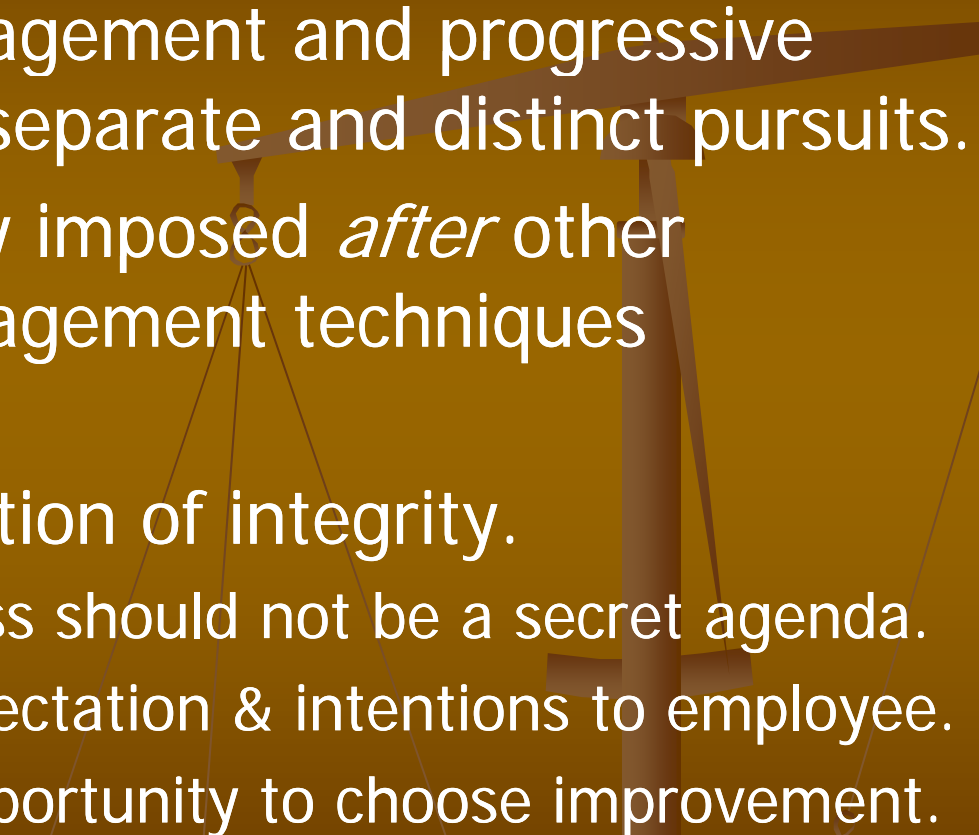


Performance Management Through Progressive Discipline

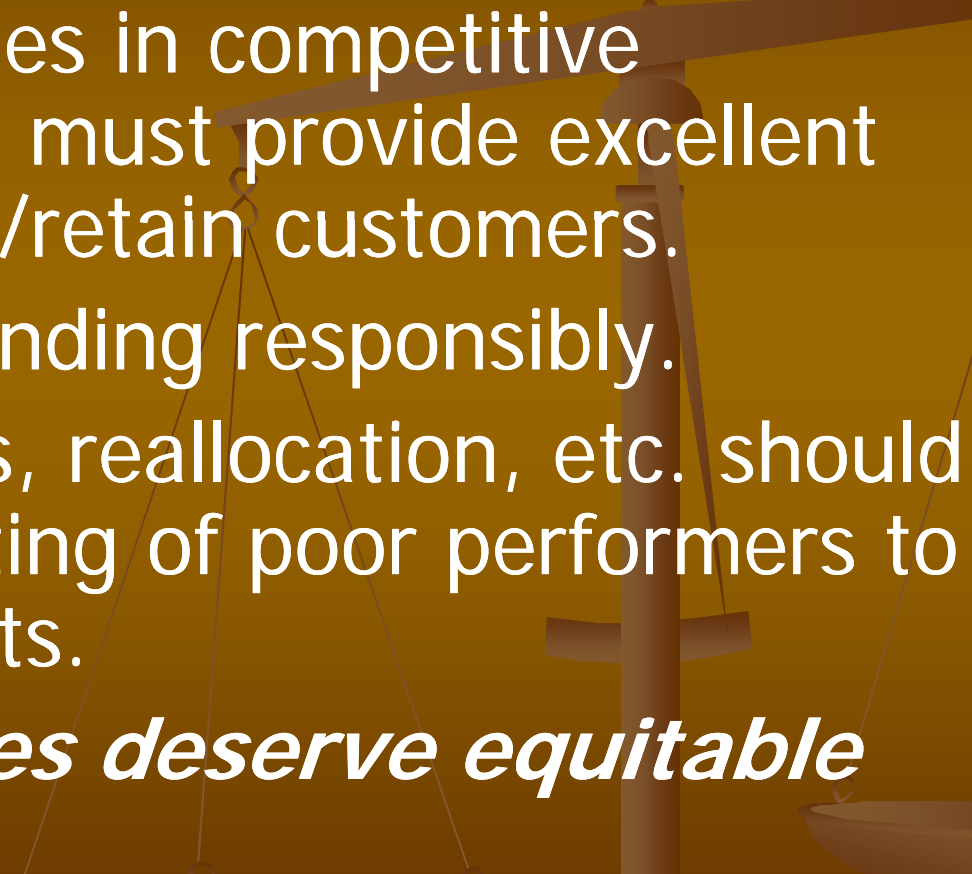
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Employee & Labor Relations

Revised 2/2/06

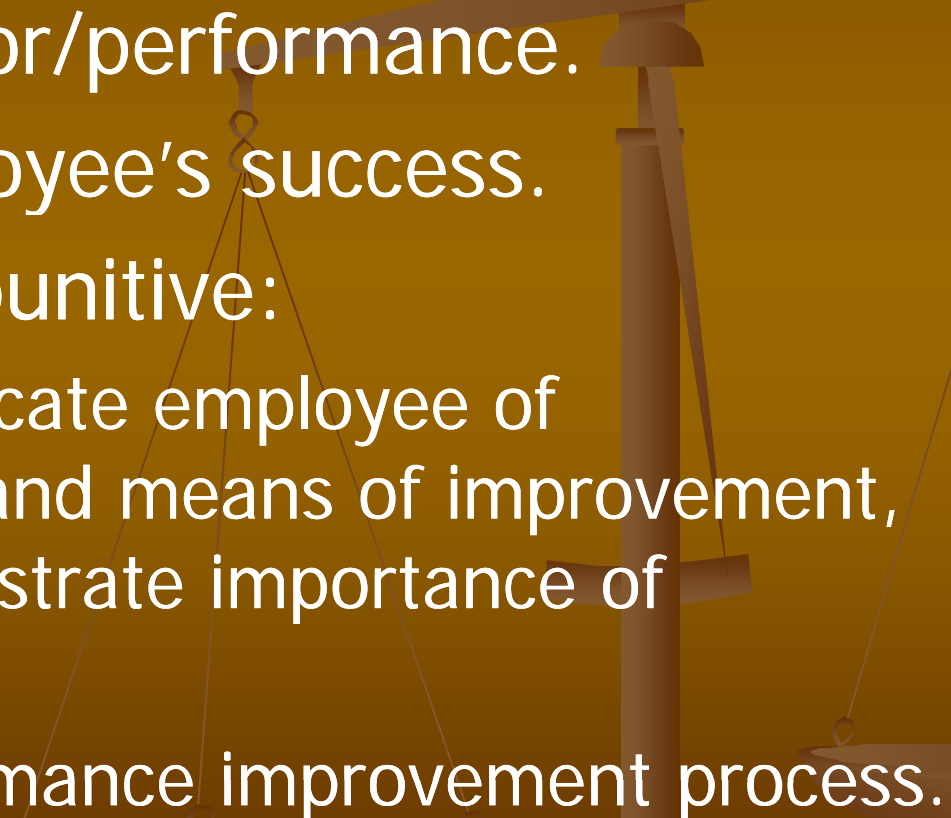
Performance Management

- Performance management and progressive discipline are *not* separate and distinct pursuits.
 - Discipline normally imposed *after* other performance management techniques exhausted.
 - Proceed from position of integrity.
 - Disciplinary process should not be a secret agenda.
 - Communicate expectation & intentions to employee.
 - Give employee opportunity to choose improvement.
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Why Progressive Discipline?

- University operates in competitive environment; we must provide excellent service to attract/retain customers.
 - Duty to spend funding responsibly.
 - Transfers, layoffs, reallocation, etc. should not result in shifting of poor performers to other departments.
 - ***Good employees deserve equitable treatment.***
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Goal of Progressive Discipline

- Modify behavior/performance.
 - Promote employee's success.
 - Object is not punitive:
 - Goal is to educate employee of expectations and means of improvement, and to demonstrate importance of compliance.
 - Part of performance improvement process.
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Just Cause

- Seven tests: *
 - (1) Notice
 - (2) Reasonable Rules & Orders
 - (3) Investigation
 - (4) Fair Investigation
 - (5) Proof
 - (6) Equal Treatment
 - (7) Penalty

*Just Cause: The Seven Tests, Koven & Smith

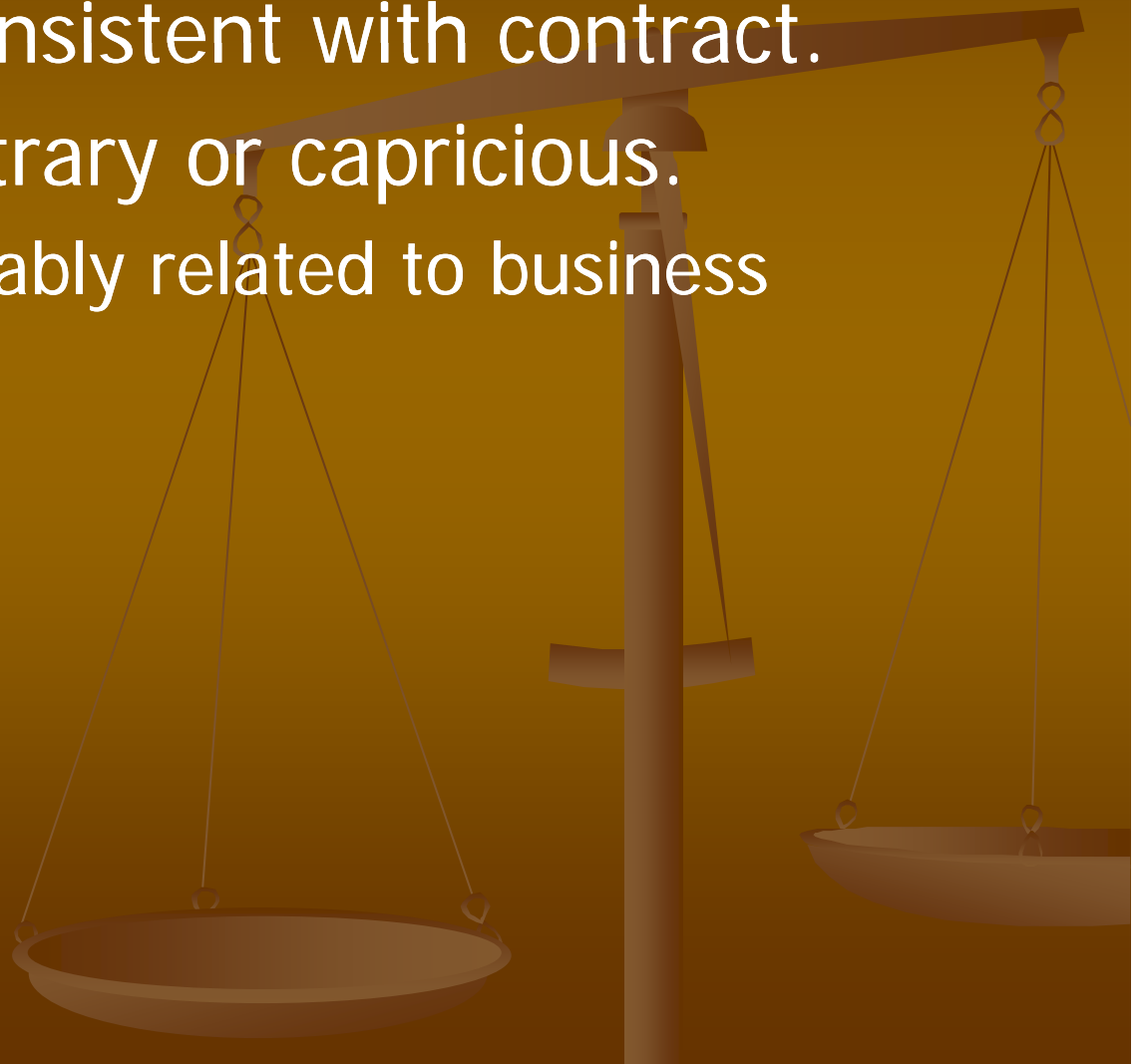


(1) Notice

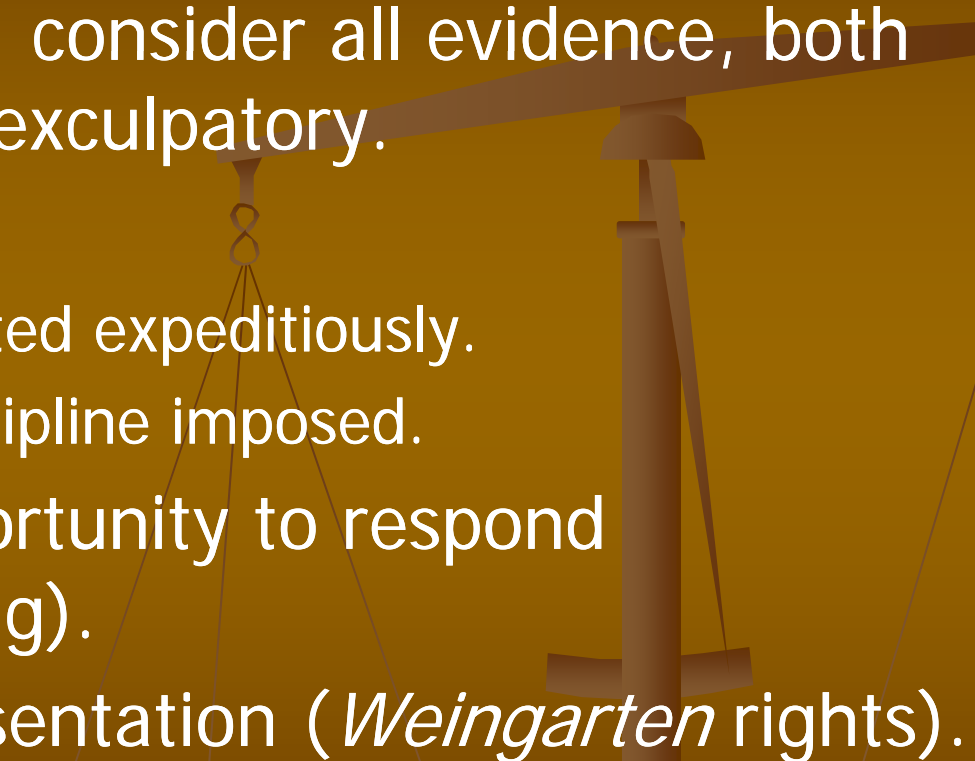
- Prior to imposition of discipline, employee must have notice of rules and expectations.
- Establish through:
 - New employee orientation
 - Orientation checklists
 - Receipts for departmental handbooks
 - Periodic reinforcement/coaching.

(2) Reasonable Rules & Orders

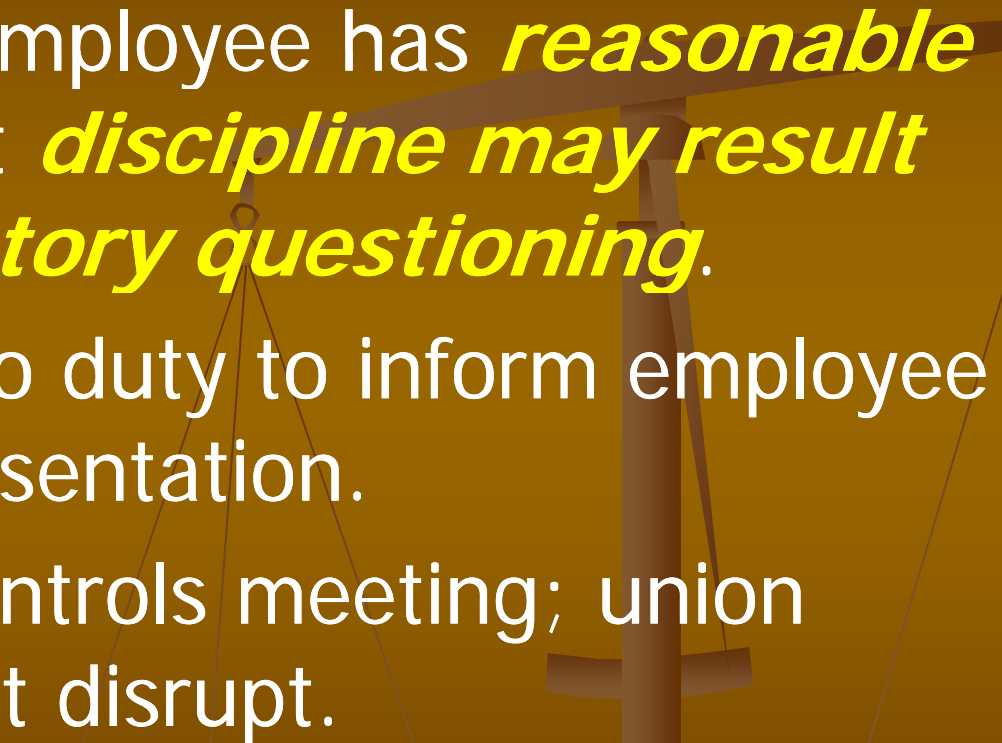
- Can not be inconsistent with contract.
- Can not be arbitrary or capricious.
 - Must be reasonably related to business necessity.



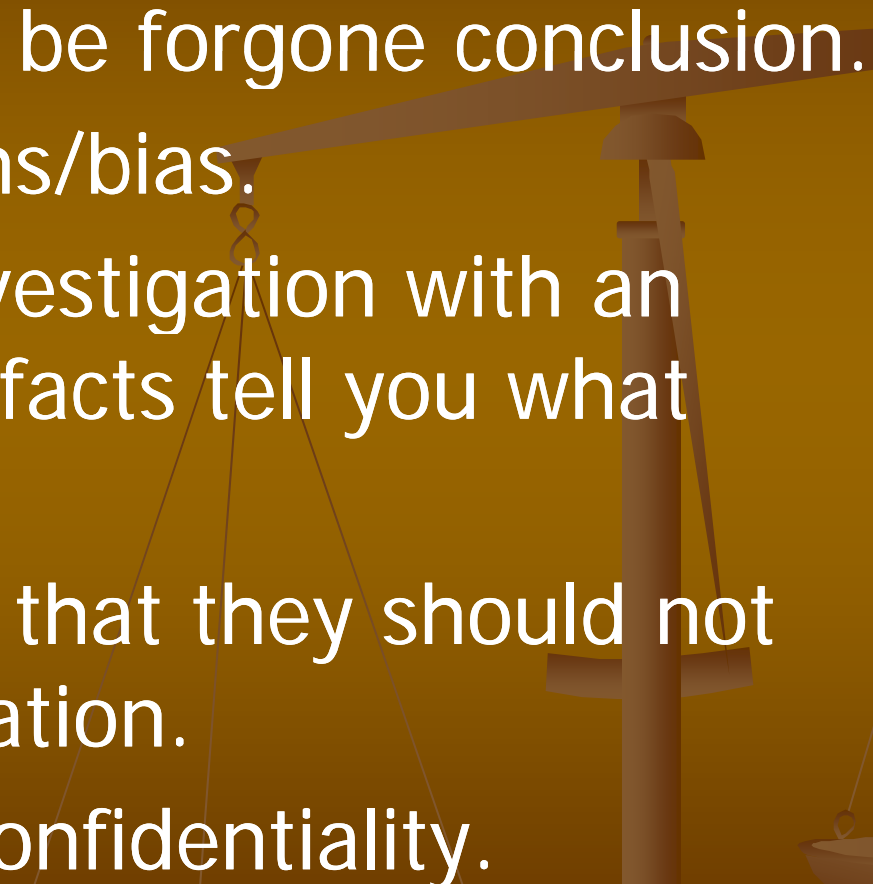
(3) Investigation

- Must be thorough; consider all evidence, both incriminating and exculpatory.
 - Must be timely:
 - Should be completed expeditiously.
 - Occurs before discipline imposed.
 - Give accused opportunity to respond (*Loudermill* Hearing).
 - Allow union representation (*Weingarten* rights).
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Detail: Weingarten Rights

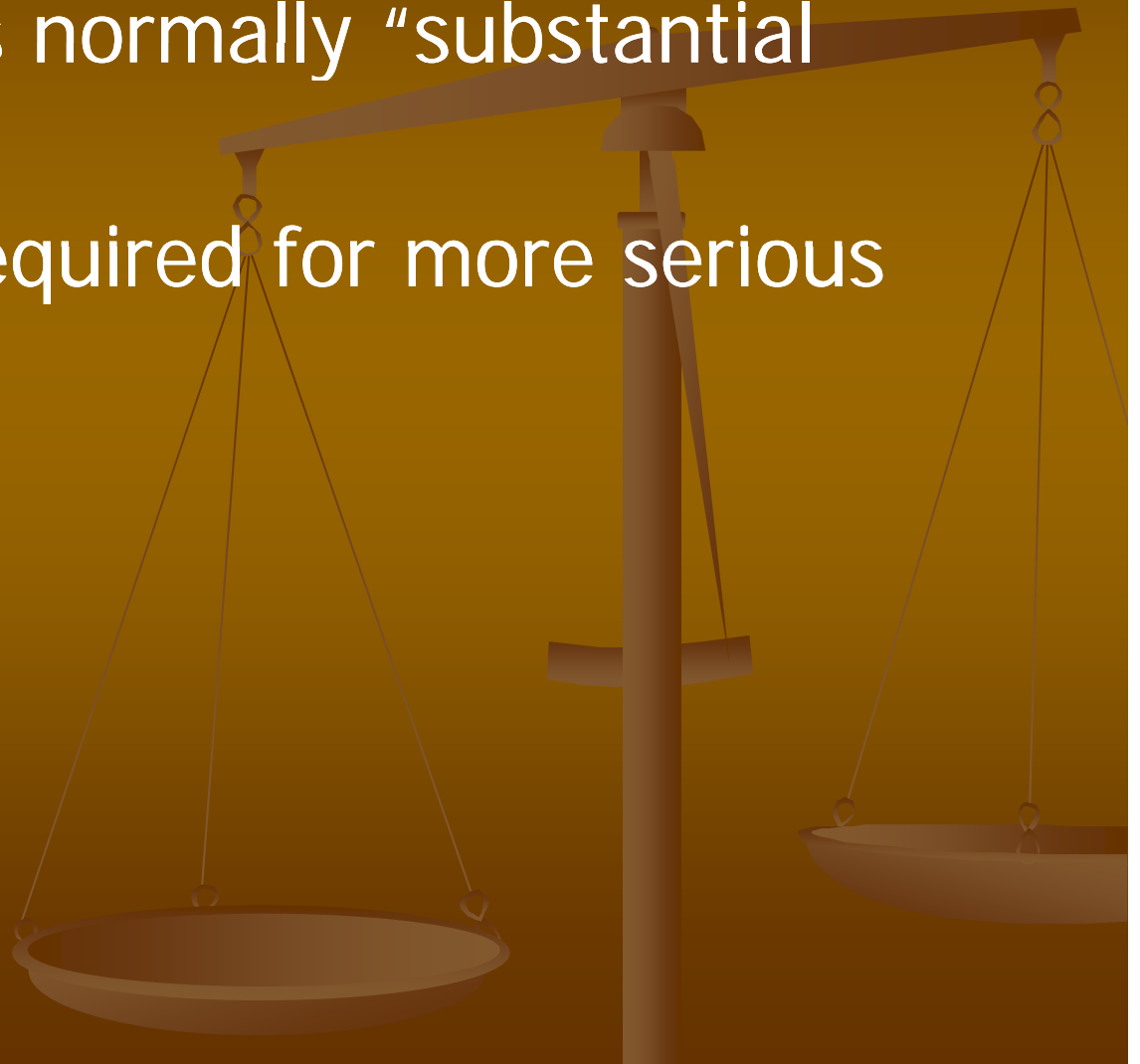
- Applies where employee has ***reasonable*** expectation that ***discipline may result*** from ***investigatory questioning***.
 - Not *Miranda* - no duty to inform employee of right to representation.
 - Management controls meeting; union steward may not disrupt.
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(4) Fair Investigation

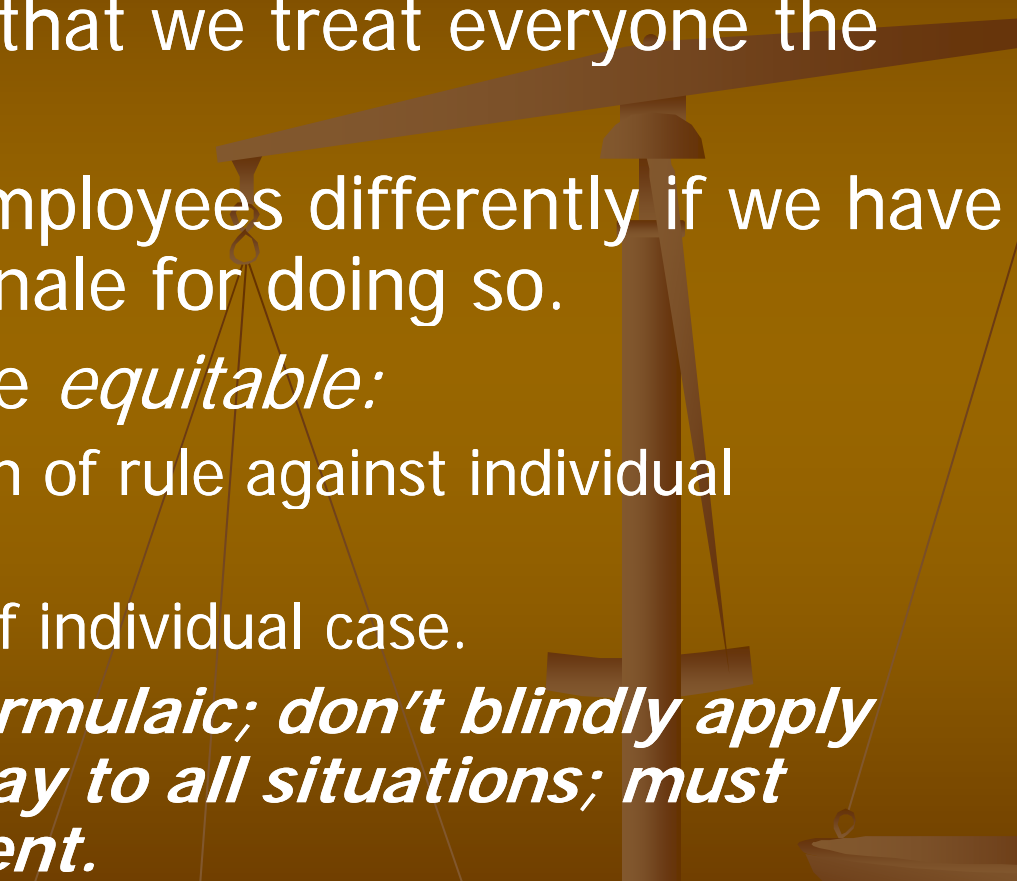
- Result must not be forgone conclusion.
 - Test assumptions/bias.
 - Don't initiate investigation with an agenda; let the facts tell you what occurred.
 - Inform subjects that they should not discuss investigation.
 - Don't promise confidentiality.
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(5) Proof

- Level of proof is normally “substantial evidence.”
- Greater proof required for more serious allegations.

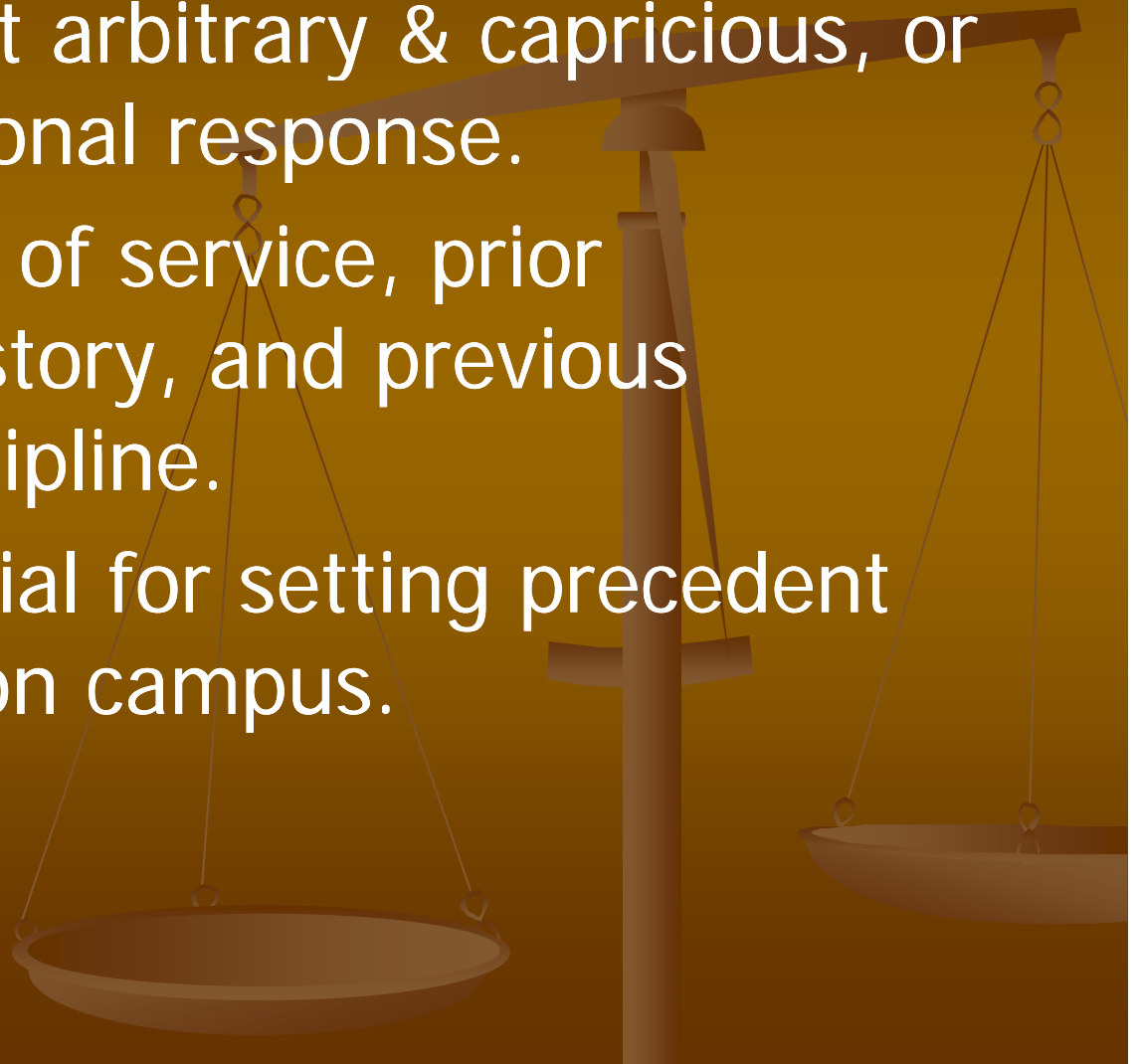


(6) Equal Treatment

- ... does *not* mean that we treat everyone the same!
 - It is OK to treat employees differently if we have a reasonable rationale for doing so.
 - Treatment must be *equitable*:
 - Balance application of rule against individual circumstances;
 - Distinguish facts of individual case.
 - ***Rules are not formulaic; don't blindly apply rules in same way to all situations; must exercise judgment.***
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(7) Penalty

- Must be fair, not arbitrary & capricious, or based on emotional response.
- Factor in length of service, prior performance history, and previous progressive discipline.
- Consider potential for setting precedent for other units on campus.



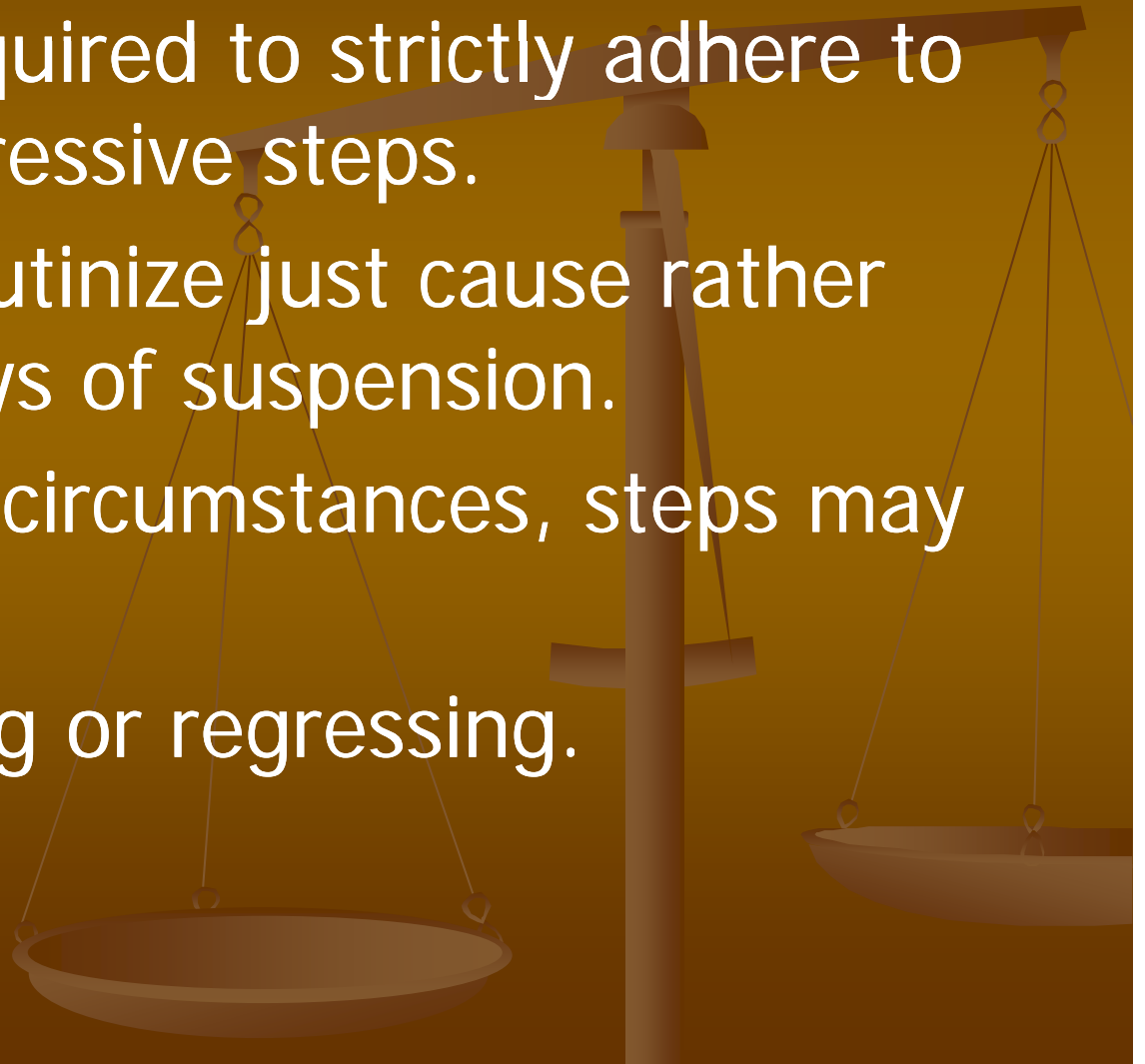
Standard Progressive Steps*

- Verbal counseling/affirmation of expectations is necessary prerequisite, but is not formal discipline.
- Written Reprimand
- 1-day Suspension
- 3-day Suspension
- 5-day Suspension (long-term employees)
- Termination

*Standard progression for this campus; other employers may differ.

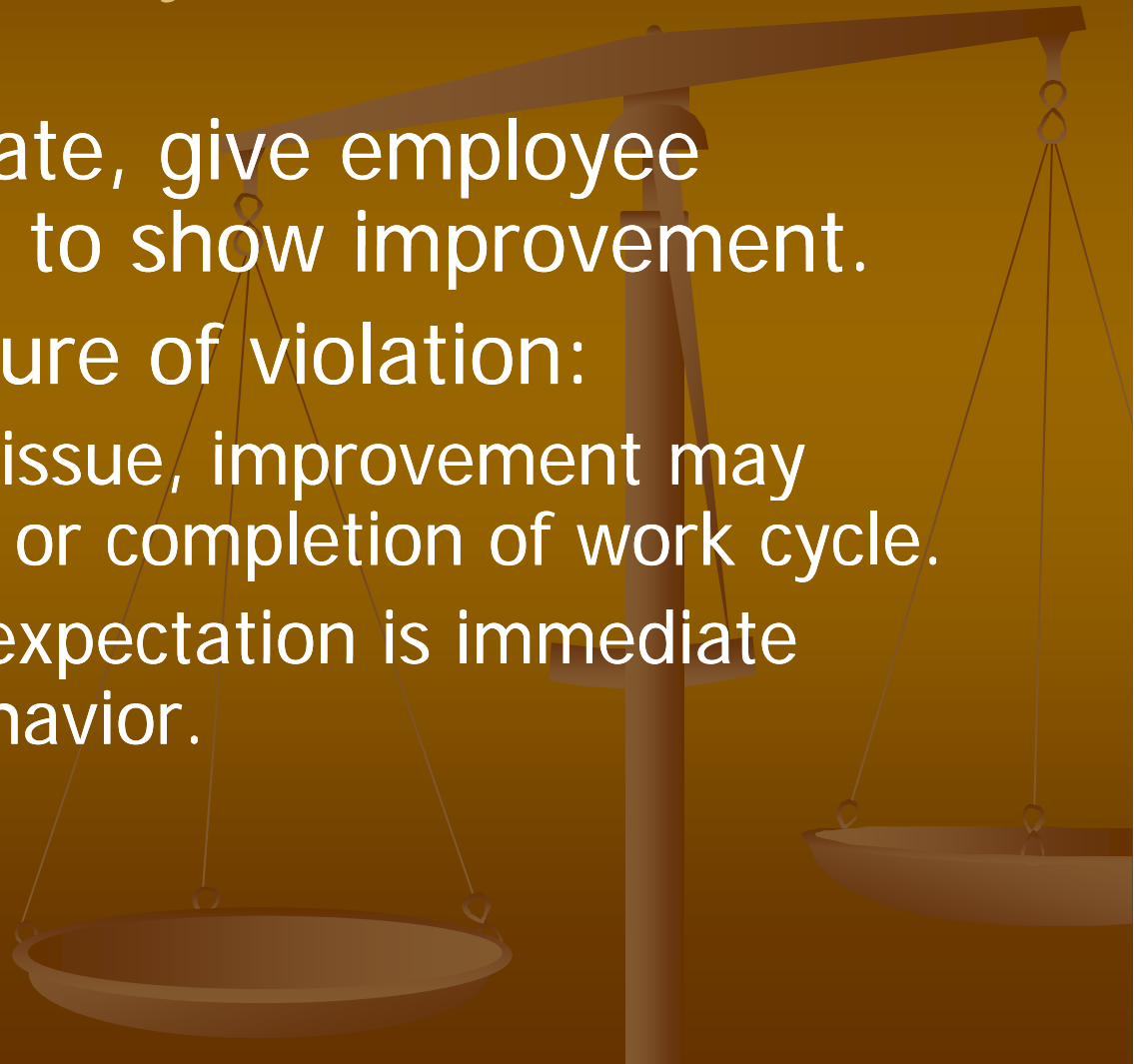
Progressive Steps

- Not always required to strictly adhere to standard progressive steps.
- Arbitrators scrutinize just cause rather than count days of suspension.
- Depending on circumstances, steps may be skipped.
- Avoid repeating or regressing.



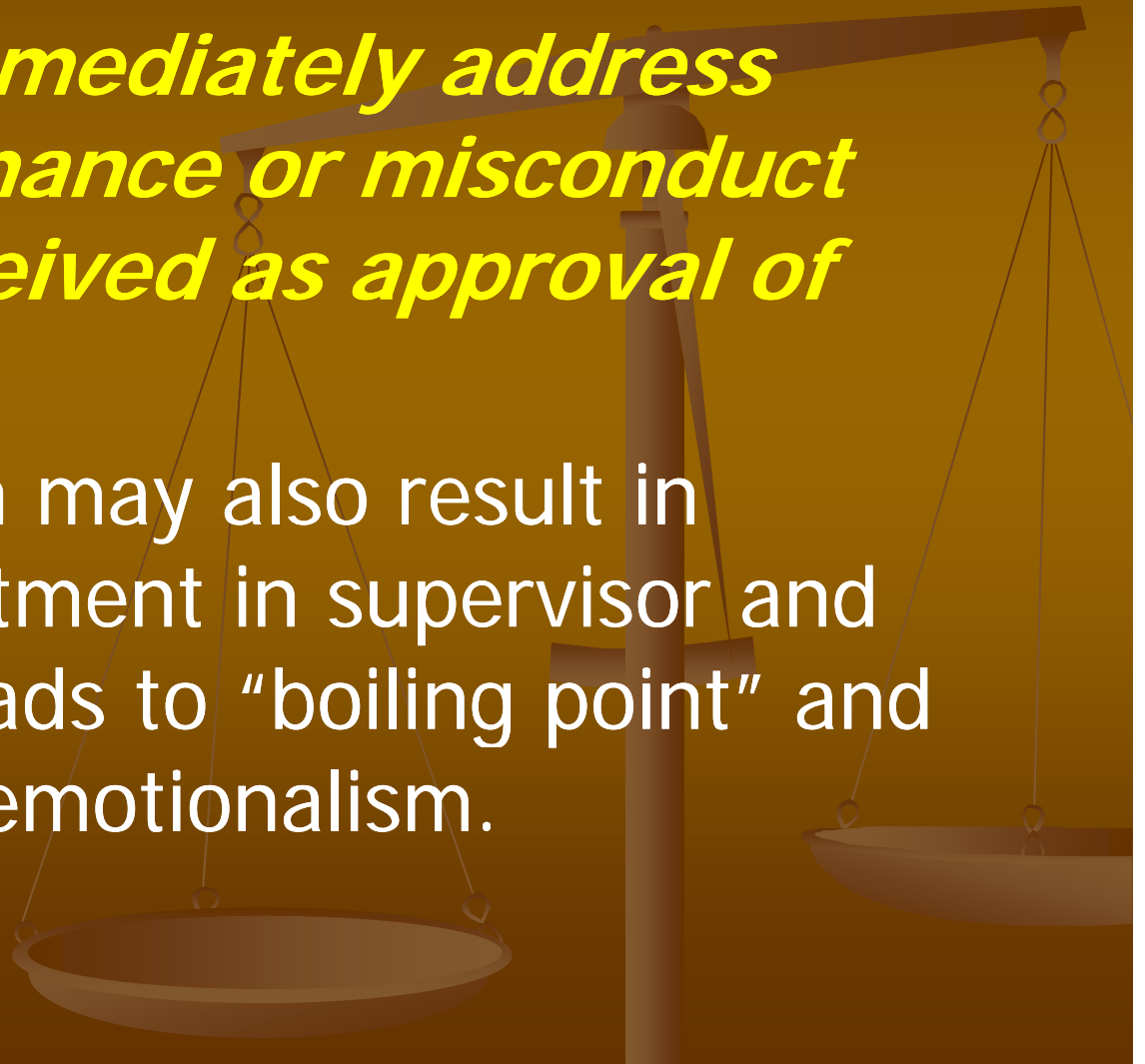
Length of Time Between Disciplinary Measures

- Where appropriate, give employee reasonable time to show improvement.
- Depends on nature of violation:
 - If performance issue, improvement may require training or completion of work cycle.
 - If misconduct, expectation is immediate cessation of behavior.



Timeliness of Discipline

- ***Failure to immediately address poor performance or misconduct may be perceived as approval of behavior!***
- Procrastination may also result in growing resentment in supervisor and staff, which leads to “boiling point” and inappropriate emotionalism.

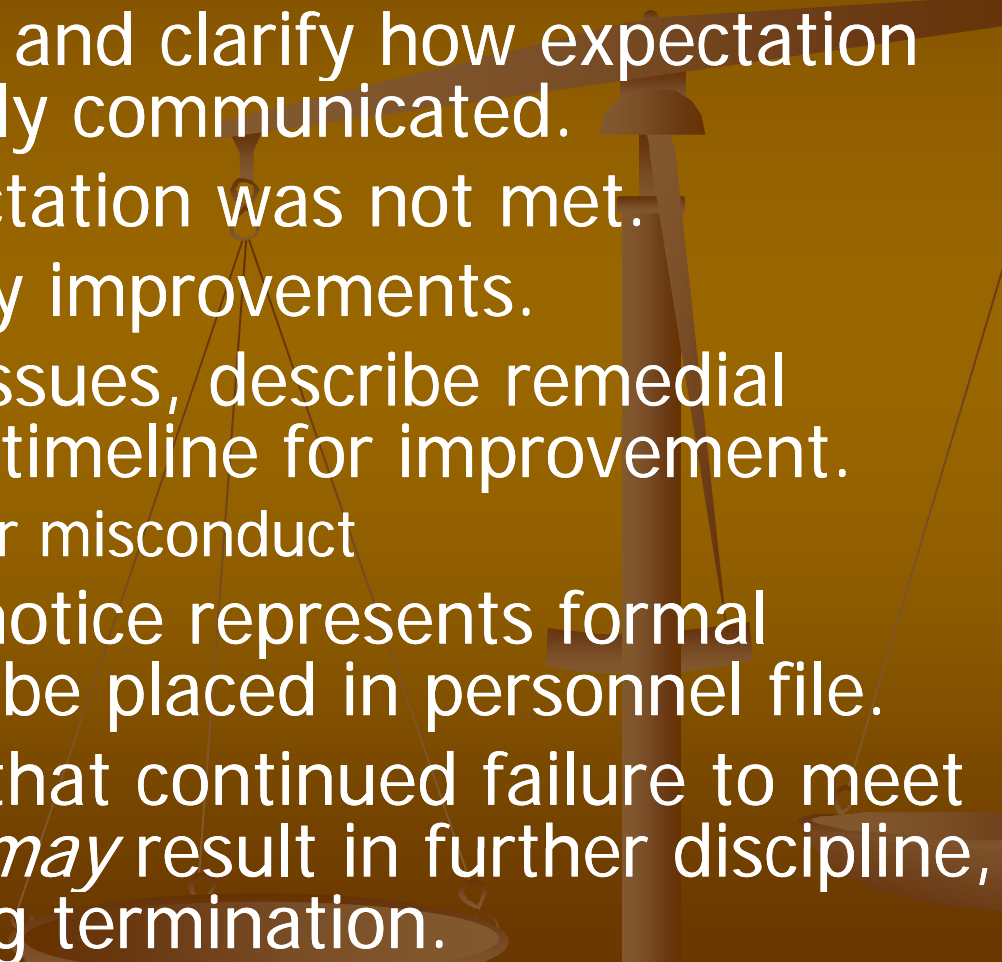


Timeliness of Discipline

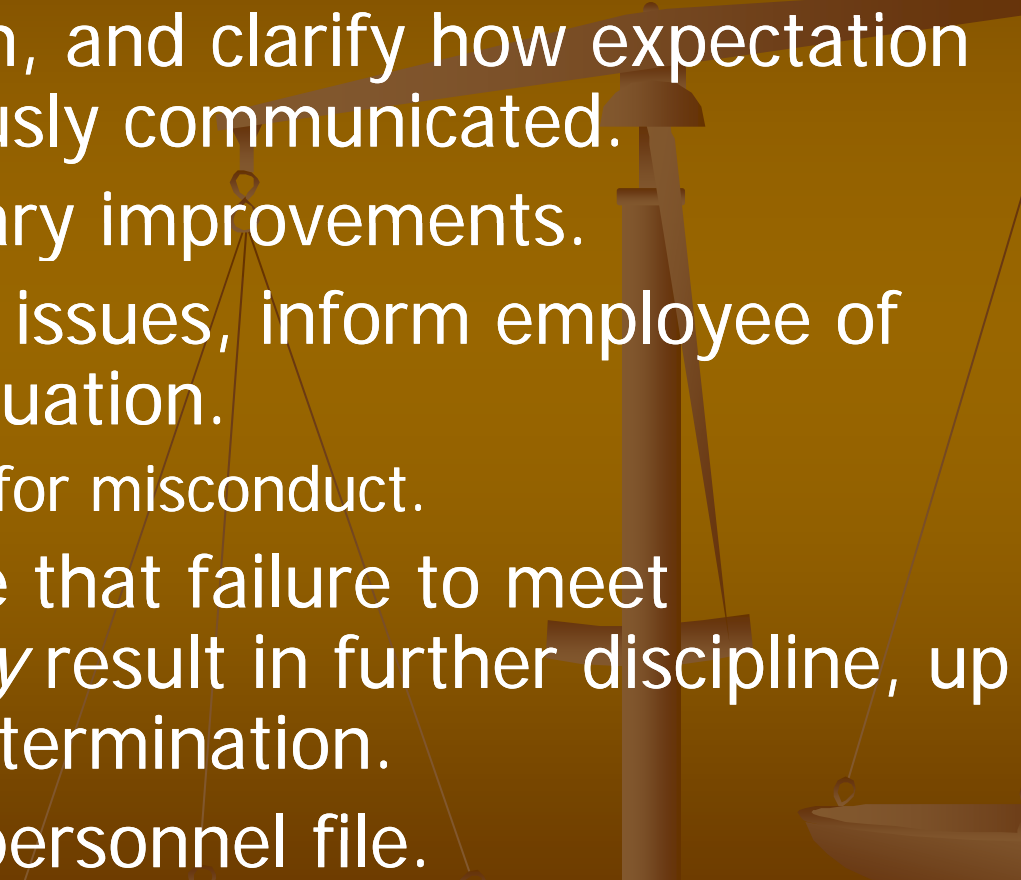


- Timeliness measured from when management knew or should have known about performance/behavior.
- Timeliness of imposition of disciplinary measure:
 - Delays based on business rationale (e.g., staffing issues) are OK.
 - Don't delay to deliberately prejudice employee.

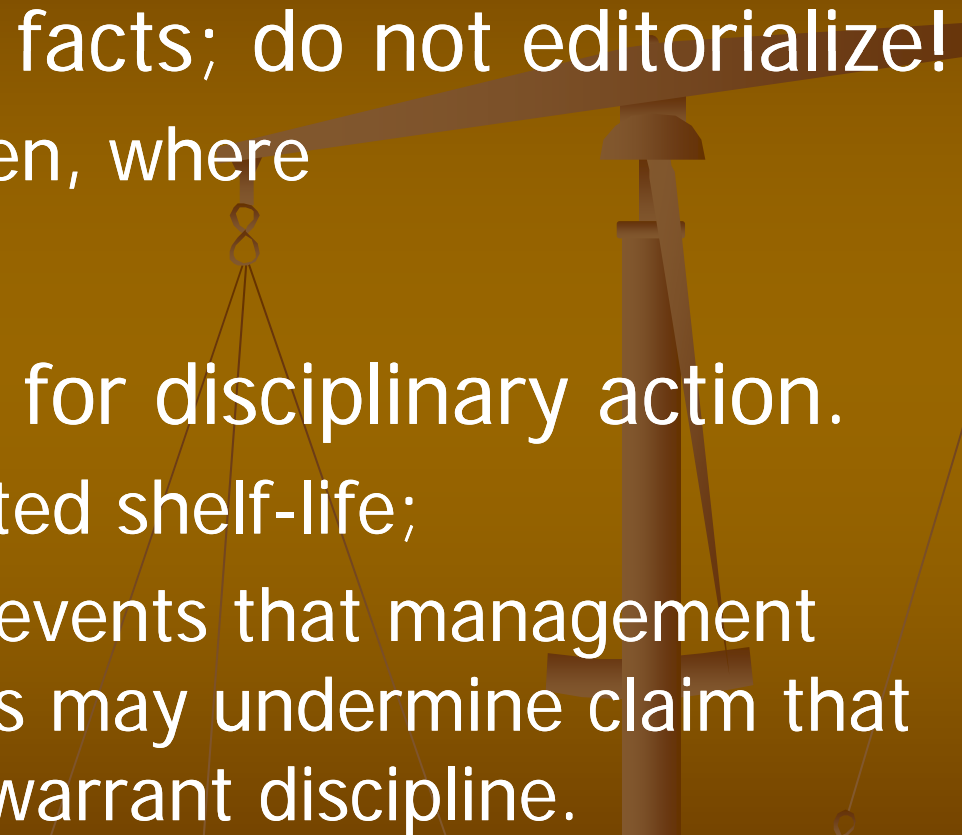
Written Notices of Discipline

- State expectation, and clarify how expectation has been previously communicated.
 - Specify how expectation was not met.
 - Describe necessary improvements.
 - For performance issues, describe remedial measures and set timeline for improvement.
 - Not appropriate for misconduct
 - Indicate that the notice represents formal discipline that will be placed in personnel file.
 - Inform employee that continued failure to meet *any* expectations *may* result in further discipline, up to and including termination.
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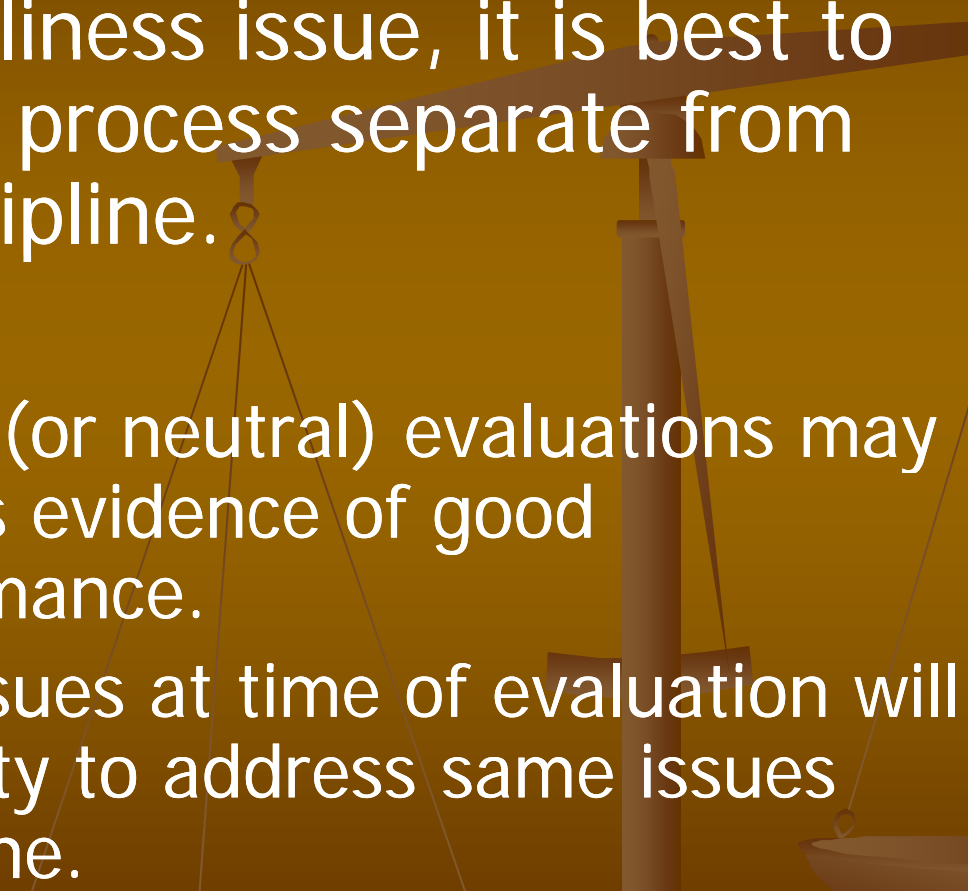
Clarification of Expectations Letter

- State expectation, and clarify how expectation has been previously communicated.
 - Describe necessary improvements.
 - For performance issues, inform employee of date of next evaluation.
 - Not appropriate for misconduct.
 - Inform employee that failure to meet expectations *may* result in further discipline, up to and including termination.
 - Do not place in personnel file.
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Supervisory Notes

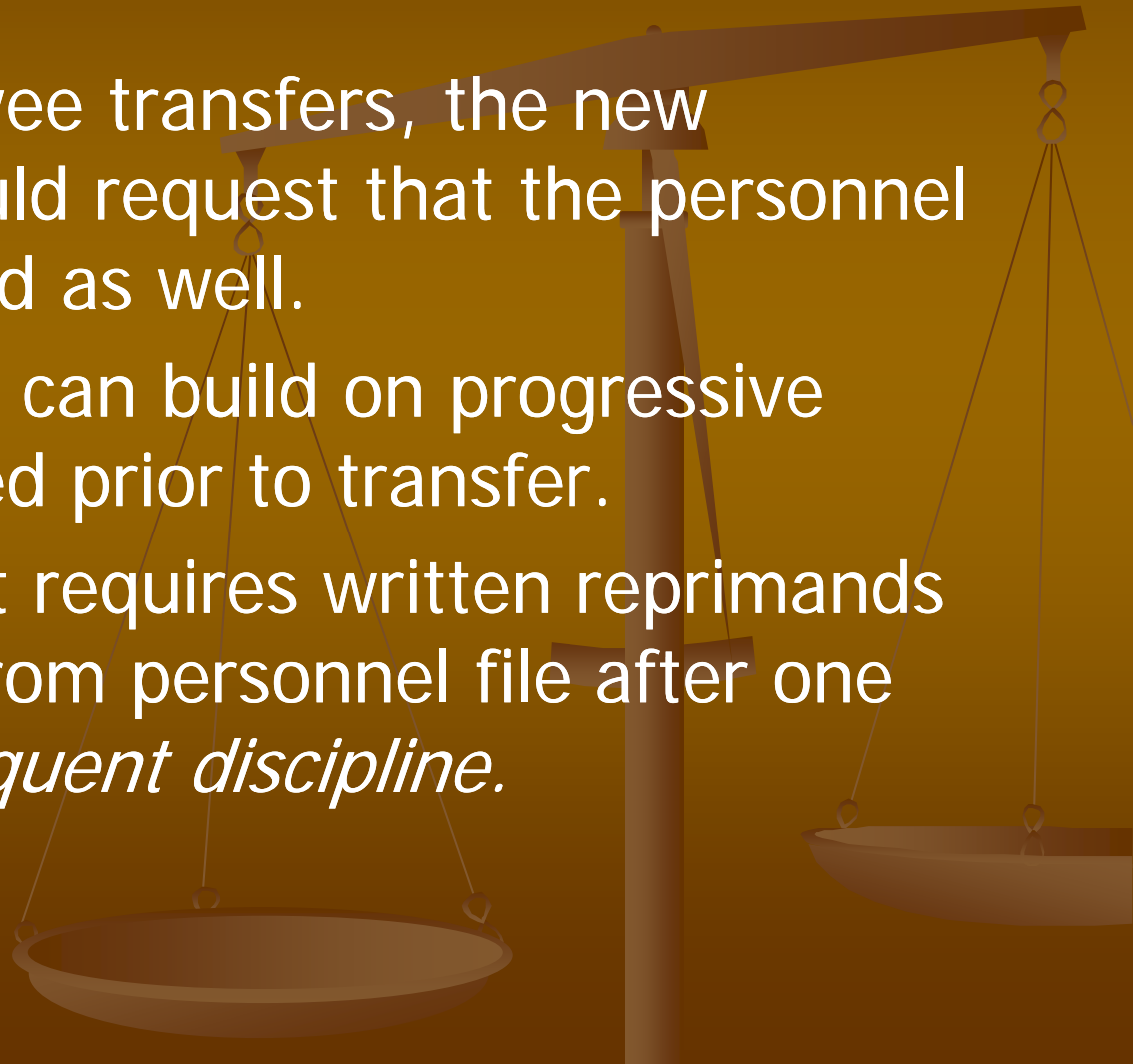
- Nothing but the facts; do not editorialize!
 - Who, what, when, where
 - Must be timely.
 - Not a substitute for disciplinary action.
 - Notes have limited shelf-life;
 - Descriptions of events that management failed to address may undermine claim that current events warrant discipline.
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Note on Performance Evaluations

- Because of timeliness issue, it is best to keep evaluation process separate from progressive discipline.
 - Be honest!
 - Falsely positive (or neutral) evaluations may be used later as evidence of good conduct/performance.
 - Avoidance of issues at time of evaluation will undermine ability to address same issues through discipline.
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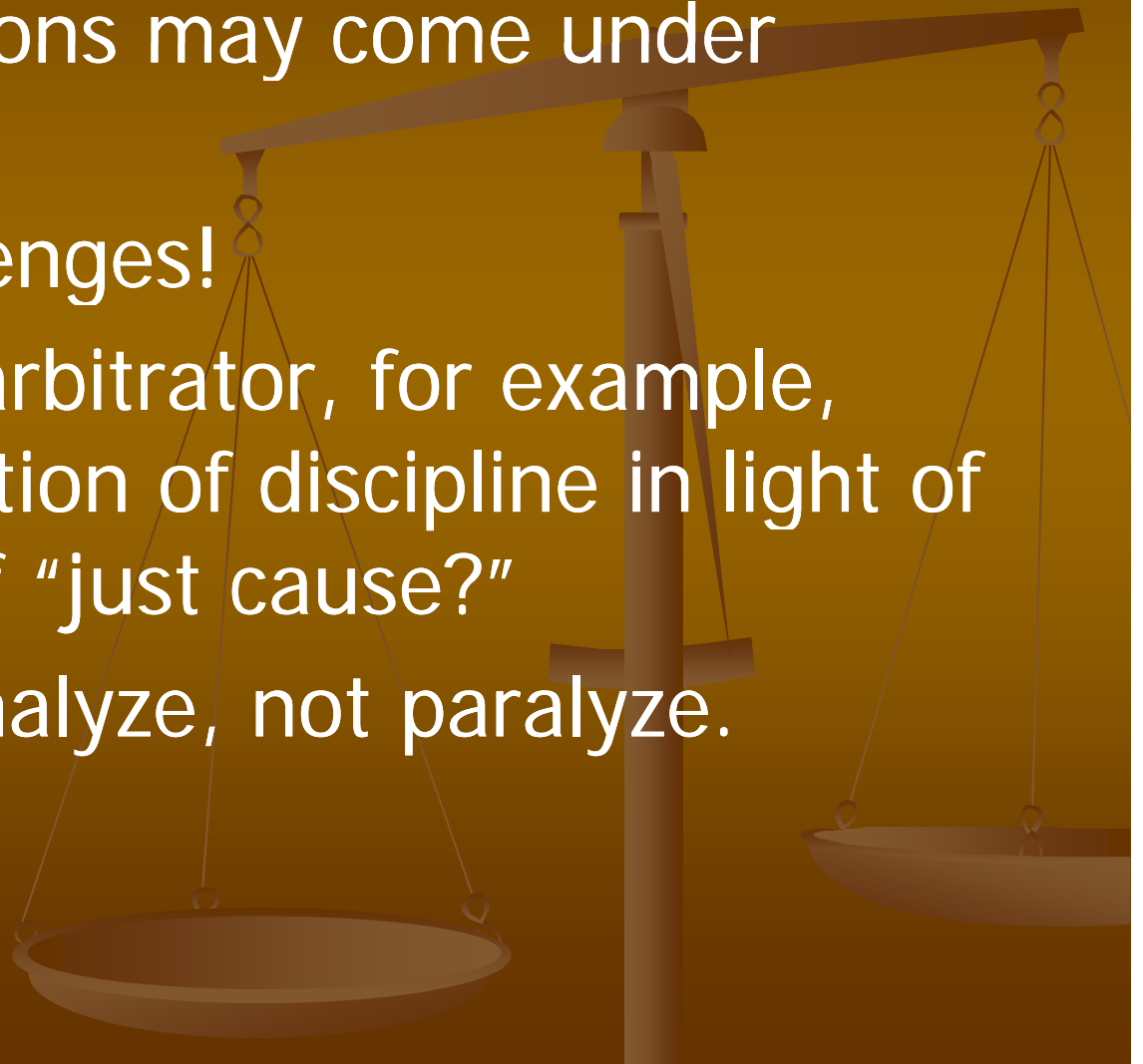
Discipline Follows Employee

- When an employee transfers, the new department should request that the personnel file be transferred as well.
- New department can build on progressive discipline imposed prior to transfer.
- AFSCME contract requires written reprimands to be removed from personnel file after one year *if no subsequent discipline.*

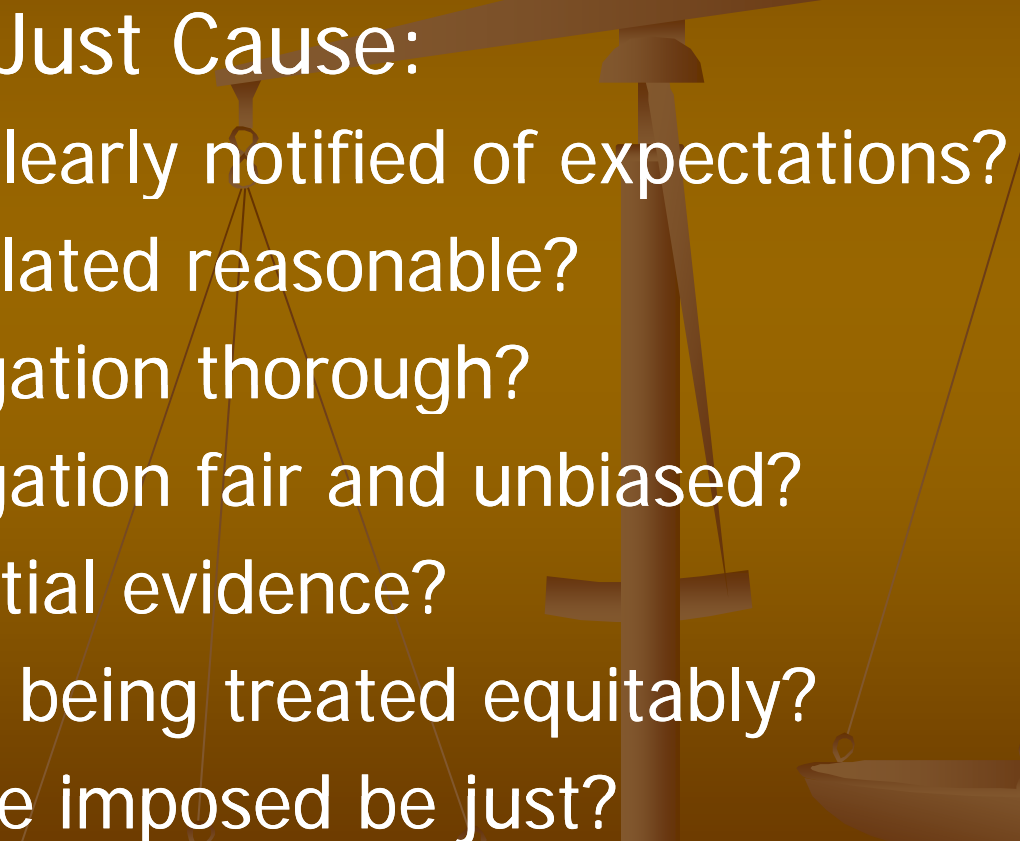


Defensibility

- Disciplinary actions may come under scrutiny.
- Anticipate challenges!
- How would an arbitrator, for example, view the imposition of discipline in light of the principles of "just cause?"
- Purpose is to analyze, not paralyze.



Self-Evaluate Before Imposing Discipline

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- Apply 7 tests of Just Cause:
 - Was employee clearly notified of expectations?
 - Was the rule violated reasonable?
 - Was the investigation thorough?
 - Was the investigation fair and unbiased?
 - Is there substantial evidence?
 - Is the employee being treated equitably?
 - Will the discipline imposed be just?