



PERSONNEL RULES

EMPLOYEE PERFORMANCE **SKELLY PROCESS** §7409

Overview: Disciplinary action which will result in suspension without pay for a period of more than five (5) days, salary step reduction, involuntary demotion, or termination, shall follow pre-disciplinary procedures as outlined in this rule.

Applicable to: All permanent status employees - unrepresented, elected, probationary, and extra-help employees are excluded

Definitions: Due Process- Due process is the course of formal proceedings carried out regularly and in accordance with established rules and principles.

Skelly Process- California Supreme Court decision (*Skelly v. State Personnel Board*) establishing public sector employees have property rights to their job and cannot be deprived of it without proper due process.

Weingarten Rights- United States Supreme Court decision (*National Labor Relations Board (NLRB) v. J. Weingarten, Inc.*) establishing employees have a right to union representation at investigatory interviews and pre-disciplinary meetings.

Guidelines: In *Skelly v. State Personnel Board*, the California Supreme Court ruled, as part of constitutionally guaranteed due process, public employees are entitled to certain procedural safeguards before discipline, which is sufficiently severe to constitute a deprivation of a liberty or property right if imposed on them.

The "Skelly Process" is the mechanism for providing this guaranteed due process.

Written Notice of Proposed Disciplinary Action

The first step in the Skelly process is to provide the employee with a written Notice of Proposed Disciplinary Action to impose disciplinary action. This must be done before any disciplinary action is implemented. The written Notice of Proposed Disciplinary Action shall include the following:

- Description of the proposed discipline, including charges
- Date the proposed discipline is intended to be effective
- Specific grounds for the proposed discipline and facts upon which the proposed discipline is based, including rules, policies, provisions, or statutes which have been violated
- Copies of any documents, evidence, or other materials relied upon in proposing the discipline
- Statement warning the employee about future related misconduct
- Statement warning the employee against prohibited retaliation against any and all witnesses
- Statement indicating the employee's personnel file was relied on, and advise the employee he / she may inspect their personnel file upon request
- Date and time for the Skelly meeting
- Name of the Skelly officer
- Statement indicating the employee has a right to respond orally or in writing
- Statement advising the employee if he / she does not provide a response indicating a request for a Skelly meeting within five (5) calendar days of

service of the written Notice of Proposed Disciplinary Action shall constitute a waiver of the right to the Skelly meeting

- Statement advising the employee of the right to be represented by a representative of his/her choice at the Skelly meeting

The County shall serve the written Notice of Proposed Disciplinary Action personally on the employee or mail to the employee's last known address by registered mail. If mailing the notice by registered mail, additional days should be added to the applicable response time to ensure the employee receives notice of the Skelly meeting within five (5) calendar days.

Without consent of the employee, the Skelly meeting shall not be held fewer than five (5) calendar days after service of the written Notice of Proposed Disciplinary Action. The response time is calculated beginning the first day after the notice is served on the employee. If the written Notice of Proposed Disciplinary Action is mailed, two additional days will be added to the applicable response time. Reasonable extensions may be provided if an employee makes a timely request.

Pre-Discipline Skelly Meeting

The second step in the Skelly process is the Skelly meeting. Skelly meetings are intended to allow an employee the opportunity to respond to allegations of misconduct prior to the imposition of any disciplinary action. In *National Labor Relations Board (NLRB) v. J. Weingarten, Inc.* the United States Supreme Court ruled employees subject to an investigation or pre-disciplinary meeting have a right to union representation. Therefore, an employee may elect to be represented by a representative of his / her choice at the Skelly meeting. Those in attendance of the Skelly meeting may include the employee, the employee's union representation or an attorney obtained by the employee at the employee's expense, the Department Head or designee, the Skelly officer, a representative from the Personnel Office, and / or a legal representative for the County.

The Skelly meeting is simply providing the employee with an opportunity to provide information and / or offer mitigating factors which may help the Skelly officer reach a conclusion regarding whether or not there are reasonable grounds to justify the discipline. The employee may choose to explain what happened and / or why it happened. The Skelly officer may ask the employee clarifying questions.

The pre-discipline Skelly meeting is not an evidentiary hearing. The Skelly officer may respond to procedural questions from the employee, however should not respond to substantive questions regarding the proposed discipline.

If the employee elects to respond to the written Notice of Proposed Disciplinary Action in writing, there is no need to hold the Skelly meeting. The Skelly officer will simply consider the written response instead.

Skelly Officer

A Skelly officer must be objective, impartial, uninvolved, and unbiased. However, this does not necessarily mean the Skelly officer must be unfamiliar with all aspects of the persons involved. It is preferable the Skelly officer be as far removed as possible from the circumstances, giving rise to the case and has an understanding as to his / her appropriate function as a Skelly officer. Any person holding a position above the employee in the chain of command has the inherent authority to act as a Skelly officer. This level of authority is necessary because of the requirement that

the employee be provided a fair and meaningful opportunity to respond to the charges. The selection of the Skelly officer may be made by the Department Head and / or the Personnel Director

The function of the Skelly officer is to provide an objective review of the proposed discipline and ensure the employee has the opportunity to respond to the charges against him or her and then, in consideration of the employee's response, to evaluate: 1) whether there is a reasonable basis to believe the employee engaged in the misconduct charged, and 2) whether the proposed disciplinary action is within the range of reasonable penalties. Essentially, the Skelly officer's function is to objectively decide whether there are reasonable grounds to believe the charges against the employee are true and support the proposed disciplinary action.

The Skelly officer has the responsibility of reading the Notice of Proposed Disciplinary Action and any other materials upon which the discipline is based. The Skelly officer should also consider any information provided by the employee. The Skelly officer should then utilize all the information provided to decide whether the proposed discipline should be sustained, modified, or rejected. If the Skelly officer concludes additional information is needed, the Skelly officer may contact the Department Head, the authority imposing discipline, or the Personnel Director for advice or assistance in obtaining the information.

Once the Skelly officer has decided how to proceed, the Skelly officer will then draft a written recommendation to the authority who is proposing the discipline. The written recommendation should describe the charges, what was done in the course of the Skelly officer's review, and the reasons for the Skelly officer's conclusion. If the employee submitted anything to the Skelly officer in writing, it should be attached. If the employee responded orally, the employee's response should be summarized by the Skelly officer.

The Skelly officer's recommendation should be completed within a reasonable period of time. Generally speaking, the recommendation should be received by the authority imposing discipline within three working days.

Written Notice of Final Discipline

The third step in the Skelly process is to provide the employee with a written Notice of Final Discipline. The County shall serve the written Notice of Final Discipline personally on the employee or mail to the employee's last known address by registered mail.

A written Notice of Final Discipline should not contain any new evidence or charges which were not set forth in the written Notice of Proposed Disciplinary Action. If there are new charges or evidence, they should be included in an amended written Notice of Proposed Disciplinary Action letter, and another Skelly meeting should be provided to the employee.

If the Skelly officer recommends the discipline as originally proposed should be implemented, the written Notice of Final Discipline will be, in most respects, very similar to the written Notice of Proposed Disciplinary Action.

The Skelly officer may recommend to modify or reject the discipline. If this occurs, the Department Head or the authority imposing discipline will still be considered the final decision maker. The employee will be notified if the proposed final discipline is changed.

Post-Discipline Appeal

Employees who are disciplined may appeal using contract dispute procedures. However, execution of the written Notice of Final Discipline will be implemented upon conclusion of all pre-disciplinary procedures.

Post-discipline appeals must be filed with the employee's Department Head within fourteen (14) calendar days of receiving the written Notice of Final Discipline. If the written Notice of Final Discipline is mailed, two additional days will be added to the applicable response time. Disciplinary appeals for Merit Systems Services (MSS) employees are governed by Cal. Code Regs. Tit. 2, §17045. MSS standards allow for a 30-calendar day filing period for post-discipline appeals. MSS appeals must be in writing and include a description of the basis of the appeal and the relief requested. See TCPR §7410: Appeals Process for additional information on post-discipline appeal.

Procedure: Responsibilities for implementation, application, and enforcement of this rule are listed below.

Employee Employees receiving a written Notice of Proposed Disciplinary Action may respond orally or in writing to the Skelly officer within five (5) calendar days of receiving the notice. Employees who do not respond indicating a request for a Skelly meeting within five (5) calendar days of receiving a written Notice of Proposed Disciplinary Action, will be considered to have waived their right to a Skelly meeting. An employee who receives a written Notice of Proposed Disciplinary Action should consider consulting with their Union representation for further guidance.

Department Heads and Supervisors Department Heads or their designee are responsible for ensuring pre-disciplinary procedures are provided to employees in accordance with this rule. Disciplinary actions which may result in a suspension, reduction in pay, involuntary demotion, or termination should be reported to the Personnel Office.

Personnel Office The Personnel Office is responsible for advising Department Heads or their designee on disciplinary matters, and ensuring pre-disciplinary procedures are imposed in accordance with this rule.

Required Forms: None

References: TCPR §1202: Personnel Files; TCPR §7401: Disciplinary Procedures; TCPR §7410: Appeals Process; Skelly v. State Personnel Bd., 15 Cal.3d 194; NLRB v. J. Weingarten, Inc. 420 U.S. 251

Effective Date: September 12, 2023

The provisions of this Code shall not supersede any state law, federal Law or current collective bargaining agreement between an employee organization and Tehama County. The provisions of these Codes shall not preclude specific County departments from developing operational policies and procedures.