

# **COUNTY OF MARIPOSA SUPERVISOR'S HANDBOOK**



## **A GUIDE TO EMPLOYEE CONDUCT AND DISCIPLINE**

**August 2016**

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**A Guide to Employee Conduct and Discipline**

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## INTRODUCTION

This handbook is written and designed primarily for supervisors and managers of both sworn and non-sworn employees. It is intended to provide guidance and instruction on proper supervisory practices for public entity employment, but is not intended to cover every anticipated issue that may arise in a supervisor's department. The Appendices included with this Handbook are templates of several supervisory documents, but are not intended to replace assistance by the Human Resources Department when needed.

Probationary employees and non-elected Department Heads are at-will employees and as such are not subject to the "just cause" disciplinary procedures outlined in County policies or collective bargaining agreements and described in this Handbook. Formal disciplinary action for permanent employees is defined by either the County's applicable collective bargaining agreements or County or Departmental policy. Familiarize yourself with the disciplinary articles of the appropriate collective bargaining agreements and County and Departmental policies.

This handbook has been written to provide you with useful advice, tools, examples, and assistance in carrying out your responsibility for discipline. For the majority of situations, it will serve as your primary source of information in fulfilling your key role in the disciplinary process; however, all formal disciplinary actions above an oral reprimand require the review and approval of the Department Head and the Human Resources Director.

## Chapter 1

### **PHILOSOPHY OF MARIPOSA COUNTY ON DISCIPLINE AND THE SUPERVISOR AS KEY PERSON IN IMPROVING PERFORMANCE**

Excellent employees who are motivated and strive to provide the highest level of service to the citizens of the County of Mariposa in the performance of their duties and the accomplishment of the mission of their unit are the rule, not the exception. Such a unit is the desire of every supervisor and a testimony to high quality, dedicated employees and good supervisory leadership. They attest to the effectiveness of the County management, supervisory, and employee systems and processes: selection, training, teamwork, and desire to deliver the highest level of service to the public through a high quality workforce. Most employees come to the County sincerely wanting to do a good job and deliver service to the public. It is often the first line supervisor's skill, talent, and knowledge of the "tools of supervision" which lead, direct, train, counsel, appraise, and assist the employee to achieve that goal.

Remember, the poorest performing employee in your unit – unless that performance is documented as being below standard – has set the standard for your unit in the eyes of other employees, the Board of Supervisors, the County Administrative Officer, Arbitrators, Judges, and juries. Poor performance must be documented and corrected. As a supervisor, this is your responsibility.

This responsibility for improving employee performance starts with you and extends up the management ladder of every department up to the County Administrative Officer. When it comes to taking "formal disciplinary action," it is taken by the appointing authority (Department Head) but usually involves action initiated by the first-line supervisor and reviewed by the Human Resources Department.

Given the above, the role of the first-line supervisor, from informal coaching and counseling through the formal disciplinary actions mentioned above, is of key importance.

#### **A Word about At-Wil, Probationary, and Extra Help Employees**

Unlike permanent employees, at-will, probationary, and extra help employees are not entitled to pre-disciplinary or post-disciplinary appeal rights before suffering discipline or termination. At-will and probationary employees may be disciplined or terminated with or without cause and with or without notice

- Permanent Employee: Any person employed by the County for indefinite period of time and eligible for all benefits and privileges and has successfully completed their probationary period.

- **At-Will Management Employee:** An employee who is appointed by and serves at the pleasure of the Board of Supervisors and who does not serve a probationary period and therefore, does not gain “permanent” employment status.
- **Probationary Period:** The period of continuous County service following appointment from an eligible list to a class in County service and prior to obtaining permanent status in the class. In the County, the period of probation is twelve (12) months. Permanent employees who are promoted or transferred shall be on probation for six (6) months.
- **Position:** A specific office of employment provided by the budget, whether occupied or vacant, full- or part-time, temporary or permanent, calling for the performance of certain duties as outlined in a class specification (job description).
- **Status:** The employee’s current appointment such as permanent, extra help, at-will, or probationary.

Employees who do not have permanent status and who hold extra help, at-will, or probationary status are not entitled to due process before imposing discipline. The definitions below will help make this distinction.

### **Extra-Help Employee**

Extra-help employees can be hired on a full-time or part-time basis for less than 1,000 hours per year. Extra-help employees are not eligible for County benefits or any leave accruals unless state or federal law specifies otherwise. An employee appointed to an extra-help position is not a permanent employee. If there is no eligible list, an extra-help employee may be appointed on a temporary basis (emergency hire).

### **Probationary Employee**

A probationary employee is within the process of completing the last part of the testing process prior to obtaining permanent status. This is your opportunity as a supervisor to review the employee’s work and make a very important decision - should s/he get permanent status?

The supervisor should be aware of when a probationary period ends - probationary periods are typically twelve (12) months. If an employee is not released during the probationary period, the employee will obtain permanent status. **IF YOU BELIEVE RELEASE IS APPROPRIATE, DO NOT WAIT UNTIL THE LAST MINUTE TO RELEASE AN EMPLOYEE FROM PROBATION.** Processing a probationary employee’s release takes time.

You will learn as you proceed through this handbook that when disciplining a permanent employee, the burden of proof is on the County to prove two things: (1) that there is just cause to discipline the employee (meaning the facts support discipline); and (2) that the penalty imposed is appropriate.

However, probationary and at-will employees have limited or no appeal rights and under most circumstances, may be terminated with or without cause. Only probationary safety officers are entitled to limited appeal rights in accordance with relevant case law and the Public Safety Officers Procedural Bill of Rights. Probationary safety officers are entitled to a name-clearing hearing (also called a “Lubey” hearing) if released from probation for misconduct. However, the Firefighters Procedural Bill of Rights explicitly excludes probationary employees.

Also, bear in mind that any employee may file a complaint with the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission if the employee believes he or she was released from probation or separated for an unlawful reason. Although at-will and probationary employees are not entitled to due process before terminating employment, it is still critical that you document your reasons for releasing an at-will or probationary employee as it will be critical to defending against any complaints of unlawful termination.

One of the best ways to avoid disciplinary problems with permanent employees is to act affirmatively during an employee’s probationary period. All probationary employees are to be provided an employee evaluation by their immediate supervisor. The County’s employee evaluation process is designed to provide evaluations and development at three intervals for probationary employees.

It is very important to give an employee who is on probation regular feedback. If it is necessary to release an employee, it should not be a surprise to that employee since she/he had been receiving this feedback. A permanent employee who is on probation due to promotion or transfer is entitled to receive a performance evaluation thirty (30) days before the end of the probationary period.

Keep the following in mind when dealing with probationary employees:

- The probationary period is an “extension of the exam process.”
- Communicate expectations and standards to employees. Provide them with a written duty statement and job standards by which the job should be performed.
- Does the employee have the basic skills to do the job?
- Does the employee have excessive unauthorized absences or a poor attitude? If so, consider releasing that employee before the end of probation if there is no sign of improvement. Be careful, however, a probationary employee who is

absent as a result of injury, illness, or other protected leave cannot be released from probation for excessive absences.

- Do not settle for mediocrity - if an employee does not meet job standards, consider releasing him/her from probation. Remember, when an employee is new to his/her position, this is a time they should be putting their best efforts forward. If you are only getting mediocrity during a time when they should be showing you their best, what will their performance be when they gain permanent status?

If problems such as performance, behavior and attitude, ability to work cooperatively with others, or excessive unauthorized absences arise, **CONSIDER RELEASING THE EMPLOYEE FROM PROBATION.**

**A probationary period should not be extended if you simply want more time to evaluate an employee.** If you have doubts, release the employee from probation. A probationary period should only be extended if an employee is on an authorized leave of absence (either paid or unpaid). In these cases, contact Human Resources as the probationary period may be extended by the equivalent number of calendar days that the employee is absent.

There are limited appeal rights for probationary employees except if the release was based on an unlawful reason. **The employee cannot appeal release merely because of disagreement with your decision.**

## Chapter 2

### ROLES OF KEY PARTICIPANTS IN THE DISCIPLINARY PROCESS

#### Role of Department Head

- Set a good example.
- Understand and implement County policies and procedures.
- Exhibit a willingness to support the policies consistently and fairly.
- Teach supervisors and other managers how to make department/County policies and procedures work.
- View discipline as corrective and instructive rather than punitive.
- Understand the need to change and control unacceptable behavior that is not positive and supportive of organizational goals.
- Implement discipline as required.
- Ensure disciplinary action is consistent with department and County practice and is fair and legal.
- Understand legal limitations on discipline and those imposed by County policy.
- Understand, coordinate, and utilize “Skelly” procedures.
- Hold all departmental management accountable for proper application of disciplinary policies.

#### Best Practices for Front Line Supervisors

Supervisors should:

- Set a good example.
- Communicate work rules to employees such as County policies, department rules, and other pertinent policies and procedures and handbooks, e.g., Policy Against Discrimination and Harassment in the Workplace; Information Security Policy; Operation of County Vehicle Policy; New Employee Orientation Handbook; and department handbooks, etc.

- Clearly explain job and performance expectations necessary for an employee to succeed.
- Review prior employee performance evaluations.
- Meet with employees to correct and improve performance.
- Address a problem in performance and/or attendance once you are made aware that a problem or infraction exists.
- Recognize, handle, and make recommendations regarding disciplinary cases.
- Deal objectively with each problem and apply discipline consistently.
- Be aware of the terms and conditions of employment as they relate to disciplinary practices.
- Know and understand labor agreement provisions including the representation rights of employees. If you have any questions, please contact the Human Resources Director.
- Participate/testify in disciplinary hearings.
- Perform regular and timely performance evaluations.
- Know the chain of command.
- Investigate allegations of employee misconduct or refer to the Human Resources Department as specified in the County Policy against Discrimination and Harassment in the Workplace.

### **Role of Human Resources Department**

- Coordinate and consult with the County Administrative Officer and County Counsel, as needed, regarding discipline.
- Support and consult with Department Heads and supervisors regarding disciplinary cases and approve actions.
- Serve as the Skelly Officer or appoint a designee to serve as Skelly Officer.
- Coordinate disciplinary documentation.

## Chapter 3

### PREVENTATIVE ACTIONS

Preventive actions are the proactive steps taken by a supervisor to minimize problems that require corrective or disciplinary action. **Corrective or disciplinary actions are usually taken to prevent misconduct or when preventive actions fail to improve the employee's performance to an acceptable level.**

**The responsibility for improvement of performance is shared between you and your employee.** It is one of the most important responsibilities assigned to a supervisor. The purpose of discipline is not to punish, but to teach an individual to behave or perform in an acceptable manner. Your role as a supervisor or a manager is that of a teacher, teaching the employee how to perform in a satisfactory and acceptable manner on the job. Your employee's responsibility is to fully participate in the process and to accept responsibility for his/her performance and/or behavior. Despite your supervisory efforts, the employee ultimately makes the decision whether or not to perform according to standards.

Throughout the counseling process, the employee should be brought to an understanding that you honestly desire his/her improvement and are providing the needed training and/or assistance. At the same time, the employee must be aware that s/he has been given a fixed period in which to improve, and in the event s/he cannot, or will not improve, the employee will be subject to disciplinary action. The value of this approach lies in the recognition that proper performance counseling (that is communication and documentation related to performance standards) can challenge an employee to realize his/her true potential in a way no other method can.

The following suggestions can help you prevent poor employee performance or behavior problems. These suggestions are based on the belief that it is most important for you to create and maintain conditions that minimize the number of corrective or disciplinary actions that are taken. In other words, your efforts should be directed first toward preventive measures. These actions are proactive steps which you can initiate as opposed to steps taken in reaction to an employee's wrongdoing.

#### **Set Clear Expectations**

When employees report to you as their supervisor, there is a need to clearly communicate job duties and accepted standards of performance and conduct to employees.

As changes occur, modifications should be communicated to your staff. In cooperation with your employees, you can develop the general standards of conduct and performance that are expected in your section or unit and see that all employees, and particularly all new employees, are aware of these standards. When these standards

have been formulated, accepted, and understood, you will find that the need to take corrective actions will occur less frequently.

### **Create a Good Working Environment**

- Be friendly and approachable.
- Communicate.
- Foster a productive and safe working environment that helps employees do their best.
- Set a good example.
- Be aware of, and resolve conflicts before they escalate.
- Investigate and resolve complaints quickly. As an example, the sooner an interpersonal conflict between employees is resolved, the less likely it will erupt into a major problem in the future.
- If the complaint involves any reference to unlawful harassment, retaliation, and/or discrimination – even if not explicit, immediately refer to the County’s Policy to handle such complaints and inform the Department Head and the Human Resource Director. Any complaint of unlawful discrimination, harassment, or retaliation, if not investigated and addressed as soon as possible, may result in litigation.
- If a problem or situation involves workplace violence, immediately contact your Department Head and the Human Resources Director, or if necessary, dial 9-1-1.
- If personal problems are causing an employee to have problems at work, suggest the employee contact the Employee Assistance Program (EAP).
- If the employee indicates an alcohol or drug problem, refer to the appropriate bargaining unit Drug and Alcohol Testing Policy, follow the procedure, and consult with Human Resources.
- Seek feedback from your employees regarding what can be done to make their working environment more productive.
- Provide employees with words of appreciation and encouragement. A memo of commendation can be conducive to maintaining a positive work environment. However, be honest! Recognition for improved performance, which is still not acceptable or up to standard, is not the same as praise for acceptable or superlative work. The memorandum should state clearly which one is being recognized.

## Provide On-Going Feedback Regarding Performance

- You should be available to your employees and interact with them on a regular basis. If you are separated from your employees by location or shift, you should contact them face-to-face on a regular basis.
- Employees should feel free to offer suggestions for improvement in working methods and to bring problems to you when they arise. The existence of problems among your employees is not necessarily a reflection on your skill as a supervisor. What is important, however, is the willingness of your employees to bring their complaints, comments, or concerns to you. They will come to you when they know you will be open-minded in evaluating their recommendations and fair in handling their problems.

The following are suggestions to assist you in establishing open communications with your employees:

- Do not criticize employees in front of others, except when the health or safety of the employee or of others is of imminent concern.
- Be respectful of both management and employee perspectives.
- Listen to the employees' concerns when they arise.
- Listen when an employee tells you of obstacles to his/her effective performance and address the situation if it calls for an adjustment and you are in a position to be able to take action.
- Be familiar with the formal negotiated grievance procedure in the labor agreement(s) covering employees who are under your supervision.
- Refer those cases you cannot satisfactorily resolve to a higher authority, but be prepared to share your suggested solutions.
- Provide employees with regular feedback regarding their job performance.
- Be as impartial and objective as you possibly can on an employee's performance evaluation. Do not hesitate to praise, but do not rate an employee higher than s/he deserves just to avoid a disagreement. Evaluations can have some subjective elements, but the basis of the evaluation should be objective. **BE SPECIFIC. Your job is to make that judgment call.** Use examples for both good and poor performance. It shows that you are considering both the positives and areas of development in performance. An inaccurate evaluation can be worse than none at all, from the point of view of the employee and management.

## Provide Adequate Training and Development

- It is the supervisor's responsibility to provide training and assistance where appropriate so that employees can successfully perform their job. Supervisors have a responsibility to assess the employee's training needs and to ensure that these needs are met in a reasonable timeframe. Training can be accomplished through a variety of methods, including on-the-job as well as formal classroom training. Become familiar resources such as:
  - Instructional tapes and videos.
  - Inviting speakers who have particular expertise in an area to one of your staff meetings.
  - Pairing an employee with a "buddy" or "mentor."
  - Contacting the Human Resources Department for additional resources.
- The development of your staff also entails providing training opportunities to develop employees for increased responsibilities in future job opportunities. The performance evaluation is a good opportunity to discuss with employees their goals and together develop a plan to achieve those goals in the next year. Performance goals for the next year should be specific and measurable so that you may evaluate the employee's success in achieving those goals at the end of the year.

## When a Problem Arises, Provide Prompt Intervention

- A problem should be immediately brought to the attention of the employee. The usual way to do this would be in your routine business communication.
- **Unresolved conflicts often lead to a need for formal action by the supervisor.** Therefore, you should attempt to resolve conflicts quickly (such as personality disputes, minor arguments, etc.) by taking the following steps:

STEP	ACTION
1	Communicate: First speak with individuals; then if appropriate, bring the involved employees together to discuss the problem. <i>Note:</i> This is <b>not</b> appropriate when investigating allegations of employee misconduct, sexual harassment, discrimination, or workplace violence.
2	Listen with an open mind to all sides of the issue.
3	Decide on a solution. If the solution involves only the parties to the dispute, you should attempt where possible to mediate a solution between them rather than resolving the problem for them. If the solution involves a policy decision or other employees, the decision should be postponed until you have an opportunity to discuss it with your Department Head or with your other employees.

## WORK-RELATED COUNSELING

- Informal counseling is the first step when you talk about a problem. The entire emphasis of this counseling is on helping the employee. The focus should be on the facts, not the person. Be consistent and objective. Focus on work performance but be aware of potential personal problems affecting performance.
- To assist in making the counseling session a constructive one, consider following the steps listed below:

STEP	TOPIC
1	Review employee's personnel file to see if there are any previous deficiencies, problem areas, or record of performance limitations.
2	Prepare for the meeting by outlining topics to be discussed and gathering necessary materials for the meeting.
3	Cite specific problem areas with examples. Allow the employee the opportunity to discuss issues that s/he believes may be affecting performance. Consider suggestions offered by the employee.
4	Discuss and give employee copies of any procedures, rules, and policies relating to the performance problems. Be sure you have reviewed them yourself and be prepared to discuss them.
5	Discuss the impact of the deficiency on the job (staffing, morale, etc.).
6	Discuss the expected standard and how you will follow up (dates, consequence of error).
7	Discuss how you will measure improvement.
8	Offer assistance (i.e., training).
9	Bring the meeting to a close by ensuring the employee clearly understands 1 - 8 above.
10	Summarize meeting by writing down what was covered in the meeting and what was agreed to. If a corrective action plan has been developed, make sure the employee understands your expectations and his/her responsibilities. Provide a summary to the employee as "record of discussion" as appropriate.

- Counseling is confidential. Meet with the employee in private. Do not discuss the need to counsel in front of or with other employees.
- Note to yourself any contributing factors such as poor facilities, lack of or faulty equipment, lack of training, or the need for reasonable accommodation for a qualified employee with a disability. Please contact Human Resources with any questions about whether an employee is a "qualified individual with a disability" who may require a reasonable accommodation.

- If the employee mentions the need for or requests a reasonable accommodation, do not disregard the request. Identify the type of accommodation being requested. Contact your Department Head and Human Resources for direction on how to proceed on such a request.
- If appropriate, provide the employee with ADA (American with Disabilities Act), FEHA (Fair Employment and Housing Act), FMLA/CFRA (Family and Medical Leave Act/California Medical Rights Act) paperwork, so s/he may make a formal request.
- If the employee cites personal problems, do not attempt to become the employee's personal counselor. Consult with Human Resources and consider referring the employee to the EAP or other qualified professional.
- Be sure the employee understands what areas need to be improved, how improvement is to be achieved, and the timeframe. This is the time to clear up any misunderstandings. Be supportive of the employee.
- Follow-up on your part is critical to this entire process and it is essential that you remember to evaluate the situation with the employee within the agreed upon timeframe.
- Your failure to follow up can send a message that it is not really important that the employee improve, and you will lessen the effectiveness of your counseling. If satisfactory improvement is not achieved and/or sustained, you will need to take further corrective action and/or commence discipline.
- It is critical that every supervisor document significant events and maintain supervisor files that include precise, factual documentation regarding the employees s/he supervises over the course of the entire performance period. This documentation should include an on-going record of the employee's performance and other work-related information. The information in the supervisor files may provide the basis for completing performance evaluations or supporting formal disciplinary action should it become necessary.

When engaged in corrective action, the supervisor must ensure the corrective action plan is closely monitored to provide the employees the opportunity to get additional assistance. Appropriate monitoring should be put in place to provide optimal opportunity for improvement. If additional adjustments are needed to the corrective action plan, you will be able to take action quickly. Make sure to document corrective action meetings and steps to the file.

## **Employee Assistance Program**

The Employee Assistance Program (EAP) is an employee benefit. The plan offers counseling sessions to employees and dependents. Licensed and qualified counselors perform counseling in a confidential manner.

Eligible employees and their dependents are entitled to three (3) sessions each per year, per incident at no cost to the employee.

Services provided by the EAP are as broad as the kinds of problems that people have:

- Marital and family counseling.
- Alcoholism and drug dependency counseling.
- Financial and credit problems.
- Emotional problems.
- Stress.
- Interpersonal conflicts.
- Situational problems.
- Legal matters.
- Elder care.

## **Supervisor Referral to EAP – Informal**

- You may wish to refer or suggest an employee contact the EAP if you believe he or she may benefit from doing so. EAP referrals are confidential.
- The supervisor may make an informal referral to the EAP even though job performance or behavioral problems have not yet occurred.
- Utilization of the EAP is strictly voluntary on the part of the employee. Supervisors may advise employees that an EAP is available and may be helpful.
- Employees should not be ordered to use the EAP.

## Chapter 4

### DISCIPLINE DEFINED

Discipline requiring due process applies only to employees with permanent status. Any employee who has permanent status may, for just cause, be removed, suspended, or reduced in rank or compensation by his or her Department Head. Before any disciplinary action may be taken against a permanent employee, he or she is entitled to written notice of the reasons for discipline and an opportunity to respond the facts supporting discipline before discipline is imposed. These procedures are outlined in detail in the County's Discipline Policy. At-will, probationary, and part-time employees are not covered by these processes and may be disciplined or terminated with or without cause and with or without notice. However, at-will employees are still covered by state, federal, and County anti-discrimination, harassment, and retaliation policies. Please consult with Human Resources before dismissing an at-will employee.

Discipline is very specifically defined in the County's Discipline Policy. After imposing lesser forms of discipline, it may take the form of any one or a combination of the following:

- Written reprimand.
- Suspension.
- Reduction in salary.
- Disciplinary demotion.
- Discharge.

#### **Suspension**

A Department Head may suspend the employment of an employee without pay. Employees under suspension shall not accrue sick leave and vacation during such suspensions.

#### **Reduction of Pay Step**

A Department Head may reduce the salary of an employee for disciplinary reasons, provided that such reduction shall be to a step within the salary range of the position held by the employee.

## **Disciplinary Demotion**

A Department Head may demote an employee for disciplinary reasons to any position with a lower salary, provided the employee meets the minimum qualifications for the lower-level position.

## **Dismissal**

Dismissal is the removal of a permanent employee from County service. This action should be taken only when the Department Head is satisfied that the employee has been given fair and reasonable opportunity to meet performance or behavior standards, and has clearly failed to do so or the action is egregious enough to warrant dismissal without the imposition of lesser discipline.

## **Disciplinary Considerations**

When disciplining an employee, management bears the burden of proving that:

1. There is “just cause” (i.e., a good reason) to discipline the employee;
- and-
2. The level of discipline is appropriate, given the offense and any other relevant considerations.

## **Just Cause**

Disciplinary action against a permanent employee may only be taken for “just cause.” “Just cause” means, among other things, that the discipline shall be reasonably related to the seriousness of the offense. Consider the following checklist when determining whether there is “just cause” to discipline an employee:

- Was the employee on notice that he or she violated a rule, policy, regulation, or provision of an MOU (and is there any documentation of that notice such as counseling memos, performance evaluations, etc.)?
- If an investigation was required, was it objective, prompt, and thorough in its findings (particularly where it determined that discipline occurred)?
- Do the facts support a violation of the rule(s)?
- Is the proposed discipline consistent with discipline imposed in other similar situations?
- Is the penalty reasonably proportionate to the violation of the rule, policy, regulation, or provision of the MOU?

## **Factors to Consider: When to Discipline**

Whether to discipline or take action will depend on many factors such as:

Was there a rule, procedure, policy, or regulation that the employee violated? Was the rule written? Was the rule unwritten but well known to employees?

Was the employee informed of poor performance or inappropriate behavior? When and by whom? Was this documented?

- Are there contributing problems that are the responsibility of the County to correct?
- Know what the impacts of the employee's actions are on the workplace and be prepared to explain and document.

## **Factors to Consider: Appropriate Level of Discipline**

For the discipline to be considered appropriate, the County must demonstrate that the level of discipline "fits the offense." In other words, the County must be able to show that the proposed discipline is not excessive and is appropriate given the type and extent of the misconduct and/or work performance problem. As noted above, all disciplinary decisions beyond an oral reprimand must be referred to the Human Resources Department.

The County must be able to show that the seriousness of the offense, the individual's disciplinary history, or similar disciplinary actions within the department was taken into account.

- Consider employee's length of employment, class, job duties, and responsibilities.
- Has there been prior discipline or other corrective actions?
- Has discipline or corrective action been progressive and at what stage of progressive discipline is the situation?
- Is the conduct so unacceptable that by itself, it warrants termination?
- Is the inappropriate behavior or inadequate work performance new or has it been long-term or on-going?
- Are there multiple, related performance problems that should be considered?

- Are there aggravating or mitigating circumstances that should be considered (e.g., previous discipline, impact on employee's productivity, honesty in responding to investigative inquiries)?
- Review similar situations and how they were handled by your department.
- Consider all evidence - pro and con - before making a final decision on level of discipline.

### **Burden of Proof**

Bearing the burden of proof means that management must have evidence - testimony, documents, etc., to support the facts outlined in notice of discipline. **YOU MUST PROVE THE FACTS** so be sure to gather as much written evidence as possible in support of discipline.

## Chapter 5

### EXAMPLES OF DISCIPLINARY SITUATIONS

This chapter provides sample problems pertaining to some of the most common reasons for discipline. It is not meant to cover every instance of discipline. If you have any questions about whether an employee's conduct constitutes a violation of the County's collective bargaining agreements or policies, please contact Human Resources.

- Performance problems, including inappropriate workplace behavior.
- Excessive absenteeism/sick leave abuse.
- Excessive tardiness.
- Theft, embezzlement, and unauthorized use of County equipment.
- Substance abuse/alcohol related problems.
- Loss of driver's license.
- Breach of confidentiality.

#### Performance Problems

Common performance problem situations include:

- Problems with the quality of work.
- Problems with the quantity of work.
- Problems with unacceptable behavior.

For examples of grounds for discipline, refer to the collective bargaining agreements or the County's Discipline Policy. In order to address the above problems, the following steps are suggested:

STEP	ACTION
1	Identify the critical tasks of the job. What are the most important and essential elements of the job?
2	Identify the standards of performance and if appropriate, whether the employee has been made aware of the standards.
3	Identify how to measure if the standards are being met.
4.	Identify how the employee failed to meet the standard(s).
5.	Once the critical task of the job is identified, meet with the employee at regularly scheduled intervals to review progress on meeting standards.

As a supervisor, you can identify critical or important tasks based upon: (1) your own experience; (2) County job descriptions/class specifications; (3) manuals or rules and regulations; (4) discussions with employees actually doing the job; and (5) the equitable application of these standards to all employees performing similar tasks.

For instance, you may identify the critical tasks or responsibilities of an Administrative Clerk III (an advanced journey level, lead clerical employee) to be:

- Provide lead direction to others and evaluate their work output.
- Exercise independent judgment in prioritizing work.
- Deal tactfully with employees, department staff, and the public.
- Perform advanced journey-level work.
- Pay attention to details.
- Provide excellent customer service.
- Set a good example.
- Maintain good attendance.

After determining the critical tasks or responsibilities of the position, you must figure out how to quantify or measure the work that you expect to be performed. In the example given above, you might measure quantity or quality based on:

- Accuracy of the completed work product, i.e., is there typos, misspelled words, does the work frequently have to be returned and re-done?
- The volume of the work product. How much is being produced? Do reports get typed in a timely manner? Are deadlines met?
- Is the work of those reporting to the lead worker getting done? Is work evenly distributed?
- Is the lead worker maintaining positive working relationships and interacting with others in a positive manner? Are there examples of rude, discourteous, or inappropriate behavior?
- How is the attendance of the lead worker?

If you have an employee with whom you are having performance problems, you need to be sure you have clearly communicated your expectations and that you have provided

the necessary counseling and coaching to the employee. The concept of progressive discipline suggests certain steps be taken.

### **Excessive Absenteeism/Sick Leave Abuse**

Sick leave can be used when sick or to attend a medical appointment. Employees may also use sick leave when eligible family members are sick or injured. It is not to be used like vacation or for personal business of a non-medical nature, unless specifically authorized in statute.

A common concern and problem for supervisors is an employee who is absent a great deal, usually calling in sick. The question is: What can you do about this? You must first distinguish between protected sick leave and abuse or misuse of sick leave. If sick leave is protected, you cannot discipline an employee for that usage.

It is important to show that excessive absenteeism impacts your operation. Specifically, work does not get done, is delayed, or has to be performed by another employee.

Don't use any arbitrary standard to determine sick leave abuse.

Look at sick leave use/abuse on a case-by-case basis.

How do you deal with someone who is excessively absent or abusing sick leave (for example, using sick leave when they are not sick) or using more sick leave than a situation warrants (e.g., taking a whole day off for a morning medical appointment)? Determine what constitutes excessive absenteeism or sick leave abuse and how do you distinguish between "legitimate" sick leave usage and "abuse."

Protected leave should not be included in any calculation of excessive or abusive sick leave. (Examples of protected leave: Workers' Compensation; ADA [Americans with Disabilities Act]; FMLA/CFRA [Family and Medical Leave Act/California Family Rights Act]; PDL [Pregnancy Disability Leave]; paid sick leave provided in accordance with the Healthy Families Act of 2015; Kin Care law; military leave; leave to appear at a child's school; leave for victims of domestic violence or other violent crimes; leave for jury duty and court appearances; time off to vote; etc.) **Contact Human Resources or the Auditor's Office regarding a determination of what constitutes "protected leave."**

When analyzing an employee's absenteeism and sick leave usage, gather the following information:

- Current sick leave balance.
- Time worked for County.

- Compare actual hours worked with hours scheduled to be worked during a specific time period, such as six months. Do not include authorized vacation time in calculating absenteeism.
- Was there a long-term illness or injury covered by Workers' Compensation, FMLA/CFRA, PDL, ADA, or some other form of protected leave?
- Was the sick leave authorized?
- What types of reasons did the employee provide for the need for sick leave (although do not inquire about the precise nature of an employee's alleged illness or injury or the illness or injury of a family member)?
- Do any patterns emerge such as Monday - Friday usage, or the day before or day after a holiday as an attempt to extend the weekend or holiday?
- What is the frequency of the employee's absences? Are there a lot of individual days being used for separate instances versus using blocks of time? For example, an employee may miss 15 continuous days from work due to a serious illness and another employee may miss 15 separate days of work.
- Is the employee following appropriate sick leave procedures?
- Has the employee exhausted all sick leave time but continues to take sick leave at no pay?

In other words, get your facts together before deciding what to do. Now that you have your facts, analyze the data.

**Example:**

You have two employees. Both have worked for the County ten years. Therefore, had they never used sick leave, they would have approximately 1,200 hours of sick leave accrued.

Employee A has 300 hours of sick leave accrued. Employee B has 120 hours of sick leave accrued. On the surface, employee A has less sick leave usage or better attendance than employee B, but you need to further analyze the figures.

Upon analyzing timesheets and absence requests, you determine that employee A, in the last six months, has used 33 days of unprotected sick leave. All 33 days were single days of usage, and 23 of the 33 days were in conjunction with the weekend or holiday.

This would certainly give the appearance of sick leave abuse. (i.e., why are they usually sick in conjunction with a weekend?)

When looking at employee B, you see that after three years of employment with perfect attendance (360 hours of sick leave accrued), she had a serious non-industrial injury and she was gone for three months, thus exhausting all sick leave.

She returned to work and for four more years did not use any sick leave. After four years, the employee took maternity leave for her newborn child and was gone four months, exhausting all sick leaves. In the last six months she used 120 hours or 15 days of sick leave. Most of the sick leave was used for doctors' appointments for her child, none of which was in conjunction with a weekend. From these facts, it is not likely that sick leave abuse is occurring.

The illustrations above demonstrate that it is not recommended to establish a set number of hours to determine whether an employee is excessively absent. Employee A has more sick leave accrued, but is probably abusing sick leave while Employee B has less sick leave but is not abusing sick leave. If you had a rule that said anyone who falls below 200 hours sick leave is placed on controlled leave, you might possibly be dealing with the wrong employee.

Once you've analyzed your data, contact Human Resources regarding next steps in addressing the employee's excessive absenteeism. It may be necessary to meet with the employee to determine whether there are any underlying reasons for the excessive absenteeism of which the County is not aware. It may also be appropriate to require medical notes for each absence moving forward.

### **How to Avoid Excessive Absenteeism Problems**

- Before hiring someone, particularly a promotion within the County, determine if employee has met the attendance standards with the prior supervisor. If s/he has been excessively absent without any valid reason, consider that in your decision.
- If there is a promotion or transfer, review the personnel file for all perspective employees. Consider whether the employee demonstrates a pattern of excessive absenteeism without a valid reason so that you may be aware of continuing patterns and any previous action to correct the absenteeism.
- Stress the importance of good attendance with all employees.
- Review injury reports to see if this contributes to sick leave usage.
- Review absenteeism and sick leave usage of all employees on a regular basis.

- Let employees know you appreciate good attendance.

STEP	ACTION
1	Stress good attendance.
2	Watch sick leave usage during probation.
3	Analyze sick leave usage on a case-by-case basis.
4	Discuss the problem with Human Resources.
5	Recognize good attendance.

Before you take any action, be sure you consult with appropriate management to ensure compliance with policies that may be unique to your department.

### **Tardiness**

How do you deal with an employee who is constantly tardy, takes long lunches and/or breaks? The first thing you need to do is discuss the problem with the employee. If an employee is always five or ten minutes late, this is not acceptable. However, maybe there is a problem with day care, car pools, bus schedules, etc. that can be corrected by simply adjusting the start and ending times by 10 to 15 minutes. Contact Human Resources about how best to deal with adjusted work schedules. However, it is the employee's responsibility to be at work when s/he is assigned. Tardiness in excess of 15 minutes will result in loss of pay for time absent, in addition to constituting an infraction. If discipline is necessary, consider a system where the penalty gets more severe each and every time the employee is late. Also, be sure to document tardiness and impact the employee's tardiness is having on the department.

The Appendix contains sample memos that give you an idea of how to proceed if you are having this problem.

### **Breaks**

Breaks are on paid time. If an employee without a specific break time is unavailable when needed because s/he is "on a break," you can bring this situation under control by specifying his/her break time within the workday.

### **Theft or Embezzlement**

Theft and embezzlement have one thing in common: a basic lack of honesty and integrity. It is the expectation that all employees are honest. However, by the very nature of some job classes, such as a cashier, stock clerk, or accountant, honesty is the ruling factor in determining discipline no matter how minor the offense.

Theft of County money or equipment and embezzlement of funds are considered major infractions which require immediate action and will generally result in a recommendation for termination. The following actions should be taken in all cases involving embezzlement, theft of cash, fixed assets, or office supplies.

- In determining how to proceed, a supervisor must seek assistance from the Department Head and Human Resources representative.
- Investigate thoroughly. A criminal investigation does not substitute for the departmental investigation.
- Contact the Auditor’s Office. They will conduct an audit of internal controls, determine exactly what can be documented as missing, and make recommendations to assist in preventing future thefts or embezzlement.
- Make a report to the Sheriff’s Office, if appropriate.
- Contact the District Attorney’s Office. They will determine if the County will pursue criminal prosecution and seek restitution to the County.

In cases involving theft of office supplies or other “minor” items, you might want to consider counseling, reprimand, or suspension in-lieu of termination. In these cases you would not generally make a referral for criminal investigation. The determination to make a referral for criminal investigation is the responsibility of the County Administrative Officer. Before taking action, the following steps should be taken:

<b>STEP</b>	<b>ACTION</b>
1	Investigate thoroughly.
2	Determine if the theft is cumulative or ongoing.
3	Determine if discipline is to be recommended.

### **Unauthorized Use of County Equipment**

The unauthorized use of County equipment can be a minor or major infraction. In deciding whether the infraction is a major or minor one, you should consider some of these factors:

- Was it a violation of a written rule, regulation, law, or policy?
- Was it an unauthorized use of equipment or theft?
- Was this the first offense?
- Was there cost and/or possibility of liability to the County?
- Was there damage to property or injury to the employee, co-worker, or citizen?
- Did it involve behavior that is of such nature that it causes discredit to the County?

**Examples of infractions would include:**

<b>EXAMPLE</b>	<b>INFRACTION</b>
1	“Borrowing” a County vehicle or major piece of equipment for personal use.
2	Use of County facilities and/or equipment to repair personal equipment or personal vehicles.
3	Use of any County equipment or facilities to operate a business.
4	Unauthorized use of County cellular phones, computers, printers, and internet for personal purposes.

**Substance Abuse/Alcohol-Related Problems**

Employees who suspect that they may have a substance abuse problem are encouraged to voluntarily seek counseling and information through the County’s EAP. If you suspect that one of your employees has a substance abuse problem, the following may be helpful.

- Read the appropriate bargaining unit Drug and Alcohol Testing Policy.
- Contact your Department Head and the Human Resources Department.
- Document the employee’s behavior.

**Symptoms/Behaviors Indicative of Substance Abuse**

- Late to work regularly?
- Monday/Friday absences; frequent absences?
- Disappears from work site for long periods?
- Mood or behavior changes; disruptive behavior?
- Inability to get work done?

Counsel the employee, stating what the performance problem and inappropriate behavior changes you have observed. The focus should be on the employee's work performance, not on the substance abuse issue. Explain that employee’s behavior is unacceptable.

Refer the employee to the County’s EAP. Follow-up the counseling session with a counseling memo outlining your expectations and consequences of continued behavior. If the inappropriate behavior and performance problem continues, counsel the employee again and follow up with a letter of reprimand.

In the reprimand, you may want to identify a plan of action for the employee to seek help if the employee admits having a substance abuse problem. The plan may include a leave of absence for treatment and then time off for follow-up counseling visits.

**See the Drug and Alcohol Testing Policies for each of the County's collective bargaining agreements.**

### **Loss of License, Certificates or Similar Requirements**

Failure to possess or keep any license, certificate or other requirements/performance standards specified in the employee's class specification is grounds for discipline, up to termination. Although this could pertain to any type of required license, such as that applicable to a utility operator or engineer, it usually pertains to loss of a driver's license where a driver's license is needed to perform the job and the employee's job description requires that he or she possess a valid driver's license.

Each license suspension should be dealt with on a case-by-case basis. Before making your decision on the level of discipline, the following needs to be considered:

- Contact your Department Head and Human Resources Department to find out what your department's practice is in dealing with the loss of a license or certification.
- What type of driver's license is needed for the job (A, B, or C)?
- For how long has the license or certificate been suspended?
- Is this the first time a license has been suspended?
- What is the work record and past disciplinary record of the employee?
- Did the employee notice the employer about the loss of certificate or suspension?
- Has the employee been working without a license and if so, for how long?

Termination is the standard recommendation, particularly if the license is suspended for a long period of time. However, if an employee has an excellent work record and the license suspension is, for example, only for one month, you may consider suspending the employee without pay for the period the driver's license is suspended. However, the employee may still be entitled to pre-disciplinary due process.

If an employee has a medical condition that causes the loss of a driver's license (i.e., deteriorating eyesight, diabetes), a reasonable accommodation will be considered. Consult with the Human Resources Department or upper level management before

making this decision. You should refer the employee to Human Resources to discuss the need for reasonable accommodation.

### **Breach of Confidentiality**

Breach of confidentiality is the unauthorized use or disclosure of confidential and private information to individuals or agencies. Breach of confidentiality is also the unauthorized solicitation and distribution of information regarding a department client or customer without proper authorization from the client.

Certain laws require that specific information be kept confidential:

- Employee medical information (Americans with Disabilities Act; Confidentiality of Medical Information Act; Fair Employment and Housing Act; California Constitution).
- Client medical information (Confidentiality of Medical Information Act; Health Insurance Portability and Accountability Act [HIPAA]).

Unauthorized use or disclosure of any of this information can result in civil or criminal liability. Be sure all new employees are fully advised of any confidentiality requirements in your unit/office/department and that all employees sign a receipt of acknowledgement when receiving the department's policies on confidentiality, assuming one exists.

Other information, such as personnel files and documents are confidential as a result of California law and County policies.

If you suspect a breach of confidential information has occurred, the following steps provide a guideline for your investigation:

<b>STEP</b>	<b>ACTION</b>
1	Take statements from all involved individuals and witnesses (employee, complainant).
2	Inspect and collect all relevant materials and records.
3	Review the employee's prior work record. Find out how often the infraction occurred and how costly it was to the department/County, i.e., is the County liable?
4	Consult with your Human Resources Department to find out how similar situations have been handled.
5	Proceed with coaching, counseling, or discipline as appropriate.

## Chapter 6

### STEPS LEADING TO DISCIPLINE

Performance problems are often time-consuming to deal with; be prepared to spend a significant amount of time going through these steps.

Generally the County follows “progressive steps” in correcting performance problems or other misconduct. For on-going or continuing work performance problems, progressive actions may be taken that have increasingly serious consequences to the employee. In the case of a performance problem, a supervisor usually goes through the following steps:

STEP	ACTION
1	Verbally communicate the performance deficiency and/or failure to meet performance standards. It is important to document this conversation as this constitutes an “oral warning” as provided for the County’s MOUs.
2	Issue counseling memo to employee.
3	Issue a formal Letter of Reprimand or “Notice of Deficient Performance.”
4	Followed later by progressive “formal” discipline such as suspension, reductions in pay step, demotion, and termination, as dictated by the nature of the offense.

Thus, remedial action “progresses” from the more informal methods to formal disciplinary action under the concept of progressive discipline. It should be obvious that depending on the problem, all, some, or possibly none of the early steps need be taken in order. Although the imposition of progressive discipline is ideal – it is not required.

Minor deficiencies might be corrected in an informal discussion with your employee but you need to document the conversation. Some deficiencies, such as an emerging pattern of leave abuse, might require most of the earlier and some or all of the latter steps of progressive discipline. Finally, in severe cases, such as intoxication on duty, insubordination, workplace violence, theft, and race/sexual discrimination/harassment, it often is appropriate to recommend formal disciplinary action without going through the less formal steps.

The actions listed below are generally the steps taken prior to the recommendation of formal discipline. However, as noted above, keep in mind that there are situations where the severity of the conduct warrants some or all of these steps to be skipped (i.e., fighting, theft, or insubordination).

#### **Oral Warning/Counseling**

Oral warning or counseling should be given when the supervisor first notices performance or behavior that needs improvement. Be sure and document a verbal counseling so that it may be relied upon in future discipline if performance does not

improve. Save written documentation of oral counseling in a place that is secure, but easily accessible to you such as a supervisor's file. Remember, documented evidence of not only the performance deficiencies, but also earlier steps to correct the deficiency are critical to the success of imposing significant discipline later.

This step, when done correctly and promptly, is one of the most effective ways for supervisors to quickly resolve performance issues. This is because an employee's performance issues are easier to resolve at the early stage when the employee knows the problem early on and before patterns are set.

Supervisors who do not take the necessary time to speak with employees about their performance issues are giving their employees a false sense of what is acceptable. When that occurs, not only will the job of communicating performance deficiencies to employees become much harder for supervisors, but it will also be much harder for employees to accept and see that they are not adequately performing.

At times, a written account of discussions between a supervisor and an employee (such as a record of discussion or memo to file) can be used to document discussions between the supervisor and the employee regarding any meetings that take place. Oral warnings and counseling are not subject to pre or post-disciplinary appeal.

### **Counseling Memo**

The counseling memo should be given when:

- Oral warning/counseling has failed to elicit the desired performance/behavior; or
- The employee had been informed of the appropriate behavior through other means (e.g., at unit meetings).

The formation of a counseling memo is generally a joint effort between your Human Resources Department or upper level management and a supervisor. When issuing a counseling memo, supervisors should make certain employees understand the information in the counseling memo.

### **A counseling memo should include the following:**

- Specific examples of problem areas.
- An explanation of the impact the deficiency has to the unit/department/County.
- The expected standard.
- Timetables for improvement.
- If appropriate, a Performance Improvement Plan.

- The consequences for not meeting the expected standard.

Counseling memos are not typically placed in the employee's formal personnel file. Contact your Human Resources Department or upper level management as to where they are to be retained. Counseling memos issued to civilian employees are not subject to pre- or post-disciplinary appeal. However, safety officers are entitled to review any adverse or negative comment placed in either a supervisor's file or their personnel file. (See Government Code § 3305). Also, be aware that if a counseling memo focuses too much on the likelihood of discipline if the violation is not abated, the officer may be entitled to appeal the counseling if it appears the officer may suffer "punitive action" because of the counseling in the future. See Appendices for a sample counseling memo.

### **Formal Written Reprimand or Notice of Deficient Performance**

For purposes of this Handbook, the terms of a Formal Written Reprimand or "Notice of Deficient Performance" are used interchangeably. A Formal Written Reprimand is a written censure of an employee that may be given with no prior warning or counseling if warranted by the facts.

The Formal Written Reprimand should be given when:

- Oral warning(s)/counseling(s) and/or counseling memo(s) have failed to elicit the desired performance/behavior; or
- Assuming it is issued outside the progressive chain of discipline, that the conduct is severe enough to warrant a break in the normal progressive process.

Written Reprimands or Notices of Deficient Performance are placed in an employee's personnel file. Supervisors need to make it clear to employees who are at this stage that this may be their last opportunity to improve before formal discipline is recommended.

When you first start drafting a reprimand just ask yourself **who, what, where, when and why**, to get started.

A formal written reprimand should include the following:

- Statement that it is a written reprimand.
- Any rule or policy violated.
- Statement of problem or infraction.
- Date of infraction.

- History of any prior counseling or infraction.
- Statement of impact on work.
- Instructions needed, if any.
- Timeframe for improvement.
- Warning of consequences if no further improvement.
- Signature line for the employee and any level of management based on department practice.
- Performance Improvement Plan.

When giving an employee a reprimand, have the employee read and sign it; then have it placed in the employee's personnel file in Human Resources. If the employee refuses to read and/or sign it, read the entire reprimand to him/her, make a note on the document that you did so and the employee refused to sign, and then have it placed in his/her personnel file in Human Resources. Do not argue with the employee to obtain the signature.

### **Administrative Leave**

Under certain serious circumstances and with department approval, it may be necessary or appropriate to remove an employee from the workplace and place an employee on paid administrative leave pending investigation of allegations of misconduct or imposition of the disciplinary action. Administrative leave shall not be imposed without pay because that is considered a suspension without due process.

When an employee is placed on paid administrative leave, the employee is given a letter outlining the terms and conditions of the leave. Typically the employee is to remain available for work at home during normal working hours and may be required to contact his/her supervisor on a daily basis. Other additional terms are contained in the sample administrative leave letter (See Appendix). As a supervisor, it is your responsibility to make sure the employee follows the terms and conditions of the administrative leave letter.

## Chapter 7

### IMPLEMENTING DISCIPLINE

Discipline has the following steps under the County's process. For those employees who are exempt from this process (extra help, probationary, at-will), contact the Human Resources Department.

- Notice of Proposed Disciplinary Action.
- "Skelly" conference.
- Final Notice of Disciplinary Action.
- Post Disciplinary Appeal rights depending on the level of discipline.

#### Notice of Proposed Discipline

The first step in discipline is to serve the employee with a "Notice of Proposed Disciplinary Action." This notice outlines:

- the rules violated;
- the facts supporting violation of those rules;
- the reasons for the proposed penalty;
- an explanation of the employee's pre-disciplinary rights;
- any progressive discipline;
- a warning against retaliation;
- and a list of all documents relied upon in preparing the Notice. Additionally, copies of all documents relied upon must be attached to the Notice.

For instance, the discipline might be for excessive absenteeism. The Notice should specify the rules, policies, MOUs, and/or procedures violated; facts and materials leading to the discipline (including the dates of absences, whether they were unauthorized, and if relevant, their relationship to weekends, etc.) and how those facts demonstrate a violation of the County's Policies; the proposed level of discipline and the reasons justifying the proposed level of discipline; an explanation of any progressive discipline imposed in the past; a warning that the employee is prohibited from retaliating against anyone who may have participated in an investigation into the employee's alleged misconduct; an explanation of any pre-disciplinary (or Skelly) rights, including the date, time, and location of the Skelly meeting; and all documents relied upon in preparing the Notice of Proposed Discipline.

The “Notice of Proposed Discipline” and the “Final Notice of Discipline” can only be authorized by the appointing authority and, in some cases, his/her designee. As a supervisor, you cannot impose discipline without the approval of the Department Head.

Upper level management together with Human Resources typically writes the “Notice of Proposed Disciplinary Action.” (See Appendix) Usually this document is based upon information submitted in writing by the appropriate supervisor or manager. All memos and other documentation related to this incident should be given to upper level management. These documents include, but are not limited to, the following (not all may be applicable in all instances):

- Memos to file regarding incidents that may have occurred.
- Record(s) of discussion (some departments may issue these prior to counseling memo).
- Any applicable announcements or notes from bulletins or unit meetings.
- Counseling memo(s).
- Letter(s) of Reprimand.
- Prior disciplinary actions.
- Accident reports, Sheriff’s reports, accident investigation reports (if an accident was involved).
- Investigation report.
- Past performance evaluations.
- Statements from witnesses.
- Any other related documents or information.

At this point the discipline is **proposed**, not final. The employee has the right to have copies of **all** the materials upon which the disciplinary action is based and those materials should be attached to the Notice of Proposed Discipline.

### **Skelly Meeting**

Before final action can be taken, the employee has the option to request a meeting to tell his/her side of the story. This meeting is commonly referred to as a “Skelly” meeting. It is an informal meeting with the Human Resources Director, or his or her designee. Ideally, the person acting as the Skelly Officer is not involved in the recommendation to impose discipline. In order for an employee to take advantage of this opportunity s/he

must respond to the Notice of Proposed Disciplinary Action in the manner and timeframe specified in the Notice.

The employee may represent himself/herself, or be represented by his/her union, or an attorney. This is not a formal hearing. It is the employee's chance to present information demonstrating or asserting that the facts are wrong or incomplete, or the discipline is too severe because there are mitigating factors, or it is being imposed in an unfair fashion.

### **Skelly Officer Duties**

During a Skelly meeting, the Skelly Officer should review the charges for fairness and completeness. The employee should be provided with a full opportunity to present any defenses or mitigating circumstances. The employee should be encouraged to provide a full and complete response. The Skelly Officer is not expected to perform an independent investigation of the alleged wrongdoing and tendered defenses.

A formal hearing is not required. A Skelly meeting is not an evidentiary hearing, but an opportunity for the employee to articulate his/her defense to the proposed charges as well as to identify any mitigating circumstances.

At the conclusion of the meeting, the Skelly Officer should issue a complete report of his/her findings so that the appointing authority is in the best possible position to evaluate the entire case before issuing final discipline. If after considering all of the information (including that presented by the employee and the County's information and/or evidence on which the proposed discipline is based), the Skelly Officer believes that there is insufficient evidence to sustain the charges, s/he should so advise the appointing authority.

However, the final determination of the merits of the charges (or whether any further investigation is required) and the appropriateness of the proposed disciplinary action in light of any tendered defenses or mitigations rests exclusively with the appointing authority. The Skelly Officer may, but need not, offer a view or recommendation regarding the appropriateness of the proposed penalty. If the Skelly Officer recommends modification of the proposed penalty, the basis for the recommended modification should be articulated in the report to the appointing authority. Based on the Skelly Officer's recommendation, the Department may need to do follow up investigation.

## **Final Notice of Disciplinary Action**

After the Skelly meeting and before discipline is imposed, the employee must receive a Final Notice of Discipline. The Final Notice of Discipline will contain:

- The rules, policies, or procedures violated.
- A response to any and all arguments or mitigation presented by the employee during the Skelly meeting.
- Facts upon which discipline is based.
- A list of documents upon which discipline is based (If documents are attached to the Notice of Proposed Discipline – it is sufficient to state copies of documents will be provided to the employee if necessary).
- The effective date of the discipline.
- A statement of appeal rights.

The discipline is effective for the dates outlined in the document. For instance, it might be a five-day suspension because of an act of insubordination. It would state, for instance, you are suspended from November 1<sup>st</sup> to 5<sup>th</sup>.

The employee will have ten (10) working days to file an appeal with the County Administrative Officer. If the level of discipline includes suspension, demotion, or discharge, the affected employee shall have the right to appeal the County Administrative Officer's decision to arbitration within ten (10) days.

## **Amending Notices of Discipline**

If new disciplinary action, new facts, or a different level of discipline is needed, as a result of a Skelly or additional investigation, it will likely be necessary to issue a new notice of proposed disciplinary action or final notice of discipline, in which case a new Skelly meeting will be required. With assistance from the Human Resources Department, the Department Head is responsible for amending the Notice of Proposed Disciplinary Action or Final Notice of Discipline.

## **Appeal to the County Administrative Officer**

An appeal may be filed with the County Administrative Officer within 10 working days from the date of the Final Notice of Disciplinary Action.

## **Appeal to Binding Arbitration**

In a case involving suspension, demotion, or discharge, the affected employee shall have the right to appeal the County Administrative Officer's decision to arbitration if requested in writing within ten (10) working days of the date of the County Administrative Officer's written decision.

## **Reasons Disciplinary Actions Are Sustained**

Discipline is more likely to be upheld by a neutral third party arbitrator when the following takes place:

- The facts prove that the conduct for which the employee is being disciplined occurred.
- A thorough investigation was conducted and charges in the discipline are proven.
- The testimony of witnesses is consistent with the charges in the discipline.
- All procedures in the disciplinary process were properly followed.
- Management can show, especially with performance problems that it informed the employee of any deficiencies, and made clear what was expected.
- Where applicable, the employee was offered assistance in improving performance and given time to improve.
- The level of discipline is appropriate for the offense committed by the employee and that the employee's conduct harmed the public service.
- Management can show, if challenged, that policies are reasonable and applied consistently and equally to all employees who work for you, the supervisor.

As a supervisor, your role is critical in sustaining a disciplinary action.

### **Reasons Disciplinary Actions Are Modified or Reversed**

Discipline may be modified or reversed if errors can be shown. The supervisor plays a key role in ensuring that discipline is upheld.

Listed below are **possible** reasons discipline might be modified or reversed by the Skelly Officer, the County Administrative Officer, or a neutral third party arbitrator:

- **The charges cannot be proven**, usually due to faulty memories unsupported by adequate documentation or because a thorough investigation was not conducted.
- **Testimony in a hearing is inconsistent with the charges and the discipline;** frequently because the procedures were not followed properly.
- **Lack of appropriate and progressive discipline:** the employee with a performance problem has no previous record of corrective actions or admonishments.
- **Procedures were not followed properly.**
- **The employee**, with a performance problem, was not given help or an **opportunity to improve.**
- **The level of discipline was too severe** for the offense.
- **Standards were not applied consistently** and/or discrimination can be proven.

Remember, the quality of the discipline documentation depends in large part on you, the supervisor.

## Chapter 8

### CONDUCTING INVESTIGATIVE INTERVIEWS AND INTERVIEWING WITNESSES

A Skelly Officer, the County Administrative Officer, or neutral third party arbitrator may not sustain corrective action and discipline if it was not based on a thorough and fair investigation. Before deciding to take corrective action, in most cases, you or someone you designate will need to investigate any wrongdoing or poor work performance. A key part of your investigation is to hear the employee's side of the story.

#### ***Weingarten* Rights**

As a supervisor, you should be aware of an employee's *Weingarten* rights.

#### **1. Represented Employees (Sworn and Non-sworn Employee)**

A non-safety/fire employee is entitled to union representation at an investigatory interview with management that the employee reasonably believes could result in discipline or in "highly unusual circumstances" such as an interactive process meeting. The right to union representation arises only if 1) the interview is investigatory in nature; and 2) the investigation is centered on the employee being interviewed, or the investigator has some reason to reasonably believe the employee will say something that may lead to discipline. The supervisor or manager need not postpone the interview because a particular union representative is unavailable for reasons which the employer is not responsible, when the employee could have requested the presence of another union representative who is available, however, be reasonable. If a short continuance would not cause any hardship, consider postponing the interview.

Safety employees have the right to be informed of the "nature of the investigation" prior to being interrogated and are entitled to a representative during any interrogation. (Gov. Code, § 3303, subd. (c).) Safety employees, however, are not entitled to be informed when an investigation is opened. The right to be informed about the nature of the investigation means the employee was given reasonable amount of time to hear and review the alleged charges with his or her attorney. (See *Ellins v. City of Sierra Madre* (2016) ---Cal.Rptr.3d--- WL 337383.)

The key issue is the nature and content of the interview. An interview may initially be intended to only gather facts about an incident, but if the focus changes during the interview to investigating misconduct of the employee being interviewed, *Weingarten* rights may be triggered. The standard to determine the reasonableness of the employee's fear of discipline is objective, not subjective.

There is no right to union representation when the purpose of the meeting is to inform the employee of the disciplinary action to be taken.

RIGHT TO REPRESENTATION FOR SWORN EMPLOYEES IS DIFFERENT THAN NON-SWORN EMPLOYEES. If you have any questions about the Public Safety Officers Procedural Bill of Rights or the Firefighter Procedural Bill of Rights, please contact Human Resources. Failure to follow the requirements of the Public Safety Officers Procedural Bill of Rights (POBR) or the Firefighter Procedural Bill of Rights (FBOR) may result in County liability.

For peace officers, Government Code section 3303(i) states that, “[u]pon filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation.”

For fire service employees, Government Code section 3253(i) provides firefighters with the same right to representation during an interrogation except that, while public safety officers are entitled to representation if the interrogation is “likely to result” in punitive action, firefighters are entitled to representation if the interrogation focuses on matters that “**may**” result in punitive action.

Accordingly, be advised that the FBOR includes a right to representation that may be more expansive than the POBR right to representation.

The employee's right to representation arises only on request unless the employee is entitled to representation. You are not required to advise employees of their rights. If the employee requests representation, you have the following options: 1) grant the request and provide a reasonable amount of time for the employee to arrange for a representative; 2) conduct the interview in the presence of a union representative; or 3) terminate the meeting and offer to continue only if the employee waives the right to union representation.

A union representative has no right to interfere with the interview or prevent the County from eliciting direct responses from the employee under investigation.

The supervisor or manager has no duty to bargain with the union representative at the interview. (1) The representative is present to assist the employee and to attempt to clarify facts or suggest other employees who may have the knowledge or facts. (2) The supervisor or manager has the right to require the employee to respond to relevant questions and can insist on hearing the employee's version of the facts. The employee may be charged with insubordination if the employee refuses and remains silent. (3) The union representative has no right to interfere in the interview process.

## 2. Unrepresented Employees

Unrepresented employees have a right to representation in the same types of circumstances as represented employees. You are not required to provide employees with notice of this right.

However, you must honor an employee's request and provide a reasonable amount of time for the employee to arrange for a representative. The representative chosen by the employee may be a coworker. The coworker does not have the right to materially participate in or disrupt the meeting.

### How to Conduct an Investigation

- **Appoint someone objective to conduct the investigation:** Someone not involved in the underlying complaint or ultimately responsible for imposing any discipline.
- **Stay objective** and be mentally prepared for the interview. It is a chance to find out the reasons why an employee took certain actions and whether a violation of County policy or procedure occurred. Try to get an objective perspective on what occurred. Don't let prior experience with any particular employee bias you.
- **Contact** the Human Resources Department for complaints involving sexual harassment, discrimination, or retaliation.
- **Decide** whom to interview first, second, and so on. If you received a complaint about your employee (the alleged "wrong-doer"), it is usually customary to interview the complainant first, followed by the witnesses to that event, and conclude with the accused. This can help avoid the need for subsequent meetings.
- **Schedule** the interview for a specific time and place. The employee has the right to know what the meeting is about, an opportunity to request representation (if applicable), and a short time to meet with his/her representative before the meeting.
- **Prepare** for the meeting by collecting or reviewing necessary documents that will assist you in the investigation (i.e., samples of documents, policies, employee personnel file, complaint documents, reports, records).
- **Review** any written statements or reports received regarding the incident. Although many written statements can be useful in an investigation, if you analyze them closely, there may be missing information you need to collect by interviewing the witness personally. Use the reports and statements as the basis for developing your interview questions. Do not rely exclusively on those reports and statements in determining what occurred.

- **Prepare** your questions in advance. This will help you stay focused during your meeting and help ensure you ask all the questions you intended to ask. Your questions are only a guide and you may need to deviate from your list as the employee or witness provides additional information.
- **Conduct** the interview in private, not in the presence of others. It should be held in a private location where interruptions are minimal. It can be beneficial in some situations to have a witness to the interviews.
- **Begin** the meeting by explaining that you are investigating an incident.
- **Advise** the employee to answer the questions honestly and completely to the best of their ability.
- **Explain** the failure to cooperate with the investigation may constitute insubordination and may lead to disciplinary action. Check with the employee to make sure they understand the directions given.
- **Obtain** the employee's statement of what occurred, including the date, time, and place of the alleged act(s) and the names of all persons alleged to be involved or have relevant knowledge.
- **Ask** basic questions for each event of who, what, why, where, when, and how without leading him/her in a particular direction. Do not be accusatory.
- **Ask** open-ended questions (e.g., "Tell me what occurred?" "Describe the incident on..." "Explain your role in..."). Ask follow up questions as necessary.
- **Take** good notes during the interview. The notes should reflect the statements made by an employee, not your interpretation of what is being stated. Any direct quotes should be identified.
- **Listen** to the employee/witness and give them the chance to explain what they saw or heard in their own words. If the employee is the accused, give the employee a chance to think and provide additional information.
- **Remain** quiet and give the employee sufficient time to respond. Avoid the urge to fill in the moments of silence. Give the employee a chance to think and provide additional information.
- **Rephrase** any question that the employee doesn't understand or any question that the employee seems to be avoiding or is not answering directly. Remember the question you asked and evaluate if the response given addresses that question. If the witness provides a response that does not address the question, ask the question again.

- **Secure** any relevant physical evidence, such as objects, pictures, emails, police reports, documents, etc. that the employee identifies or provides during the interview.

**Before you finish your interview, do the following:**

1. Make sure you have covered all the questions.
  2. Ask the employee if there is any additional information s/he wants to provide.
  3. Suggest that the employee keep all information discussed during an investigative interview confidential and state the reason why confidentiality is important in this particular case.
  4. Explain to the accused that you will be concluding your investigation over the next several days and analyzing the information gathered to determine if a violation has occurred and what action is to take (if any). Also, explain to the accused that if disciplinary action is to occur, s/he will be provided with the materials used to support the discipline.
  5. Advise the employee that retaliation is prohibited and should they experience any retaliation to contact your Human Resources Department.
  6. Advise the employee to contact you if they think of any additional pertinent information after they leave the interview.
  7. Ask the employee if s/he has any questions. Refer those you cannot answer to the Human Resources Department or upper level management.
- **Prepare** a written summary of what occurred during the interview while the interview is still fresh in your mind. If you are interviewing employees and/or witnesses to an incident, consider obtaining the employee's signature on their witness statement.
  - **Consult** with the Human Resources Department or upper level management to determine what action has been taken for similar infractions in the past.
  - **Recommend** disciplinary action when appropriate through your department's chain of command or the Human Resources Department. Your recommendation for disciplinary action should include your investigation summary and a copy of all supporting documentation and evidence used to support the discipline.

**As you proceed with the steps of the investigation as outlined above, remember to get outside help when necessary.** There are occasions when the investigation becomes too complex for you to handle. Consult the Human Resources Department when necessary. Also, you may need to refer an employee to the EAP for potential personal, family, physical or emotional problems.

**APPENDIX I**

**COUNTY PROCEDURES**

## APPENDIX I-A

### RELEASING A PROBATIONARY EMPLOYEE

1. **PURPOSE:** To implement administrative procedures for releasing employees during the probationary period.
2. **POLICY SUMMARY:** Employees in permanent positions must be notified in writing when they have not passed probation in a County classification. Work with Human Resources for the proper letter format and content.
3. **PROBATIONARY PERIOD:** means the period of continuous service following appointment from an eligible list to a permanent position in a County job classification in the County service and prior to obtaining permanent status in the class.
  1. The probationary period is regarded as part of the merit testing process. This period is used for closely observing the employee's work, for ensuring the employee's effective adjustment to the position, and for releasing a probationer whose performance does not meet the required standards of work.
  2. The period of probation for new employees is twelve months. Additionally, probationary periods may be extended. The probationary period for employees promoted or transferred may be six to twelve months. Check the applicable MOU to determine the required probationary period for each classification and in each bargaining group.

## **PROCEDURES: RELEASE DURING PROBATION**

### **A. Decision to Release an Employee from Probation**

1. The employee's supervisor should consult with the appointing authority and/or or the Human Resources Department when deciding whether to release an employee during the probationary period.
  - Employees must be notified in writing when they are released from probation. Notice must be served using documents approved by Human Resources. These documents are the Notice of Release From Probationary Status and Affidavit of Service. (See Attachments 1 and 2)
  - Determining an effective date of release is part of the decision process. For guidance in determining the date of release, contact Human Resources.
2. Resignation. If the employee who is about to be released resigns, either orally or in writing, promptly consult Human Resources.
3. Leave of Absence. A probationary employee may be authorized to take a leave of absence. Consult with Human Resources to guide you through the potential extension of probation for these employees.
4. Transitional Duty Assignment. A probationary employee may be assigned to light duty. Consult with Human Resources to guide you in the event a probationary employee is assigned to light duty.

### **B. Human Resources Recommendation**

1. Human Resources strongly recommends that the effective date on a Notice of Release be at least seven days earlier than the date calculated as the last day of the employee's probation. In doubtful cases, contact Human Resources as soon as possible for guidance regarding the effective date.
  - The Notice of Release from Probationary Status must be served on or before its effective date.
  - The effective date of release cannot be later than the last day of the employee's probation. The release cannot be effective retroactively.

### C. Effective Date of Release

1. The release of a probationary employee is effective on the date and at the time specified in the Notice of Release from Probationary Status. The Notice of Release must be served before the date and time it is effective.
2. Releasing an employee may be appropriate at any time during the probationary period. In each case the effective date should be determined on the basis of all relevant circumstances.
  - When releasing an employee who has the right to return to a former department, the releasing department/work unit must consult with Human Resources for guidance.
3. An employee's probationary period may be extended according to County MOUs.

### D. Date of Service

1. The Notice of Release from Probationary Status must be served on or before its effective date.

### E. Method of Service

1. The original Notice of Release from Probationary Status must be served on the employee.
2. If at all possible, notice should be served in person by the employee's immediate supervisor, Department Head, or Human Resources Department. It is preferable to serve notice in a private setting.
  - The server should not attempt to explain reasons for the employee's release except to state that the employee did not complete the probationary period.
  - The server should answer questions on procedure or refer the employee to a resource person.
3. If the employee is unavailable for any reason and cannot be served in person, consult Human Resources for advice on alternate methods of service. Alternate methods of service may be more time-consuming,

therefore, it is imperative that the employing department act quickly in these instances.

F. Documentation of Service

1. Prepare the Notice of Release from Probationary Status and two copies.
2. The original Notice of Release and copies must be signed by the Department Head.
3. The person who serves notice should complete the Affidavit of Service immediately (see Attachment 2). Attach a copy of the Affidavit to each copy of the Notice of Release.
  - The Affidavit of Service documents the probationary employee's receipt of legally-mandated information contained in the Notice of Release. This documentation will be used to prove timely delivery of the release, if the employee files a complaint.
4. Distribute documents immediately after the Affidavit has been completed.
  - The original Affidavit of Service and a copy of the Notice of Release must be filed with the Human Resources along with the Payroll Action Form (PAF).
  - The remaining documents should be distributed to the County Auditor's Office and the operating department's supervisory file.

G. Right to Return

1. Right to Return to a Former Class. Employees may have transferred or promoted to the probationary class from a class in which they hold permanent status. These employees have a right to return to the class from which they promoted, unless the reasons for the release from probation would be cause for dismissal from County service.
  - If it is necessary or appropriate to dismiss a probationary employee who has permanent status in a former class, always contact Human Resources promptly. Example: A probationer's unsatisfactory conduct may be so serious, that the employee should be dismissed from the former class in addition to being released from probation.

2. Return to a Former Position - Usually, an employee with prior permanent status who is serving probation in a new position will be returned to the former class and if applicable, in the former department.

- The immediate supervisor in the releasing department/work unit notifies the former department/work unit that the employee is being released to the former class in the former department/work unit. Notice should be given at least seven days before the anticipated date of return.
- The Human Resources Director in consultation with the Department Head of the former department/ work unit determines an appropriate placement for the returning employee.
- The former department/manager sends written notice to the releasing department/work unit, including the employee's new position title, the person to whom the employee should report, and the date of return indicated by the releasing department/ work unit.
- The immediate supervisor in the releasing department /work unit notifies the employee of the new assignment in the former department/work unit.
- If no vacancy exists in the former class in the former department/work unit, the former department/work unit should contact Human Resources. The possibility of placing the employee in a vacant position in the class in another department will be considered. If the employee cannot be placed in another department/work unit, s/he will return to the former department/work unit in the former class even if this will cause a "bumping" situation.
- The releasing department/work unit sends the PAF, the Notice of Release, and Affidavit of Service to the gaining department/work unit. The gaining department/work unit obtains appropriate authorization signatures and forwards the PAF and attachments to Human Resources.

**APPEALS:** A new probationary employee has no right of appeal of failure to pass probation.

**Attachment 1 of Appendix I-B**

**COUNTY OF MARIPOSA COUNTY**

**NOTICE OF RELEASE FROM PROBATIONARY STATUS**

TO: \_\_\_\_\_, \_\_\_\_\_  
(Name of Employee) (Class Title)

You are hereby notified that you are released from employment during your probationary period and that your employment in the class identified above is terminated effective:

\_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m.

**PRIOR PERMANENT STATUS**

If you were promoted or transferred to the above class from a position in which you held permanent status, you may have a right to return to a position in that class as provided in for in the County's policies and procedures. For information concerning this right, contact the Human Resources Department.

**APPEAL FROM RELEASE**

Pursuant to County Bargaining Unit MOUs, a new probationary employee shall have no right of appeal failure to pass probation.

**Attachment 2 of Appendix I-B**

**AFFIDAVIT OF SERVICE**

I, \_\_\_\_\_, do hereby declare:

I am employed in the position of \_\_\_\_\_  
with the County of Mariposa County.

On \_\_\_\_\_,

20\_\_\_\_\_ at approximately \_\_\_\_\_ at  
(time)

\_\_\_\_\_  
(location)

I personally served a copy of the attached "Notice of Release From  
Probationary Status" upon \_\_\_\_\_,  
(Probationer's Name)  
by handing such a copy to him/her.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 20\_\_\_\_\_,  
at \_\_\_\_\_, California.

\_\_\_\_\_  
(Signature)

**APPENDIX II**  
**SAMPLE LETTERS**  
**AND NOTICES**

**APPENDIX II-A**

Date: May 11, 20XX  
To: Administrative Clerk III  
From: Administrative Supervisor  
Subject: **EMPLOYEE ASSISTANCE PROGRAM REFERRAL**

The purpose of the memo is to express my concern about your behavior in the workplace.

Over the past (months, weeks, days), I have met with you on \_\_\_\_\_ occasions regarding your behavior at work. (describe specific circumstances here)

As a way of providing you support to address the above issues, I am formally referring you to the Employee Assistance Program. The EAP is confidential, so any information discussed about your personal problems is strictly between you and the EAP counselor. As your supervisor, I am referring you to the program and encouraging you to attend, but your participation is voluntary. I have contacted Human Resources who can provide you with the information needed to set up an appointment. I will be notified whether or not you attend the appointment. Supervisory Referral EAP sessions will not count against your own EAP benefit sessions and you may schedule them during normal working hours.

I hope that you will utilize the EAP, but in any event, your behavior at work must improve. I am available to discuss this situation further should the need arise.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Department Head's Signature

\_\_\_\_\_  
Date

## APPENDIX II-B

Date: May 11, 20XX  
To: Administrative Clerk III  
From: Administrative Supervisor  
Subject: **COUNSELING MEMO - PERFORMANCE**

The purpose of this memo is to counsel you regarding your performance in several areas. On October 18, 20XX, you were promoted to Administrative Clerk III. On that date I gave you a copy of your duties and the standards and expectations of your position.

After your last annual evaluation on July 17, 20XX, I noticed areas of your performance that were falling below standard. The specific areas I noticed which were not meeting standards and expectations were your accuracy and completeness of work and the work of your unit, performance in new and emergency situations, and concerns regarding your leadership abilities.

Listed below are my areas of concern.

### **Accuracy and Promptness in Completing Work**

There are two areas I am concerned with: the accuracy and promptness of your personal work and that of one of your staff.

1. Regarding your own work, there have been several incidents in which you have missed deadlines in the letters and reports that you type for me. Specifically, the letters to Department Heads regarding assessment practices was to go out on March 8, 20XX, but didn't get done until March 15, 20XX. This is just one of many examples. In addition, you have yet to set up a system for purchase orders and warrants which I had asked you to do by March 25, 20XX.
2. Regarding the work assigned to the clerical support staff of your unit, overall, the quality has been sporadic. Specifically, on four separate occasions in the last week, letters have gone out with typos in them; in one case there were three typos. This is not acceptable.
3. In addition, there have been specific performance problems with one of your employees. Specifically, regarding the performance of the Administrative Clerk I, the following needs correcting:
  - a. The attitude he displays in dealing with the supervisors; specifically, he is constantly complaining and creates a negative and unfriendly work environment.

- b. The letters and reports he types have had to be redone repeatedly. Specifically, he continually gives final drafts to the supervisors that still have typos. Attached are five examples of his work that were unacceptable.

### **Performance in New or Emergency Situations**

As you know, we work in an office that has many deadlines and “rush” jobs. Priorities may occasionally change. I have noticed that when a priority needs to change, rather than adjust your work and that of your subordinates accordingly, you continually complain to the supervisors for whom your staff provides clerical support. This creates a disruptive and negative environment. One specific incident occurred on April 14, 20XX when you lost your temper and shouted at one of the supervisors in the presence of three other people. This is unacceptable.

### **Training and Leading Staff**

I am concerned with the lack of training or direction given to the Administrative Clerk I. This has resulted in a poor work product from him as described above. You need to spend more time reviewing his work and taking steps to improve it.

In addition, based on your conduct as described in the “Performance in New or Emergency Situations” above, you are not providing positive leadership to your staff when you exhibit the behavior mentioned above.

### **Performance Improvement Plan**

For you to meet the expectations and standards of your position, the following will be in place:

#### **Accuracy and Timeliness in Completing Assignments:**

It is your responsibility as an Administrative Clerk III to ensure that your work and the work of your staff is accurate and is completed in the required timelines. If you are having difficulty in meeting the required timelines, it is your responsibility to adjust your priorities in order to meet the deadlines, or, if necessary to meet with me to discuss any issues you may have in meeting our customer’s needs.

#### **Performance in New or Emergency Situations:**

When you receive a new assignment or change in priorities, I expect you to look at the work of your unit and adjust it accordingly. Again as stated above, if you feel you can’t meet your various deadlines, you should discuss it with me rather than complain to the supervisors or the employees in your work unit.

Training and Leading Staff:

In an attempt to improve your performance in the areas listed above, we will discuss potential training to assist you in meeting the required standards and expectations.

**Overall:**

The purpose of this counseling memo is to provide the required mechanisms such as additional training in specific areas to assist you to return to that level of performance. I will do a thorough review of your performance in sixty days. It is very important for you to demonstrate improvement as described above in the next sixty days or I will have no alternative but to recommend further action.

## APPENDIX II-C

Date: May 11, 20XX  
To: Administrative Clerk III  
From: Administrative Supervisor  
Subject: **COUNSELING MEMO – PERFORMANCE IMPROVEMENT PLAN**

On date, you and I discussed the need to improve your job performance in the following area(s):

- 1) **Attendance:** From date to date, you were out of the office for (*indicate various reasons including family sick leave, parental leave, and/or sick leave self*). During that time you failed to follow the call-in procedure in 3 out of 7 instances, provide dates, resulting in Absence without Approved Leave (AWOL) on these days. In addition, you left early one day date without requesting approval and flexed your time on another day date without prior approval. **[DO NOT CITE TO ANY ABSENCES OR TARDINESS COVERED BY PROTECTED LEAVE.]** Please contact the Human Resources Department if you have any questions.
- 2) **Telephone usage:** You spend an unusually large portion of your work time on personal calls on your cell phones. The times you spend on your personal calls have been observed by me and other staff members who have complained.
- 3) **Work management:** During timeframe, I have reviewed your workload and found the following deficiencies:
  - # water shut-offs were not processed within 30 days and should have been
  - # business licenses should have been denied due to various reasons
  - # incorrect water bill payments that were processed

It is necessary that you improve your job performance in order to meet the expectations of your job and I am willing to assist you in meeting an acceptable level of performance. However, it is your responsibility to bring your work performance up to standard. To assist you in meeting this objective, effective date, we are implementing the following Performance Improvement Action Plan:

- 1) I am temporarily taking you off of counter service effective date. This will allow you to correctly handle all delinquent water bills and business license requests that are currently in your in-basket I will expect you to complete this backlog of work by date.

- 2) You must route shut-off notices and business licenses through my office for review before sending them out. I will keep a log on these cases.
- 3) We will meet weekly on day between time to discuss your progress and areas to be concentrated on for the upcoming week.
- 4) I will expect you to schedule your personal telephone calls only during your scheduled lunch and breaks. The times we have agreed upon are as follows: first break is time, lunch is time, and second break is time.
- 5) If you need to deviate from your scheduled lunch or breaks, you must notify me personally and in advance. If I am not available then you are required to check in with my backup, name, or any other available supervisor.
- 6) As you know, you are required to follow the call-in procedure when you will not be at work at your scheduled time and you must have prior approval for any request of over-time, flex-time, or other time off. Please let me know immediately if you have any questions about these processes.

Failure to satisfactorily meet the above plan activities in this Performance Improvement Plan by date (reasonable amount of time, depending on the severity of the situation) may result in further disciplinary action.

---

Supervisor's/Department Head's Name, Title

cc: Human Resources

## APPENDIX II-D

Date: May 11, 20XX  
To: Administrative Clerk III  
From: Administrative Supervisor  
Subject: **COUNSELING MEMO - TARDINESS AND UNAUTHORIZED ABSENCE**

The purpose of this memo is to document your tardiness in the last two weeks. On Monday, March 1, you arrived to work thirty minutes late. On Wednesday, March 3, you arrived to work 25 minutes late. On Wednesday, March 3, after your second late arrival to work, I verbally advised you that you were expected to arrive at work at 8:00 a.m.

Despite the warning outlined above you returned 20 minutes late from lunch on Thursday, March 4 and Friday, March 12, you arrived to work 15 minutes late and took a 25-minute break in the morning.

As you are aware, your work hours are from 8:00 a.m. to 5:00 p.m. with a one-hour lunch. You are hereby advised that you are expected to arrive at work by 8:00 a.m. and leave no earlier than 5:00 p.m.

You are advised, effective immediately, that your lunch will be taken from 12:00 p.m. to 1:00 p.m. I am further advising you that your breaks will be taken from 10:00 to 10:15 a.m. and 2:30 to 2:45 p.m.

Any deviation from this schedule will require my prior approval. Please be advised that you will be docked for any unauthorized absence and that corrective action may be taken.

If you do not believe this to be an accurate summary of our conference, please notify me in writing by [give a date and time] so we can clarify any misunderstandings.

\*Be sure to give at least three to five working days for response



**APPENDIX II-F**

**NOTICE OF PROPOSED DISCIPLINARY ACTION  
(5 DAY SUSPENSION)**

Date: May 11, 20XX

To: Employee Name  
Employee Classification

From: Department Head Name  
Title and Department

Subject: **PROPOSED DISCIPLINARY ACTION – 5 DAY SUSPENSION**

**YOU ARE HEREBY NOTIFIED** that I am recommending that you be suspended for a period of five (5) days in accordance with *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, the [MOU/Personnel Policies/PSOPBR if peace officer]

Your proposed discipline is based on a violation of the following provisions of the [County Personnel Rules/MOU, etc.]

**I. RULES VIOLATED**

[List out the rules violated]

**II. FACTS UPON WHICH DISCIPLINE IS BASED**

The above violations are based on your commission of the following acts or omissions. Please note that this Proposed Disciplinary Action is based on any one of the above violations and need not be based upon your commission of more than one violation.

The facts upon which the proposed disciplinary action is based are as follows:

Despite numerous counseling's and a letter of reprimand, you consistently fail to report to work at your assigned time. Excessive tardiness has continued to occur and includes the following dates:

Your timesheets between March and June 2016 indicate you have been late on five separate occasions. [Describe the circumstances of each instance. When did the employee show up; did he or she call; what did he or she say when they came to work.

DATE TARDY	TIME LATE
March 20, 20XX	1.6 hours
April 2, 20XX	2.7 hours
May 5, 20XX	1.0 hours
May 9, 20XX	4.0 hours
June 15, 20XX	.8 hours

**Progressive Discipline:**

You have been disciplined for similar conduct on two previous occasions.

- a. Letter of Reprimand dated May 12, 20XX, from supervisor name, supervisor classification, to employee name, employee classification, continued tardiness.
- b. One day suspension effective June 1, 20XX, from supervisor name, supervisor classification, to employee name, employee classification, concerning tardiness and failure to follow call-in procedures in the event of illness.

In addition to the above specific Personnel Policies/Violations of the MOU, I have also reviewed and considered your entire personnel file in making the above recommendation.

Your continued tardiness has had a significant adverse impact upon the operations of the <office name> in that others have had to fill in during your absences and still maintain their workplace responsibility. In addition, your supervisor has had to consistently adjust staffing plans because she cannot depend upon you to arrive at work in a timely manner. You have been counseled and issued a letter of reprimand to address your tardiness in accordance with the MOU, but the efforts to correct the problem have not been successful. Your continued unabated tardiness demonstrates a total disregard for the efforts and patience of management in working with you to correct your tardiness problems and bring you into compliance. Accordingly, a five-day suspension is deemed appropriate.

All materials upon which the recommended disciplinary action is based are attached to this NOTICE. You may review your personnel file upon reasonable request by contacting the Human Resources Office during regular business hours.

**III. WARNING AGAINST RETALIATION**

This provision is to notify you that it is illegal and inappropriate to retaliate against any person who has participated in complaining or providing information regarding your alleged misconduct. You may not contact or in any other manner retaliate against any individual who has provided information to the County regarding your conduct.

IV. RIGHT TO RESPOND

Pursuant to Skelly and Article [XX] of the MOU, you have ten (10) calendar days from the date you are served with a copy of this notice, either personally or by mail, to respond to this proposed disciplinary action. (Optional: Your Skelly meeting will take place on XXX at [a.m./p./m.] in the Human Resources Department). You may respond personally or in writing. You may submit any materials you desire to be considered in regard to your response.

If you desire to respond personally, contact me at ###-#### to arrange for an appointment for the personal hearing of this matter. The Human Resources Director or his or her designee will conduct the Skelly meeting and make a recommendation to me about the proposed discipline. The meeting will be informal in nature and does not include any right to present evidence by way of oral examination of witnesses. Any materials you desire to submit should be delivered to the Human Resources Department (address) no later than the date of the personal (Skelly) meeting.

If you do not respond to this disciplinary action either personally or in writing on or before the expiration of the ten (10) calendar-day period referred to above, then I will make my final decision based upon the facts set forth above and any materials indicated

V. DOCUMENTS RELIED UPON IN PREPARING THIS NOTICE

The above facts are considered good cause for disciplinary action under the MOU between the County of Mariposa County and SEIU. The materials upon which the order of disciplinary action is based include the following:

- a. Letter dated June 12, 20XX from supervisor name, supervisor job title to Department Head name and title, requesting disciplinary action.
- b. Attendance and Tardiness, Section 6.4 of the Human Resources Policies and Practices Manual.
- c. Copies of Mariposa County time sheets for the pay periods 1 through 6, 20XX.
- d. Letter of Reprimand dated May 12, 20XX, from supervisor name, supervisor title, to employee name, employee title, and continued tardiness.
- e. Order of Disciplinary Action – One Day Suspension dated June 1, 20XX.

Copies of the documents are attached.

\_\_\_\_\_  
Department Head

\_\_\_\_\_  
Date

RECEIVED:

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

\_\_\_\_\_  
Date

**APPENDIX II-G**

**FINAL NOTICE OF DISCIPLINARY ACTION  
(5 DAY SUSPENSION)**

Date: May 29, 20XX

To: Employee Name  
Employee Classification

From: Directors Name  
Title and Department

Subject: **FINAL NOTICE OF DISCIPLINARY ACTION – 5 DAY SUSPENSION**

**After carefully considering your oral/written response on [date] to the Notice of Proposed Discipline, I have decided that it is appropriate to proceed with the suspension. Therefore, YOU ARE HEREBY NOTIFIED** that you are hereby suspended from your position as <title> for five workdays commencing with June 13, 20XX and ending on June 17, 20XX in accordance with the [MOU/POLICIES]. The facts upon which the order of disciplinary action is based are as follows: Despite numerous counseling and a letter of reprimand, you consistently fail to report to work at your assigned time.

**I. RULES VIOLATED**

**[List the rules violated]**

**II. FACTUAL BASIS FOR THE ACTION**

Excessive tardiness has continued to occur and includes the following dates:

<b>DATE TARDY</b>	<b>TIME LATE</b>	<b>DATE TARDY</b>	<b>TIME LATE</b>
March 20, 20XX	1.6 hours	April 27, 20XX	3.0 hours
April 2, 20XX	2.7 hours	April 30, 20XX	3.0 hours
April 5, 20XX	2.0 hours	May 11, 20XX	2.0 hours
April 9, 20XX	4.0 hours	May 14, 20XX	2.0 hours
April 13, 20XX	.5 hours	May 17, 20XX	3.3 hours
April 16, 20XX	1.8 hours	May 18, 20XX	4.7 hours
April 18, 20XX	.8 hours	May 21, 20XX	1.5 hours

Previous actions taken against you include:

- a. Letter of Reprimand dated May 1, 20XX, from supervisor name, supervisor classification, to employee name, employee classification, and continued tardiness.
- b. Counseling Memorandum dated April 19, 20XX, from supervisor name, supervisor classification, to employee name, employee classification, concerning tardiness and failure to follow call-in procedures in the event of illness.
- c. Record of Discussion dated April 6, 20XX, from supervisor name, supervisor classification, to employee name, employee classification concerning tardiness.

Your continued tardiness has had a significant adverse impact upon the operations of the <office name> in that others have had to fill in during your absences and still maintain their workplace responsibility. In addition, your supervisor, has had to consistently adjust staffing plans because she cannot depend upon you to arrive at work in a timely manner. You have been counseled and issued a letter of reprimand to address your tardiness, but the efforts to correct the problem have not been successful. Your continued unabated tardiness demonstrates a total disregard for the efforts and patience of management in working with you to correct your tardiness problems and bring you into compliance. Accordingly, a five-day suspension is deemed appropriate.

The above facts are considered good cause for disciplinary action under the Labor Agreement between the County of Mariposa County and SEIU. The materials upon which the order of disciplinary action is based include the following:

- a. Tardiness Report from March 20, 20XX through May 21, 20XX.
- b. Copies of Mariposa County time sheets for the pay periods 4 through 9, 20XX.
- c. Letter of Reprimand dated May 1, 20XX, from supervisor name, supervisor classification, to employee name, employee classification, continued tardiness.
- d. Counseling Memorandum dated April 19, 20XX, from supervisor name, Supervisor classification, to employee name, employee classification concerning Tardiness and failure to follow call-in procedures in the event of illness.
- e. Record of Discussion dated April 6, 20XX, from supervisor name, supervisor classification, to employee name, employee classification concerning Tardiness.



## APPENDIX II-H

Date: May 29, 20XX

To: Employee Name  
Employee Classification

From: Directors Name  
Title and Department

Subject: **ADMINISTRATIVE LEAVE**

Attached is a Notice of Proposed Disciplinary Action recommending that you be dismissed from your position with the County based on the charges stated therein. Consequently, effective immediately, and until further notice, you are on administrative leave with pay. While you have the right to respond to this Notice, this is a confidential matter and is not to be discussed with anyone other than your representative. In addition, the following directives will be in place:

1. You are to be available at home during your assigned normal work hours.
2. If you have a doctor's appointment, you must advise *XXX or his/her* designee, of the time and date of appointment. .
3. If you have any other appointments and request to use vacation, CTO, etc., such requests must have prior approval from *XXX or his/her* designee.
4. You must immediately surrender your *County ID badge, keys, pagers, tools, etc. (fill in the blanks)*.
5. You are directed not to visit the any County facility occupied by any Department of XXX staff during or after working hours nor are you to contact any Department of XXX employees either in person or electronically.
6. You are not to contact anyone who might be a potential witness in this personnel action either in person or electronically.
7. If you need to obtain anything from your *desk/work area* regardless of whether it is a personal item or otherwise, you may contact *XXX and s/he* will consider your request.
8. If you wish to respond to the attached Notice of Proposed Disciplinary Action in person, a meeting has been scheduled with XXX, Human Resources Director, for XXX. Her office is located at XXX, telephone number XXX.

If you have any questions regarding any of the above, please call XXX, Human Resources Director, at XXX.

**APPENDIX II-I: SAMPLE INTERVIEW DIRECTIVE TO WITNESS**

Date: May 29, 20XX  
To: Employee Name/Employee Classification  
From: Supervisor; Job Title  
Subject: **ADMINISTRATIVE INVESTIGATION**

On behalf of the County of Mariposa, I **[name of Investigator]** am conducting an investigation. You are not the focus employee in the investigation; however, it is believed that you may have information that is pertinent.

I am hereby directing you to cooperate with the investigation and supply any information you might have to me including answering the questions asked of you accurately, completely and truthfully. Your investigative interview will take place on **[Date/Time]** at **[Place]**. Your interview will be recorded. You have the right to bring your own recording device and record any and all aspects of the interview.

[TO BE USED AS NECESSARY ON A CASE BY CASE BASIS]: To ensure a full, fair and effective investigation in this matter, and in order preserve public confidence in the County’s ability to operate effectively, during the pendency of the investigation, you are directed not to discuss this investigation or its subject matter with anyone other than the investigator, your union representatives and/ or legal counsel.

This order shall automatically be lifted at the conclusion of the investigation, when the need **(choose a justification for confidentiality (e.g.) for accurate collection of information from individuals involved in or who witnessed events / to safeguard against the destruction of evidence/ to prevent the fabrication of testimony/ to protect witnesses/to protect against a cover up)** will abate.

This order is not intended to prevent you from engaging in protected concerted activity under the Meyer-Milias-Brown Act or any of the County’s MOUs. You may continue to engage in protected concerted activity under the Act and the MOUs, including but not limited to discussing any other aspects of your employment and working conditions with others, including co-workers. If you are unsure whether discussing certain issues with others would violate this order, you are encouraged to consult with your union representatives and/or legal counsel, who may advise you, and to also contact the Human Resource Department with any questions.

I acknowledge, understand, and will comply with the above directives. I understand that failure to do so may result in discipline.

RECEIPT:

\_\_\_\_\_  
Employee’s Signature Date

**APPENDIX II-J: SAMPLE INTERVIEW DIRECTIVE TO ACCUSED (NON-SWORN)**

Date: May 29, 20XX

To: Employee Name  
Employee Classification

From: Supervisor; Job Title

Subject: **ADMINISTRATIVE INVESTIGATION**

On behalf of the County of Mariposa, [INSERT ONE: a representative from the Human Resources (HR) Department OR an outside investigator, [insert name of outside investigator],] is investigating allegations that you may have engaged in conduct that could be cause for discipline. The purpose of the investigation is fact-finding and no decisions will be made until all relevant facts are gathered and you are given an opportunity to explain your side of the story.

[Name of the Investigator] will be interviewing you. Your interview will take place on [insert date] at [insert time] at [insert location].]

As your supervisor, I am directing you to attend the interview and to answer the questions of [insert name of investigator] completely, and truthfully. You are entitled to representation at the interview but you must contact and arrange for a representative to attend with you. Your interview will be recorded. You have the right to bring your own recording device and record any and all aspects of the interview.

County employees are prohibited from engaging in retaliation. You shall not retaliate against any individual who you know or who you may reasonably anticipate will be a witness in this investigation, nor shall you attempt to influence any witness to this matter.

**[TO BE USED AS NECESSARY ON A CASE BY CASE BASIS]:** To ensure a full, fair and effective investigation in this matter, and in order preserve public confidence in the County's ability to operate effectively, during the pendency of the investigation, you are advised not to discuss this investigation, including the specific allegations of misconduct against you, with anyone other than the investigator, your union representatives and/ or legal counsel.

This order is not intended to prevent you from engaging in protected concerted activity under the Meyer-Milias-Brown Act. You may continue to engage in protected concerted activity under the Act, including but not limited to discussing any other aspects of your employment and working conditions with others, including co-workers. If you are unsure whether discussing certain issues with others would violate this order, you are encouraged to consult with your union representatives and/or legal counsel, who may advise you, and to also contact the Human Resources Department with any questions.

Your cooperation in this sensitive matter is required and appreciated. I acknowledge, understand, and will comply with the above directives. I understand that failure to do so may result in discipline.

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Employee's Signature

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Date

## APPENDIX II-K: SAMPLE INTERVIEW DIRECTIVE TO ACCUSED (SWORN)

Date: May 29, 20XX

To: Employee Name  
Employee Classification

From: Supervisor; Job Title

Subject: **ADMINISTRATIVE INVESTIGATION**

An administrative investigation is currently being conducted into the events that occurred on **[insert date]**. **[Give a brief description of the event(s) that prompted the investigation]**. You are ordered to report to **[insert location]** on **[insert date]** at **[insert time]** to answer questions relating to this administrative investigation. Failure to appear will be considered an act of insubordination and can be an independent basis for disciplinary action, up to and including dismissal.

This investigation is being conducted for the County by **[insert name of investigator]**. You are hereby ordered to cooperate fully with **[name of investigator]** and to answer [his or her] questions in a complete and truthful manner. You are further ordered to obey any lawful order given by **[name of investigator]** as though such order was coming from a superior in your chain of command within the County **[Sheriff's Department/Probation Department, etc.]** The following employees will also be present during the investigative interview: **[list by name and classification or assignment]**.

The investigative interview will be recorded. You will have access to the tape if any further proceedings are contemplated or prior to any further investigative interview at a subsequent time. You have the right to bring your own recording device and record any and all aspects of the investigative interview.

You have the right to be represented by a representative of your choice who may be present at all times during the investigative interview. This representative shall not be a person subject to the same investigation. Your representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from you while under investigation in non-criminal matters. You must provide me with one (1) working days' notice if you will be represented by legal counsel as we may then require counsel to also be present.

County employees are prohibited from engaging in retaliation. You shall not retaliate against any individual who you know or who you may reasonably anticipate will be a witness in this investigation, nor shall you attempt to influence any witness to this matter.

**[TO BE USED AS NECESSARY ON A CASE BY CASE BASIS:** To ensure a full, fair and effective investigation in this matter, and in order preserve public confidence in the County's ability to operate effectively during the pendency of the investigation, you are directed not to discuss this investigation, including the specific allegations of misconduct against you, with anyone other than the investigator, your union representatives and/ or legal counsel. This order shall automatically be lifted at the conclusion of the investigation, when the need **[insert justification, e.g., for accurate collection of information from individuals involved in or who witnessed events / to safeguard against the destruction of evidence/ to prevent the fabrication of testimony/ to protect witnesses/ to protect against a cover up]** will abate.

This order is not intended to prevent you from engaging in protected concerted activity under the Meyer-Milias-Brown Act. You may continue to engage in protected concerted activity under the Act, including but not limited to discussing any other aspects of your employment and working conditions with others, including co-workers. If you are unsure whether discussing certain issues with others would violate this order, you are encouraged to consult with your union representatives and/or legal counsel, who may advise you, and to also contact the Human Resources Department with any questions.

Your cooperation in this sensitive matter is required and appreciated.

I acknowledge, understand, and will comply with the above directives. I understand that failure to do so may result in discipline.

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Employee's Signature

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Date