

Instructions for *Skelly* Officer Review

Scope: Citywide

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Instructions for *Skelly* Officer Review (2007)

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I. Role of the *Skelly* Officer

In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 (*Skelly*), the California Supreme Court ruled that as part of due process, public employees are entitled to certain procedural safeguards before discipline is imposed against them.¹ These include: (1) notice of disciplinary action proposed to be taken; (2) a statement of the reasons for the disciplinary action; (3) a copy of the charges and materials upon which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing the discipline.

The function of the *Skelly* Officer is to:

1. Provide an objective review of the proposed discipline and the employee's response.
2. The *Skelly* Officer is responsible for evaluating whether there are reasonable grounds for believing that the employee engaged in the alleged misconduct and that the misconduct supports the proposed sanction or level of discipline.
3. The *Skelly* Officer then makes a recommendation as to whether the disciplinary action should be sustained, modified in some specified way, or revoked.
4. The *Skelly* Officer should not substitute their judgment with respect to the discipline to be imposed, but rather reach a conclusion as to whether there are reasonable grounds to justify the discipline proposed. As stated by the United States Supreme Court in *Cleveland Bd. Of Educ. v. Loudermill* (1985) 470 U.S. 532, 545-46 [84 L.Ed.2d 494]:

“[T]he pretermination hearing need not definitively resolve the propriety of the discharge. It should be an initial check against mistaken decisions -- essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.”

It is *not* the function of the *Skelly* Officer to conduct a full trial-type hearing of all of the evidence. This opportunity comes later, if the employee elects to challenge the action

¹ *Skelly* involved an employment termination of a permanent civil service employee. Subsequent decisions have extended the *Skelly* doctrine to lesser disciplinary actions. See e.g., *Ng v. California State Personnel Bd.* (1977) 68 Cal.App.3d 600, 606 (demotion). It applies to dismissals, demotions and suspensions, but not to so-called “informal discipline,” such as reprimands, warning letters or oral warnings (It also does not apply to probationary employees or MPP employees, because they do not have a property interest in continued employment, unless the employment action is based on conduct which stigmatizes reputation, seriously impairs the opportunity to earn a living, or seriously damages standing in the community. *Lubey v. City and County of S.F.* (1979) 98 Cal.App.3d 340, 345-46.

taken.

II. Impartiality of the *Skelly* Officer

The *Skelly* Officer must be impartial.² This does not necessarily mean that they must be totally unfamiliar with all of the facts and persons involved in the case, but rather that they be “reasonably impartial and uninvolved.”³ Obviously, the further removed an individual is from the circumstances giving rise to the case, the less likely there will be any perception of potential bias.

The legal standard of impartiality requires that the person not have a stake in the outcome i.e., they cannot be a potential witness; have had a role in initially recommending or investigating the discipline; or for other reasons be personally embroiled in the dispute.⁴ It is preferable if the *Skelly* Officer is not in the department or division bringing the action and has had some training as to their appropriate function. The selection of the *Skelly* Officer can be made by persons who themselves would be inappropriate to serve in that role, including the supervisor who made the initial decision to discipline.⁵

III. Beginning the Process

The employee has a limited period of time to respond to the initial charges. Employees have seven (7) calendar days⁶ to either request a meeting or submit a written response.

Calculation of the response time commences the first day after the notice is served. If the Notice of Discipline was mailed to the employee, and not personally served, seven (7) additional calendar days are added to the response time.

City recognized holidays and federal holidays are excluded from the response time calculation.

Depending on the seriousness and complexity of the charges, reasonable requests for extensions of the time to respond may be entertained by the *Skelly* Officer. The *Skelly* Officer has discretion to review materials submitted by an employee after the time

² *Skelly v. State Personnel Board*, *supra*, 15 Cal. 3d 194, 208.

³ *Linney v. Turpen* (1996) 42 Cal.App.4th 763, 772-73; *Burrell v. City of Los Angeles* (1989) 209 Cal.App.3d 568, 578-9; *Titus v. Los Angeles County Civ. Serv. Com'n* (1982) 130 Cal.App.3d 357.

⁴ *Taylor v. Hayes* (1974) 418 U.S. 488, 501-03 [41 L.Ed.2d 817]; *Williams v. County of Los Angeles* (1978) 22 Cal.3d 731, 736; *Civil Serv. v. San Francisco Redevelopment* (1985) 166 Cal.App.3d 1222, 1227; *Mennig v. City Council of Culver City* (1979) 86 Cal.App.3d 341; *Anthony G. Gough* (1993) SPB Dec. No. 93-26.

⁵ *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1810.

⁶ As established by administrative practice within the City of Sacramento.

established for their response.

If the employee requests a *Skelly* review but does not submit a formal response or attend the meeting, the *Skelly* Officer should still review of the materials provided by management.

IV. The Review

The *Skelly* Officer has the responsibility to read the notice of discipline, the materials upon which it is based, and any response submitted by the employee. If the employee chooses to make an oral response, the *Skelly* Officer must make that opportunity available to them. Review of the written materials should occur before any meeting with the employee. At the commencement of the meeting and consistent with the description in Section 1 above, the *Skelly* Officer should outline their role and the limited scope of their authority to the employee.

In most cases, a meeting with the employee is all that is required to complete a *Skelly* review. In a very few cases, the information presented in the *Skelly* review may require some corroboration. In those rare instances, the *Skelly* Officer may speak with others, or review additional written information. The *Skelly* Officer must be extremely careful not to go beyond the initial information presented in the *Skelly* review which the employee has had an opportunity to confront.

The employee is entitled to have one (1) representative when they meet with the *Skelly* Officer. The employee's representative may be a person of their choosing (e.g., a union representative; an attorney; or a spouse, partner, or other trusted individual). If the employee is accompanied by any representative, the *Skelly* Officer should make clear that they are there to hear from the employee, and not other people whose purpose in attendance is to provide support. Support persons in addition to the employee's one (1) representative, may only attend with the *Skelly* Officer's consent. Since additional people can be distracting and/or create confusion, their involvement is generally discouraged.

In addition to the *Skelly* Officer, the City may have one representative at the hearing to listen, respond to procedural questions, or take notes for the *Skelly* Officer. The role of the City representative should be limited as stated here, and should be impartial as stated earlier in the selection of the *Skelly* officer.

A formal representative from management is not required given the limited role of the *Skelly* Officer.

V. The Report

After completing the review, the *Skelly* Officer may submit a written report to Labor Relations and the manager/supervisor who will make the final decision (who may or may not be the same person who signed the notice of discipline). The report should describe

the charges, what was done in the course of the review, and the reasons for the *Skelly* Officer's conclusion. The *Skelly* Officer should not substitute their judgment with respect to the discipline to be imposed, but rather reach a conclusion as to whether there are reasonable grounds to proceed with the proposed discipline, or whether it should be modified or revoked. If the employee submitted anything in writing during the review process, it should be attached. If the employee made any oral response, it should be summarized in the report. The *Skelly* Officer's conclusion should be stated in the form of a recommendation to the manager/supervisor proposing the discipline. The *Skelly* Officer should submit the report to Labor Relations and the manager or their designee within a reasonable time after the meeting, receipt of a written response from the employee or completion of the *Skelly* Officer's review.

VI. Questions

These instructions set out the basic parameters of the *Skelly* review process. Each case is unique and may present issues which are not covered by these general instructions. City staff in the Office of Labor Relations are always available to respond to questions about the *Skelly* review process as it applies to a particular set of facts.