

INSTRUCTIONS FOR *SKELLY* OFFICER REVIEW



This work is adapted from similar Instructions developed by the California State University Office of General Counsel

INSTRUCTIONS FOR *SKELLY* OFFICERS

I.	ROLE OF THE <i>SKELLY</i> OFFICER	1
II.	IMPARTIALITY OF THE <i>SKELLY</i> OFFICER	2
III.	BEGINNING THE PROCESS	3
IV.	THE REVIEW	4
V.	THE REPORT	5
VI.	QUESTIONS	6

INSTRUCTIONS FOR SKELLY OFFICERS

I.

ROLE OF THE SKELLY OFFICER

In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, the California Supreme Court ruled that as a part of due process, public employees are entitled to certain procedural safeguards *before* discipline is imposed against them.¹ These include: (1) notice of the disciplinary action proposed to be taken; (2) a statement of the reasons therefor; (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 provide an objective review of the proposed discipline and the employee's response. 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. The *Skelly* Officer then makes a recommendation as to whether the disciplinary action should be sustained, modified in some specified way, or revoked. The *Skelly* Officer should not substitute his/her 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]:

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.

“[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 taken.

II.

IMPARTIALITY OF THE *SKELLY* OFFICER

The *Skelly* Officer must be impartial.² This does not necessarily mean that he/she must be totally unfamiliar with all of the facts and persons involved in the case, but rather that he/she 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., he/she cannot be a potential witness; have had a role in initially recommending or investigating the discipline; or for other reasons be personally

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, 578-79; *Titus v. Los Angeles County Civ. Serv. Com'n* (1982) 130 Cal.App.3d 357.

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 his/her 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 five days to respond by either requesting a meeting or submitting a written response.⁶ The response time is calculated beginning with the first day after the notice is served on the employee and ending on the first day after the allotted time has elapsed. Saturdays, Sundays and other non-business days when the applicable department is closed are not included in the calculation of time. If the Notice of Discipline was sent to the employee by mail, rather than handed to him/her personally, five days are added to the applicable response times.

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 as to whether to receive or review materials submitted by an employee after the time established for his/her response.

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 City 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.

⁶As established by administrative practice within the CSU.

If the employee requests a *Skelly* review, but does not then submit any formal response or request or attend a meeting, the *Skelly* Officer should still complete a 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 for him/her. Review of the written materials should occur before any meeting with the employee. It is helpful for the *Skelly* Officer to outline his/her role, and the limited scope of his/her authority, to the employee at the hearing, consistent with the description in section I above.

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. But 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* representative when he/she meets with the *Skelly* Officer, if he/she chooses. Other persons to support the employee may only attend if the *Skelly* Officer consents. Since additional persons can be distracting and/or create confusion, their involvement is generally discouraged. The employee's representative may be a union representative or an attorney. In either case, formal representative of management is not required given the limited role of the *Skelly* Officer. If the employee

is accompanied by any representative, the *Skelly* Officer should make clear that he/she is there to hear from the employee, and *not* other persons whose purpose in attendance is to provide support.

The City may have *one* representative at the hearing to listen, respond to procedural questions or take notes for the *Skelly* Officer at his/her request. 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.

V.

THE REPORT

After completing the review, the *Skelly* Officer may submit a written report to 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 his/her 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 the manager or his/her 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 is always available to respond to questions about the *Skelly* review process as it applies to a particular set of facts.