County of Los Angeles
Department of Human Resources
POLICIES, PROCEDURES, AND GUIDELINES

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DUE PROCESS or "*SKELLY*" MEETINGS	Effective Date: October 15, 2008	
	Approved By:	

PURPOSE

This policy is established to provide general guidance for management regarding due process procedures for discharges, reductions or demotions, suspensions greater than five (5) days, and medical releases of classified permanent County employees.

BACKGROUND

In 1975, the California Supreme Court ruled in *Skelly v. State Personnel Board ("Skelly")* that in order to satisfy due process requirements, a public entity considering disciplinary action against a public employee holding a "property" interest in his or her employment (i.e., requiring cause for removal) must give the employee certain procedural rights before the discipline becomes effective. These "pre-removal safeguards" most commonly referred to as due process, must include notice that informs the employee of the disciplinary charges against him or her and the reasons for the action, access to the materials on which the charges are based, and an opportunity to respond to the charges *before* disciplinary action is taken.

Skelly-type due process procedures have since been incorporated by the Board of Supervisors into the County's Civil Service Rules. In addition to *Skelly* and the County's Civil Service Rules, California law has established specific statutory requirements for public safety officers which may differ from the procedural rights of non-safety employees. Departments which employ public safety officers (e.g., Sheriff, Fire, District Attorney, etc.) should ensure that the additional requirements of the Peace Officer's Bill of Rights and Firefighter's Procedural Bill of Rights are met.

POLICY

The County of Los Angeles will ensure that classified permanent employees are provided due process safeguards consistent with the *Skelly* decision, guiding case law, and the County's Civil Service Rules.

SCOPE

This procedure applies to all permanent Los Angeles County Civil Service employees in the classified service. Non-permanent employees are not subject to the procedures detailed within this document.

A. **Discipline.** Skelly procedural safeguards shall be followed before an employee holding permanent status in the County's classified service may be disciplined by means of a discharge, demotion or reduction, or suspension greater than five (5) days. (See Civil Service Rules 18.01 and 18.02)

B. **Medical Release**. It is recommended that *Skelly-type* procedural safeguards should be followed before an employee holding permanent status in the County's classified service may be involuntarily released for medical reasons. (See Civil Service Rule 9.08)

C. **Suspension Pending Judgment of a Criminal Conviction or Acquittal.** Civil Service Rule 18.01 permits an employee holding permanent status to be suspended without pay for more than thirty (30) days pending the judgment of a conviction or acquittal in a criminal proceeding. The law regarding preremoval safeguards for these types of suspensions is evolving. It is recommended that *Skelly-type* preremoval procedures be followed before the suspension is imposed.

D. **Oral Suspension**. Circumstances may arise which will require the immediate suspension of a permanent employee to prevent harm to the County or to the public. If a permanent employee is orally suspended without pay (either for disciplinary reasons, pending an investigation, or pending judgment of a conviction or acquittal) in excess of five (5) days, the reason(s) for the suspension shall be *forthwith* furnished in writing to the employee, and the employee shall be entitled to answer, explain, or deny the charges in writing within ten (10) business days. Additionally, the procedural safeguards listed below shall be followed on a post-suspension basis. (See Civil Service Rules 18.01.A and 18.01.B)

GUIDELINES

1. Before the *Skelly* meeting and prior to imposing the action, the employee has a right to the following:

   a) a copy of the written notice of the proposed action (i.e., Letter of Intent) which includes a statement concerning the proposed action, the specific grounds for the proposed action, and the particular reasons and facts upon which the action is based;

   b) access to and copies of the materials upon which the Decision Maker relied on for the proposed action;

   c) the opportunity to respond either orally or in writing to the proposed action; and

   d) the opportunity to respond to the proposed action within a timely and reasonable timeframe, not to exceed ten (10) business days. (See Civil Service Rules 18.01 and 18.02)

2. If an employee responds either orally or in writing to the proposed action, the following typically occurs during the *Skelly* meeting:

   a) The employee may choose to have a representative at the meeting.

b) The Skelly officer's role is to listen and to consider the information presented by the employee. The Skelly officer should be reasonably impartial, non-involved, and possess the authority to recommend a final disposition of the matter.

c) The employee is given the opportunity to present his or her side of the controversy.

3. Full consideration is to be given to the information presented by the employee or in the absence of information presented:

   The *Skelly* officer should be authorized to recommend to the final decision maker, whether the proposed action should be imposed, modified or rescinded, and whether or not the level of discipline is appropriate.

SUSPENSIONS OF ONE (1) TO FIVE (5) DAYS

Departments are not required to provide *Skelly* meetings in suspensions of five (5) days or less.

The California Supreme Court held in *Civil Service Assn., Local 400 v. City & County of San Francisco,* that, "... although a property right was involved and due process was applicable, punitive action, consisting of suspensions of five days or less, imposed upon civil service employees of city and county were minor actions not requiring pre-disciplinary action procedures of kind required by *Skelly* decision."

- If an employee wishes to exercise a non-*Skelly* due process right, the employee may file a grievance in compliance with the applicable MOUs; and/or,

- The employee may appeal the action to the Department of Human Resources (DHR), Appeals Unit. (See Civil Service Rule 18.01.C)

CONSEQUENCE OF *SKELLY* VIOLATIONS

In discharge cases, where a violation of *Skelly* has been determined at the conclusion of a Civil Service Commission hearing, back pay can be awarded to the employee. The back pay is calculated for the period of time from the effective date of the discharge until the date the Civil Service Commission renders its final decision. (See *Barber)*

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[1] In the recent 2007 case *Flippin v. Los Angeles City Board of Civil Service Commissioners,* the court held that the *Skelly* officer may hold the dual role of initiating the disciplinary proceeding and presiding over the *Skelly* meeting. However, the court noted that there needs to be additional layers of administrative review to retain impartiality. (See *Flippin*)

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AUTHORITY/SOURCE DOCUMENTS

- *Los Angeles County Civil Service Rule 18*
- *Skelly vs. State Personnel Board* (1975) 15 Cal.3d 194
- *Civil Service Assn., Local 400 v. City & County of San Francisco* (1978) 22 Cal.3d 552
- *Flippin v. Los Angeles City Board of Civil Service Commissioners* (2007) 148 Cal.App.4th 272
- *Titus v. Civil Service Commission* 130 Cal.App.3d 357
- *Williams v. County of Los Angeles* (1978) 22 Cal.3d 731
- *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264
- *Barber v. State Personnel Bd.* (1976) 18 C.3d 395
- *Due Process Rights for Peace Officers and Fire Fighters should conform to the Peace Officer's Bill of Rights or the Fire Fighter's Procedural Bill of Rights as found in Government Codes 3300-3312 and 3250-3261, respectively.*

DATE ISSUED/REVIEW DATE

Original Issue Date: October 15, 2008
Review Date: May 22, 2015

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Attachment

METHOD 1

A.) Letter of Intent	Signed by Human Resources or Employee Relations Manager
B.) *Skelly* Officer	Equal to or Higher Level Manager than signer of Letter of Intent
C.) Final Letter	Signed by the same Higher Level Manager that served as Skelly Officer

METHOD 2

A) Letter of Intent	Signed by Higher Level Manager - Other than Human Resources or Employee Relations
B) *Skelly* Officer	Equal to or Higher Level Manager than signer of Letter of Intent
C) Final Letter	Signed by same High Level Manager that signed Letter of Intent

METHOD 3

A.) Letter of Intent	Signed by Human Resources or Employee Relations Manager
B.) *Skelly* Officer	Equal to or Higher Level Manager than signer of Letter of Intent
C.) Final Letter	Signed by other Higher Level Manager - Not Manager that served as Skelly Officer