

1.0 PURPOSE

1.1 Like all organizations, the county requires order, discipline, and conscientious work performance to succeed and to promote efficiency, productivity, and cooperation among its employees. County employees are required to abide by certain rules and maintain appropriate performance levels and standards of conduct. These rules have been established to protect employees and the county from injury or other threats to its employees' well-being, as well as promote harmonious, efficient working practices. Failure to observe established rules and practices can lead to disciplinary action. The specific disciplinary action will normally be based on an assessment of the facts, the circumstances and the employee's previous record.

2.0 POLICY

2.1 For the purposes of this policy, discipline shall be defined as: (1) a temporary reduction in pay, not to exceed twelve pay periods; (2) a suspension not to exceed thirty days; (3) demotion; or (4) dismissal.

2.2 Causes for which an employee can be disciplined include:

- a) Inexcusable neglect of duty.
- b) Harassing an employee because of membership in a protected group, including but not limited to sexual harassment.
- c) Abusive, disrespectful, offensive, discourteous language or behavior directed at other county employees, which reasonably can be construed as intended to cause emotional distress, including nondiscriminatory "workplace bullying."
- d) Actual or threatened physical violence towards another person.
- e) Dishonesty.
- f) Working overtime repeatedly without a supervisor's approval.
- g) Driving a vehicle on county time without devoting full attention to driving, which can include but is not limited to eating, drinking, applying makeup, reading a map, or talking on the phone. Employees are expected to pull to the side of the road for such activities.
- h) Excessive unauthorized absenteeism, tardiness or other attendance problems.
- i) Unauthorized uses of county property.
- j) Intentional or repeated violations of safety rules.

- k) Possession or use of dangerous or unauthorized materials, such as explosives, firearms, or other similar items, while on county property, while on duty, or while operating a vehicle leased or owned by the county.
- l) Possession, distribution, sale, use, or being under the influence of alcoholic beverages or illegal drugs while on county property, while on duty, or while operating a vehicle leased or owned by the county.
- m) Smoking in restricted areas or where nonsmoking signs are posted.
- n) Conduct disrupting county activities.
- o) Excessive personal use of the telephone while on duty.
- p) Theft or unauthorized removal or possession of property from county, fellow employees, constituents, or anyone on county property.
- q) Insubordination or refusing to follow instructions.
- r) Unsatisfactory performance, including quantity and quality of work product.
- s) Violating a confidence placed with the employee in association with his/her job.
- t) Conviction of a felony bearing a reasonable relationship to the employee's position. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of felony is deemed to be a conviction within the meaning of this provision.
- u) Failure of an employee who is or has become a relative/spouse of another employee within the same department to disclose the relationship in writing to the appointing authority.
- v) Refusal to take and subscribe any oath or affirmation which is required by or in connection with his/her employment.
- w) Engaging in any outside employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with or inimical to his/her duties as a county officer or employee or with the duties, functions, or responsibilities of the appointing authority.
- x) Using for private gain or advantage county time, facilities, equipment or supplies or his/her badge, uniform, prestige or influence as a county officer or employee.

y) Accepting any reward, favor, or other form of remuneration for the performance or nonperformance of his/her job duties or anticipation of such performance or nonperformance of his/her job duties from any vendor, contractor, individual, and/or private or public organization.

z) Acquiring a financial interest in any new or existing business venture or business property at a time when the employee believes or has reason to believe that the business or property will be directly affected by his/her official duties.

aa) Inappropriate or disrespectful treatment of the public which we serve.

2.3 This is a partial list and is not intended to reflect all behavior for which discipline may occur, nor is the placement of a cause on the list indicative of the seriousness of the cause.

3.0 Procedure

3.1 Prior to suspending, demoting or dismissing (collectively referred to herein as “discipline” or “disciplined”) an employee, the appointing authority shall contact and discuss such action with the Human Resources Director, except:

a) Any employee who reports to work and based on objectively reasonable suspicion is believed to be under the influence of alcohol or illegal drugs will be transported home as medically unfit for duty and may use any accumulated leave s/he has to cover the absence from work.

b) Before being transported home, an employee who challenges the determination s/he is unfit will be provided an opportunity that day, as soon as possible, to establish the suspicion is unfounded by having his/her blood or urine tested at the Colusa County department of public health or other approved laboratory meeting United States Department of Transportation (“DOT”) standards. The laboratory shall perform the least intrusive test needed to determine the presence of alcohol/drugs in accordance with the protocol established by the United States Department of Transportation for drug/alcohol tests.

3.2 In the event the test is positive for drugs or alcohol:

a) The employee will be immediately suspended without pay for five days by his/her supervisor.

b) The employee may request a retest in accordance with the DOT protocol.

c) In the event the retest is negative, the employee will be reimbursed for all lost wages arising from suspension and their initial removal from work.

d) In the event the retest is positive, the five-day suspension will stand and the employee will be subject to further disciplinary action as discussed in sections 3.5 through 3.8 of this policy.

e) An employee who elects not to submit to a test waives his/her right to challenge the determination s/he was medically unfit for duty due to drugs or alcohol and will be subject to further disciplinary action as discussed in sections 3.5 through 3.8 of this policy.

- 3.3 An employee in the possession of unauthorized firearms or explosives shall be immediately suspended without pay for five days by his/her supervisor subject to further disciplinary action as discussed in sections 3.5 through 3.8 of this policy.
- 3.4 After consultation between the appointing authority and the Human Resources Director, the Human Resources Director may direct that an employee be placed on administrative leave with pay status pending the results of an investigation into the alleged misconduct for no more than twenty work days. The Human Resources Director may extend the administrative leave for good cause.
- 3.5 If, following discussion and/or investigation, the appointing authority concludes that discipline, as defined in section 2.1 of this policy, is appropriate, the appointing authority or his/her designee shall immediately provide a notice of intent to discipline to the affected employee. At a minimum, the notice of intent to discipline shall include a statement of the proposed discipline, the facts and circumstances giving rise to the discipline, the specific cause(s) for the discipline as defined in section 2.2 of this policy, all the materials upon which the proposed discipline is based, notice of the employee's right to respond before the discipline is implemented, and instructions for filing a pre-disciplinary response.
- 3.6 The notice of intent to discipline will be personally served on the employee by the appointing authority or his/her designee. If personal service upon the employee is impossible, a copy of the notice of intent to discipline will be sent by first-class mail to the employee at his/her last known address.
- 3.7 Subject to the limitations of this policy, an employee who receives a notice of intent to discipline may respond to the notice either orally or in writing or by both methods. An employee who wishes to respond must initiate the pre-disciplinary review process by contacting the personnel director within seven days after service of the notice of intent to discipline to schedule a meeting. In the alternative, an employee who does not wish to attend a pre-disciplinary meeting may submit a written response to the Human Resources Director within seven days after service of the notice of intent to discipline. If the affected employee does not contact the Human Resources Director within seven days after service of the notice of intent to discipline, the appointing authority may implement the proposed discipline.

- 3.8 Upon being contacted by an employee who has received a notice of intent to discipline, the Human Resources Director shall initiate the pre-disciplinary hearing process as follows: (1) the Human Resources Director will either serve as the pre-disciplinary hearing officer or will designate another person who was not involved in the development of the disciplinary recommendation to so serve; (2) either the Human Resources Director or designee will contact the affected employee within seven days to schedule a meeting at which the employee will be afforded the opportunity to make oral presentations and to present written materials; (3) in the alternative, the employee may waive the pre-disciplinary meeting and respond only in writing. However, upon reviewing written materials submitted by the employee, the Human Resources Director or designee may request that a meeting be scheduled; and, (4) following the pre-disciplinary meeting and/or the submission of written materials by the affected employee, the Human Resources Director or designee will prepare a written report which will be submitted to the appointing authority. At a minimum, this report will include a summary of the employee's presentation and copies of any materials submitted by the employee. The report may include the recommendations of the Human Resources Director or designee.
- 3.9 Upon receipt of the Human Resources Director's or designee's report the appointing authority may take whatever action he/she deems appropriate. Such action may include but is not limited to the following: additional investigation/inquiry; reduction of the discipline; or implementation of the noticed discipline. If the appointing authority decides to move forward with discipline, as defined in section 2.1, he/she will issue a notice of discipline to the affected employee. At a minimum, the notice of discipline shall include a statement of the discipline to be imposed, the facts and circumstances giving rise to the discipline, the specific cause(s) for the discipline as defined in section 2.2, notice of the employee's right to appeal and instructions for filing a timely appeal.
- 3.10 If, following the pre-disciplinary hearing process described in sections 3.7 and 3.8 of this policy, the appointing authority authorizes additional investigation/inquiry pursuant to section 3.9 of this policy, and the appointing authority still intends to implement discipline pursuant to section 3.5 of this policy, an amended notice of intent to discipline will be issued. In addition to the content required by section 3.5 of this policy, the amended notice of intent to discipline will detail the results of the additional investigation/inquiry. An employee who receives an amended notice of intent to discipline may reinitiate the pre-disciplinary hearing process pursuant to section 3.7 of this policy.
- 3.11 At any time during the pre-disciplinary process, the parties may seek to identify a mutually acceptable alternative to the originally noticed disciplinary action. If mutual agreement is reached, the details of the agreement will be reduced to writing and will be signed by the appointing authority, the affected employee and, if the employee is represented, the employee's representative.

- 3.12 The employee's right to representation shall apply throughout pre-disciplinary proceedings. Except for the signing of an agreement reached pursuant to section 3.11 of this policy, any privileges extended to or obligations placed upon the employee during the pre-disciplinary process may be exercised on the employee's behalf by his/her designated representative.
- 3.13 An employee who receives a notice of discipline issued pursuant to section 3.9 of this policy may appeal the disciplinary action to the Board of supervisors by filing a written notice of appeal addressed to the Human Resources Director within seven days following service of the notice of discipline. The timely filing of an appeal does not stay the disciplinary action. In the absence of a timely filed appeal, the disciplinary action will be final.
- 3.14 Within five days following receipt of the appeal, the Human Resources Director will request a list of five hearing officers from the state agency providing such services.
- 3.15 Immediately upon receipt of the list of potential hearing officers, the Human Resources Director will coordinate the scheduling of a meeting of the parties, which may be held telephonically. The purpose of the meeting will be to select a hearing officer.
- 3.16 First, the parties will attempt to mutually agree to a hearing officer, whose name need not appear on the list provided.
- 3.17 If unable to mutually agree, the parties will select the hearing officer by alternately striking names from the list until only one name remains, with the first to strike to be determined by lot.
- 3.18 Upon selection, the hearing officer will coordinate the scheduling of the appeal hearing which will be conducted in accordance with California Government Code Policy [11513](#). Normally, the hearing officer will schedule the hearing to begin within thirty days of his/her selection. If the hearing officer is not available to begin the hearing within forty-five days of his/her selection, either party to the appeal may reinitiate the selection process described in section 3.15 of this policy.
- 3.19 The burden of proof shall be assigned to the county. The standard of proof shall be a preponderance of the evidence.
- 3.20 At the conclusion of the hearing, the hearing officer will take the matter under submission. Within thirty days following the close of the hearing, the hearing officer will submit a written report to the Board of supervisors which shall be advisory only. The hearing officer's report shall include findings of fact and recommendations.

- 3.21 The hearing officer will cause his written report and a complete record of the hearing to be delivered to the Clerk of the Board with copies delivered to the parties to the appeal, county counsel and the personnel director.
- 3.22 Upon receipt of the hearing officer's advisory report and the record of the hearing, the matter will be placed on the Board's agenda as a closed session item for discussion at its first regular meeting following receipt of the materials. The Board will take the matter under advisement.
- 3.23 Within forty-five days of the closed session, the Board will issue its decision, which shall be in writing and will be delivered to the parties to the appeal, county counsel, the personnel director and the appropriate appointing authority.
- 3.24 The Board's decision may be based on the hearing officer's findings and recommendations, or may be based on the Board's independent review of the record, including the transcript of the proceeding, or may be based on a combination of both.
- 3.25 In response to the appeal and consistent with its findings of fact, the Board may uphold, modify or overturn the discipline.
- 3.26 Copies of the Board's written decision will be provided to all interested parties, including but not limited to the parties to the appeal, county counsel, the personnel director, the appropriate appointing authority, and the employee's recognized exclusive employee organization.
- 3.27 If the Board's decision is to do anything other than adopt the hearing officer's findings of fact and recommendation, the decision will be issued as a tentative ruling. The parties to the appeal may, within ten days of receipt of the tentative ruling, file written comments which will be considered by the Board in closed session at its next regularly scheduled meeting. A copy of comments to be filed with the Board will be provided to the opposing party at least five days before the close of the ten-day filing period. In response to written comments received, the Board may:
- a) Issue a modified decision which shall be final upon distribution; or
 - b) Take no action, in which case the Board's tentative ruling shall become final upon redistribution as the Board's decision.
- 3.28 If no written comments are filed pursuant to section 3.27 of this policy, the Board's tentative ruling will be final with no need for further action by the Board.
- 3.29 At the conclusion of the appeal process, the matter will be referred back to the Human Resources Director, who shall certify that the Board's decision has been

finalized pursuant to the provisions of sections 3.27 through 3.25 of this policy and who shall coordinate implementation of the Board's decision.

- 3.30 All of the records in an appeal shall be remanded to the Clerk of the Board for filing.
- 3.31 Except as may otherwise be specified or mutually agreed upon, all costs of representation and participation in the proceedings shall be borne by the party incurring the cost.
- 3.32 The disciplinary procedures described in this policy shall be adhered to in all instances where discipline is contemplated and/or administered for all employees except:
- a) Appointed department heads, who are at-will employees and who serve at the pleasure of the Board, may be disciplined without cause and with no right to appeal. Appointed department heads will be provided a minimum of two weeks' notice before termination.
 - b) The Agricultural Commissioner, County Counsel and Sealer of Weights and Measures may be disciplined pursuant to the terms of their contracts and/or State Code.
 - c) A Deputy County Counsel is an at-will employee who serves at the pleasure of the County Counsel and may be disciplined without cause and with no right to appeal. A Deputy County Counsel shall be provided a minimum of two weeks' notice before termination.
 - d) First-time elected department heads within the first six months of office may remove incumbent assistant department heads and a chief deputy or Undersheriff, who will have no right of appeal. Any employee displaced by this provision may assume his/her former position with the county if the position continues to exist and s/he has seniority over the incumbent or such other open position within county service for which s/he is qualified and has seniority.
- 3.33 Nothing in this policy is intended to deprive any employee of any right s/he has at law.
- 3.34 For those employees who are covered by the Peace Officers' Procedural Bill of Rights Act, nothing in this policy will be interpreted, administered or applied inconsistent with the requirements of the Act.