# TABLE OF CONTENTS

**CHAPTER 1  INTRODUCTION**

DISTINCTION BETWEEN REGULAR, LIMITED-TERM, EXTRA HELP AND PROBATIONARY EMPLOYEES ................................................. 1

- Regular Employee ........................................................................ 2
- Limited-Term Employee .............................................................. 2
- New Hire Probationary Employee ................................................. 2
- Extra Help Employee .................................................................. 2

PROGRESSIVE DISCIPLINE .................................................................... 3

SOME IMPORTANT POINTS .................................................................. 4

**CHAPTER 2  ROLES OF KEY PARTICIPANTS** ........................................ 5

- ROLE OF THE EMPLOYEE .............................................................. 5
- ROLE OF THE SUPERVISOR ........................................................... 5
- ROLE OF THE DEPARTMENT MANAGEMENT ................................. 5
- ROLE OF DEPARTMENTAL HUMAN RESOURCE TEAM ..................... 6
- ROLE OF THE UNION ..................................................................... 6

**CHAPTER 3  PREVENTION** ................................................................. 7

- SET CLEAR EXPECTATIONS ............................................................. 7
- CREATE A SAFE AND EFFICIENT WORKING ENVIRONMENT ............ 7
- PROVIDE ADEQUATE TRAINING ..................................................... 8
  - Orientation .............................................................................. 9
  - Desk Procedures ................................................................. 9
  - Individual Policy Manuals ...................................................... 9
  - Staff Meetings ..................................................................... 9
  - On the Job Training ............................................................ 9

**CHAPTER 4  ADDRESSING PERFORMANCE ISSUES** .......................... 10

- PROVIDE NOTICE TO EMPLOYEES WHEN EXPECTATIONS ARE NOT MET ............................................................................. 10
- WRITTEN NOTICE ........................................................................ 11
  - Memo of Expectations .......................................................... 11
  - Corrective Counseling Confirmation Memo ............................... 11
  - Improvement Plan/Corrective Action Plan ................................. 11

**CHAPTER 5  CAUSES FOR DISCIPLINE** ........................................... 13

- “CAUSE” DEFINED ........................................................................ 13
- DISCIPLINE WITH CAUSE ............................................................. 13
- REMOVAL FROM POSITION WITHOUT CAUSE ............................ 13
- THE SEVEN ELEMENTS OF JUST CAUSE ...................................... 13
- SPECIFIC CAUSES FOR DISCIPLINE ............................................... 14
  - Providing False Information/Dishonesty ...................................... 15
  - Incompetence .......................................................................... 15
  - Inefficiency or negligence ......................................................... 15
  - Neglect of duty ....................................................................... 15
  - Insubordination ...................................................................... 15
  - Violation of Conduct or Departmental Policies .......................... 15
  - Excessive Absenteeism or Tardiness .......................................... 15
  - Conviction of felony, misdemeanor, or offense ......................... 16
  - Discourteous treatment of the public or other employees .......... 16
  - Making a material misrepresentation to obtain or maintain employment .................................................. 16
  - Conduct which adversely affects the employee’s job performance or operation of the department in which they are employed .................................................. 16
  - Failure to maintain the license, registration, certificate, professional qualifications, education, or eligibility .......... 16
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>The Disciplinary Process</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Written Reprimand</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Suspension or Termination</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Disciplinary Reduction</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Assessing the Level of Potential Discipline</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>&quot;Due Process&quot; Requirements</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Notice of Proposed Discipline and Supporting Documentation</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Opportunity to Respond Prior to Implementation of Discipline (&quot;Skelly Right&quot;)</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Employee Appeal Rights</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Written Reprimand</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Suspension or Discharge</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Supervisor or Manager as Witness</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Burden of Proof</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Potential Employee Defenses</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Condoned Behavior</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Disparate Treatment</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Forgiveness</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Too Severe</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Conspiracy</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>Retaliation</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>Lack of Training</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>Past Work History</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>Reasons Disciplinary Actions are Sustained or Reversed</td>
<td>22</td>
</tr>
<tr>
<td>7</td>
<td>Conclusion</td>
<td>23</td>
</tr>
</tbody>
</table>
This Disciplinary Process Manual is intended to set forth guidelines for supervisors and managers in the disciplinary process. The guidelines contained herein cannot address every situation that may arise within the employee relations context and decisions regarding any employee should be made based on individual circumstances. Therefore, supervisors and managers should consult with their departmental Human Resources Team regarding performance and disciplinary issues.

CHAPTER 1 INTRODUCTION

The responsibility for improvement of performance is shared between the supervisor and the employee and extends up the management ladder of every department in the County. It is one of the most important responsibilities assigned to a supervisor. The role of a supervisor or a manager is that of a mentor: teaching and coaching the employee how to perform in a satisfactory and acceptable manner on the job. The employee’s responsibility is to fully participate in the process and to accept responsibility for his/her performance and behavior. Despite supervisory efforts, the employee must ultimately make the decision whether or not to perform according to standards. Throughout the counseling process the employee should understand that the supervisor honestly desires his/her improvement and is willing to provide the needed training and assistance. At the same time, the employee must be aware that he/she has been given a fixed period of time in which to improve, and in the event he/she cannot or will not improve, the employee will be subject to disciplinary action. The supervisor should focus on the required performance and standards of the job and the observed behaviors that the employee is demonstrating that do not meet those standards. By taking this approach, the discussions with the employee will be directed towards the “facts” and not the personalities of the individuals involved.

It is the supervisor’s skill, talent, and knowledge of the “tools of supervision” which lead, direct, train, counsel, evaluate, and assist an employee to achieve successful performance. However, on occasion there will be some employees that do not perform at the required standard of performance and will require further action by the supervisor. As will be described in more detail later, the supervisor, through regular performance discussions with the employee, coaches and counsels the employee regarding areas of performance that need improvement and ways that the supervisor can assist the employee in meeting job expectations. It is the responsibility of the supervisor to address any performance issues with an employee as they arise and not wait until they become a larger issue. If the employee is unable to meet the job expectations of their position despite these non-disciplinary efforts by the supervisor, there are disciplinary measures outlined in each respective Memorandum of Understanding (MOU) which can be utilized as a corrective action in an attempt to have the employee meet the standards and expectations of their position.

The primary purpose of discipline is not to punish, but to teach an individual that they need to behave or perform in an acceptable manner. When it comes to taking disciplinary action including a written reprimand, suspension or discharge, the action is taken by the department, but usually involves action initiated by the supervisor.
and reviewed with upper level management and departmental Human Resources. The supervisor’s actions lay the foundation for any attempts to try and correct or improve the performance of the employee. If the foundation is strong, the disciplinary action can stand up to the scrutiny of the appeals process outlined in each MOU. Given the above, the role of the first line supervisor from coaching, counseling, and performance review through disciplinary action is critical to a successful outcome.

**DISTINCTION BETWEEN REGULAR, LIMITED-TERM, EXTRA HELP AND PROBATIONARY EMPLOYEES**

The discipline process being discussed only applies to employees that are appointed to a regular or limited-term position. Disciplinary action generally does not apply to employees who are in extra help, probationary or at-will positions, as they do not share the same rights as regular or limited-term employees. The definitions below will help make this distinction.

**Regular Employee**: An employee who is appointed to a regular position in the County and is not currently serving a probationary period.

**Limited-Term Employee**: An employee who is not currently serving a probationary period and is appointed to a position that the County has determined has no anticipated long-range funding or has uncertain future funding.

**New Hire Probationary Employee**: An employee appointed to a regular or limited-term position that has not yet completed his/her probationary period. A probationary employee is really in the process of completing the last part of the hiring selection process prior to obtaining regular status and serves at the pleasure of the County. This is the supervisor’s opportunity to review the employee’s work and make a very important decision – should the employee obtain regular status?

**Extra Help Employee**: An employee that is employed in an extra help position that will last no longer than twelve months. This type of position is intended to cover seasonal workloads, emergency workloads of limited duration, vacation relief, etc. Extra help employees serve at the pleasure of the County and do not hold regular status.

A new hire probationary employee may be released at any time without notice or warning, but will officially be notified in writing of the probationary release. Please consult with the departmental HR Team when preparing the notice. An employee released during their new hire probationary period has no internal appeal rights, unless there is a claim of discrimination. An employee serving their promotional probationary period typically must be given a performance evaluation (see applicable MOU for guidance) prior to being released from the promotional position. An employee that fails to complete their promotional probationary period typically has the right to file an appeal under their MOU for this action and the right to return to their former position in most instances. The supervisor should consult with the departmental HR Team prior to failing an employee during the promotional probationary period.

One of the best ways to avoid disciplinary problems is to closely monitor an employee during the probationary period and if problems such as performance,
behavior, attitude, ability to work cooperatively with others, or attendance arise then
RELEASE THE EMPLOYEE ON PROBATION. All too often a regular employee
who is being disciplined should have been released on probation because there
were documented reasons for rejecting him/her, but it was not done.

When dealing with probationary employees:
- The probationary period is an extension of the hiring process.
- Make performance expectations clear.
- Provide opportunities for the employee to demonstrate their ability.
- Discuss with the employee any areas that need improvement.
- Assess whether the employee has the skills to do the job.
- Determine if there is a problem with attendance or attitude. If there is, release
  the employee on probation. The department does not have to wait until the end
  of the probationary period.
- If an employee does not meet performance standards, release him/her on
  probation.

Except in rare circumstances, a probationary period will not be extended. If the
supervisor has doubts, release the employee on probation. The supervisor must be
aware of when an employee’s probationary period ends – most probationary periods
are six months or twelve months. If an employee is not released during the
probationary period, the employee then has regular status. Do not wait until the last
minute to release an employee if they are not meeting performance expectations.

PROGRESSIVE DISCIPLINE
The concept of “progressive discipline” is followed in the County to deal with
performance problems and misconduct, though there are times that the conduct is
egregious enough to warrant immediate dismissal. However, most disciplinary action
“progresses” from non-disciplinary measures such as performance discussions and
counseling/coaching, to disciplinary action under the concept of progressive
discipline. Depending on the severity of the behavior, an employee may
receive discipline at a more advanced step of the disciplinary process. It is
important to remember that for progressive discipline to have a strong foundation,
on-going issues must be communicated to the employee and documented in
meeting notes, memos and performance evaluations. Contact the departmental
Human Resources Team to discuss any potential discipline.

Minor deficiencies might be corrected with an informal communication with the
employee. Some deficiencies, such as an emerging pattern of poor attendance
might require most of the earlier and some or all of the latter steps of progressive
discipline. Finally, in serious cases such as, but not limited to, dishonesty,
insubordination, being under the influence of drugs/alcohol while on duty, or
workplace violence, it often is appropriate to proceed to disciplinary action such as
written reprimand, suspension, or even discharge without going through the non-
disciplinary steps.

As a supervisor, the following steps should be followed:
**Step/Action**
1. Verbally communicate/counsel the employee throughout the year regarding the performance deficiency and/or their failure to meet performance standards. Make sure the employee is aware of the performance standard.
2. Issue a written, non-disciplinary Memo of Expectations to the employee detailing the performance standard that they are not meeting.
3. Issue a written reprimand after consultation with departmental Human Resources.
4. Successive disciplinary actions (i.e. suspension, reduction in pay, demotion, and termination) need to be discussed with departmental Human Resources prior to taking any action.

**SOME IMPORTANT POINTS**
This handbook is written and designed principally for supervisors of employees who have regular, limited-term or non-probationary status. Disciplinary action for most County employees is governed by the provisions of a Memorandum of Understanding (“MOU”). When supervising employees in a particular bargaining unit, be familiar with the disciplinary articles of the appropriate MOU. This handbook has been written to provide supervisors with useful advice, tools, examples, and assistance to fulfill the supervisor’s responsibility in the area of discipline. For the majority of situations, it will serve as a first source of information in fulfilling the supervisor’s key role in the disciplinary process. The supervisor should also call upon their manager or departmental HR Team for some additional help. The departmental HR Team, in particular, is experienced and is there to help supervisors with these types of issues.

Supervisors are encouraged and empowered to resolve workplace issues at the lowest possible level. The purpose of providing this level of authority to supervisors is to correct performance and behavior immediately so that discipline is unnecessary. All efforts by supervisors should focus on job expectations (not personalities) and how to correct performance that is not meeting those expectations.
CHAPTER 2 ROLES OF KEY PARTICIPANTS

There are many people that have a role in the disciplinary process and in ensuring that the employee is treated fairly and receives the rights afforded to them. The checks and balances built into this process are to ensure that the actions taken by the County are appropriate within the context of sound employment practices, the relevant MOU and current law.

ROLE OF THE EMPLOYEE

• Strive to meet the expectations of the job assignment.
• Be knowledgeable of the mission of the agency/department and strive to meet that vision in the work that is performed.
• Communicate any barriers to successful performance to their supervisor.
• Actively participate in performance discussions with the supervisor and set measurable goals for skill development, general performance maintenance guidelines, and achievement of department business objectives.
• Know the chain of command and use it to resolve any problems that arise.
• Be knowledgeable of and follow the policies, procedures and standards set forth by the agency/department and the County as a whole.

ROLE OF THE SUPERVISOR

• Set a good example for staff.
• Be knowledgeable of the job and performance expectations required of employees.
• Clearly communicate the performance expectations and work rules to employees.
• Address any problem in performance or conduct as soon as possible after being made aware a problem exists.
• Meet with employees on a regular basis to correct and improve performance.
• Deal objectively with each offense or situation.
• Understand the MOU provisions as they relate to disciplinary practices.
• Be knowledgeable of representation rights of employees.
• Recognize, handle, and make recommendations in cases where discipline is appropriate.
• Apply any corrective action consistently.
• Know the chain of command and consult departmental HR Team when necessary.
• Participate and/or testify in disciplinary appeal hearings.
• Regularly evaluate performance of all subordinate employees consistent with Board Policy.

ROLE OF THE DEPARTMENT MANAGEMENT

• Set a good example for all staff.
• Implement County and departmental policies and procedures.
• Understand what the policies mean.
• Apply policies consistently and fairly.
• Understand the need to change and address unacceptable behavior in a timely manner.
• Ensure that supervisors are trained and are meeting the requirements of their role in this process.
• Implement discipline as required.
• Ensure disciplinary action is consistent with County-wide practice.
• Hold all staff accountable for proper application of disciplinary procedures.
• Understand legal limitations on discipline and those imposed by County policy.
• Consult departmental HR Team when necessary.

**ROLE OF DEPARTMENTAL HUMAN RESOURCES TEAM**

• Coordinate and consult with supervisors and managers as needed regarding discipline.
• Coach supervisors and managers regarding the discipline process and the importance of addressing performance, good and bad, on a regular basis.
• Investigate and report on misconduct that may involve discipline, as well as workplace violence and discrimination complaints.
• Review and recommend appropriate level of discipline when discipline is required.
• Prepare disciplinary documents on behalf of the department.
• Assist in preparing department managers for Skelly procedures.
• Communicate department’s position in disciplinary appeal cases.
• Consult with HRD Service Team regarding disciplinary issues.
• Ensure consistent application of department and County policies, rules and regulations and the assessment of discipline.

**ROLE OF THE UNION**

As outlined in the various MOU’s, employees are entitled to representation throughout the discipline process to ensure they are receiving their established rights to due process. Typically, it is the union that provides this representation in investigative interviews, Skelly meetings and during the appeals process.
CHAPTER 3        PREVENTION

The supervisor’s primary concern is the employee’s performance. Non-disciplinary measures are the proactive steps taken by a supervisor to minimize the potential for disciplinary action. Disciplinary action is usually taken only when non-disciplinary measures fail to improve the employee’s performance to an acceptable level, or to prevent continued misconduct.

The following are proactive steps for sound supervisory practices. These steps are based on the belief that it is most important for the supervisor to create and maintain working conditions and a work environment that supports efficiency and accountability, as well as encouraging employee development and goal achievement. In other words, the supervisor’s efforts should be directed first toward preventive measures. These actions are proactive steps that the supervisor can initiate as opposed to steps taken in reaction to an employee’s misconduct.

SET CLEAR EXPECTATIONS
Accepted standards of performance and conduct should be communicated to employees from the moment they report to their supervisor. As changes occur or as needed, the supervisor should communicate the general standards of conduct and performance that are expected in the work group and see that all employees, and particularly all new employees, are aware of these standards. When these standards have been formulated, accepted, communicated and understood, a supervisor will find that the need to take corrective actions will occur less frequently.

CREATE A SAFE AND EFFICIENT WORKING ENVIRONMENT

• Set a good example. The staff will be watching the supervisor to see if their behavior is consistent with the values of the organization. Many supervisors have been derailed by communicating certain values to their staff and then not following these values themselves.

• Be approachable. Employees should feel free to offer suggestions for improvement in working methods and to bring problems to the supervisor when they arise. The existence of problems among employees is not necessarily a reflection on a person’s skill as supervisor. What is important, however, is the willingness of the employees to bring their complaints, comments, or concerns to the supervisor. They will approach the supervisor when they know he/she will be open-minded in evaluating their recommendations and fair in handling their problems.

• Provide employees with words of appreciation and encouragement. A memo of commendation for a job well done can be conducive to the maintenance of a positive work environment. However, be honest. Recognition for improved performance that 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.

• Communicate - the following are suggestions to assist the supervisor in establishing open communication with employees:

   1. Coaching and counseling employees should be done in private.
   2. Be supportive of both management and employees.
   3. Listen to the employees’ concerns when they arise.
4. Listen when an employee discusses obstacles to his/her effective performance and promptly address the situation.

5. Be available to employees and interact with them on a regular basis. If a supervisor is separated from employees by location or shift, they should contact them face-to-face on a regular basis.

6. Be familiar with the grievance procedure outlined in the MOU covering the employees being supervised.

7. Refer cases to higher authority when appropriate, but be prepared to share some suggested solutions.

8. Provide employees with regular feedback regarding their job performance.

9. Be as impartial and objective as possible on an employee’s performance evaluation. Do not hesitate to praise, but do not rate an employee higher than he/she deserves just to avoid a disagreement. Evaluations can have some subjective elements, but the basis of the evaluation should be objective. The supervisor’s job is to make that judgment call. An inaccurate evaluation can be worse than none at all, from the point of view of the employee and management.

- Foster a productive and safe working environment that helps employees do their best. Strive to eliminate, where possible, any environmental hazards, such as poor lighting, too much noise, or other safety hazards, to ensure that employees have a safe workplace.
- Seek feedback from employees regarding what can be done to make their working environment more productive.
- Investigate and resolve complaints immediately. The sooner an interpersonal conflict between employees is resolved, the less likely it will erupt into a major problem in the future.
- If a complaint involves sexual harassment, immediately refer to the County’s policy on how to handle such complaints. A sexual harassment or workplace harassment complaint that is left unresolved can leave both the supervisor and the County in a legally vulnerable position.
- If the supervisor is aware of an employee having personal problems, suggest the employee contact the Employee Assistance Program and contact the departmental HR Team for advice.
- Unresolved conflicts between employees often lead to an escalation of issues. Therefore, the supervisor should attempt to resolve conflicts quickly by taking the following steps:
  1. Bring the involved employees together to discuss the problem.
  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, the supervisor should try to mediate a solution between them rather than resolving the problem for them. If the solution involves a policy decision or other unit employees, the decision should be postponed until there is an opportunity to discuss it with management or with other employees.

**PROVIDE ADEQUATE TRAINING**

One of the most critical aspects of any disciplinary documentation is demonstrating that the employee knew, or should have known, the correct procedures. The methods to facilitate training include:
**Orientation** - This would include classes or videos for new or transferred employees, which may include information about other work locations or other offices in the County that may interact with the department. Orientation also includes familiarizing the employee with the processes of the employee’s immediate position.

**Desk Procedures** - Include a detailed description of the job that:
1) explains the specific functions of the job;
2) details the priorities;
3) identifies documentation flow;
4) specifies the performance standards for the particular job; and
5) explains the purpose of the job.

**Individual Policy Manuals** - Provide examples of standardized procedures for administrative functions such as time card completion, requesting time off, explanations of County and/or department policies, or other pertinent information. For new employees, a time should be set aside to review these policies and to give the employee a chance to ask questions. The employee should be given a checklist to initial receipt of each policy. This can be placed in the employee’s personnel file for future reference.

**Staff Meetings** - Supervisors should review various policies/procedures at staff meetings, along with discussions of methods for performing tasks. Use this as an opportunity to allow staff to ask questions and clarify issues.

**On the Job Training** - The most important aspect of training is ensuring the employee can perform the work. Do not just ask a generic question such as "Do you think you know/understand what to do now?" Instead:
a. Ask the employee specific questions about procedures.
b. Observe the employee perform the procedure.
c. Closely review the work product on a daily/weekly/bi-weekly basis.

**NOTE**: THE SUPERVISOR, NOT THE EMPLOYEE, DETERMINES WHEN TRAINING IS COMPLETE.

It is the supervisor’s responsibility to provide training and assistance so that employees can successfully perform the job. Supervisors have a responsibility to assess the employee’s training needs and to ensure that these needs are met in a reasonable time frame. Become familiar with the resources the County has available to supervisors. The development of 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.
CHAPTER 4 ADDRESSING PERFORMANCE ISSUES

PROVIDE NOTICE TO EMPLOYEES WHEN EXPECTATIONS ARE NOT MET

If an employee is not meeting the performance expectations of the job, it should be immediately brought to the attention of the employee. Informal counseling is the usual first step when addressing a problem. The entire emphasis of this counseling is on helping the employee. The focus should be on the facts, not the person. Attempt to be consistent and objective. Focus on work performance, but be aware of potential personal problems affecting performance. When conducting interviews with employees, supervisors need to remember:

1. **Cool off first**: Words spoken or e-mail sent in the heat of the moment could become a personal attack instead of an objective comment on the problem.
2. **Check your attitude**: Be mentally prepared for the interview. Find out what challenges this particular employee is facing, why did a violation occur, and/or how the employee can be helped or counseled to meet job expectations. Be objective. Do not let previous experience with this or other employees bias your attitude.
3. **Seek Privacy**: Conduct the interview in private, not in the presence of others.
4. **Listen**: Give the employee a chance to explain his/her actions and any mitigating factors. Ensure that the employee is provided ample opportunity to discuss any challenges or circumstances that impact their job performance. Note any contributing agency factors such as poor facilities, lack of or faulty equipment, lack of training, or the need for an accommodation and facilitate corrective measures as appropriate.
5. **EAP**: If the employee cites personal problems, do not attempt to become the employee’s personal counselor. REFER EMPLOYEE TO THE EMPLOYEE ASSISTANCE PROGRAM (EAP) OR OTHER QUALIFIED PROFESSIONAL.
6. **Assume Responsibility**: Do not hide behind the rules or apologize for what is occurring. If there is a rule on the subject it should stand on its own merits. It is a supervisor’s job to enforce the rules and deal with inappropriate behavior.
7. **Recognize effect on other employees**: Keep in mind the impact on the workgroup for not addressing a performance issue with an individual employee. Rule violations or inappropriate behaviors should not be brushed off or ignored.
8. **Summarize**: Before finishing the discussion (1) summarize the employee’s explanation in your words; (2) encourage the employee to communicate his/her understanding of the outcome of the discussion to ensure mutual understanding.
9. **Explain required improvement**: Be sure the employee understands what areas need to be improved, how improvement is to be achieved, and the time frame. This is the time to clear up any misunderstandings. Be supportive of the employee.
10. **Explain what comes next**: Advise the employee of the potential consequences for continued inappropriate behavior or continued performance that does not meet expectations. If discipline is to follow, DO NOT give the impression that the matter is concluded.
11. **Get outside help when necessary**: There are occasions when a supervisor may need to consult with a manager or the departmental HR Team to determine how to handle a situation.
12. **Prepare a written summary:** As soon as possible after the meeting make notes of the interview. Include the date, summary of the discussion, barriers or challenges communicated by the employee and any timeframes given for performance improvement. This summary should be placed in the Supervisor’s working file.

13. **Supervisor’s Working File:** It is critical that every supervisor maintain supervisory files that include precise, factual documentation regarding the performance of each employee he/she supervises. This documentation should include an ongoing record of the employee’s performance and other work related information. The information in the files will provide the basis for completing performance evaluations or supporting disciplinary action should it become necessary.

14. **Follow Up:** Follow-up is critical to this entire process and it is essential that the supervisor remembers to evaluate the situation with the employee within the agreed upon time frame. The supervisor should increase the monitoring of the problem performance and discuss any issues with the employee as soon as possible. Failure to follow up can send a message that it is not really important that the employee improve and will lessen the effectiveness of the counseling.

**WRITTEN NOTICE**

**Memo of Expectations**
Communicates the rule or policy and that the employee is expected to follow it. Use this if the employee has never been put on notice or if it has been a long time since the employee was last notified. Do not use if the employee has been put on notice, warned or disciplined within the last several months for a similar behavior or offense. This memo is not considered discipline and should not be placed in the employee’s official personnel file. When appropriate, include the following phrase in the memo: “… Keep this memo (or policy) in a convenient spot and use it as a reference document as you are expected to perform the task correctly on all future occasions.”

**Corrective Counseling Confirmation Memo**
This documents a discussion held in a Corrective Counseling Session. It includes a summary of the discussion that took place in the Corrective Counseling Session and informs the employee that further instances may result in disciplinary action. It should note the violation or performance that was discussed and the corrective measures to be taken. A copy should be provided to the employee and the supervisor should keep their copy in the supervisory working file. This memo is not considered discipline and should not be placed in the employee’s official personnel file.

**NOTE:** Corrective Counseling has positive connotation. It is a discussion with the employee’s input and is not a disciplinary action. The corrective counseling confirmation memo provides the necessary corroboration of the discussion.

**Improvement Plan/Corrective Action Plan**
When an employee’s performance is not meeting the expectations of their job, the supervisor should meet with the employee to develop an Improvement or Corrective Action Plan. This should only be used for on-going performance deficiencies and not single policy violations or incidents. The purpose of this plan is to document ongoing performance issues (attendance, tardiness, low production, poor work
quality, etc.) and to develop corrective measures that will assist the employee to
again meet the expectations of their position. This plan should be implemented in a
timely manner and allow the employee enough time to make the necessary
improvements prior to a performance evaluation. This plan is not considered
discipline and should not be placed in the employee’s official personnel file.
CHAPTER 5 CAUSES FOR DISCIPLINE

“CAUSE” DEFINED

DISCIPLINE WITH CAUSE
The concept that requires the County to establish it has a rational, non-arbitrary and legally defensible basis for the disciplinary action taken against a regular or limited-term employee.

REMOVAL FROM POSITION WITHOUT CAUSE
The converse notion that permits the County to terminate probationary employees, temporary employees, extra help employees, at-will employees, and all other non-regular employees without being required to establish any cause for the termination. However, the termination cannot be for discriminatory reasons.

To determine whether or not the County has “cause” to discipline an employee, it is helpful to be knowledgeable of the “Seven Elements of Just Cause.” These elements are widely accepted by Human Resources professionals, attorneys and arbitrators as standards by which to determine if an employer has “cause” to take disciplinary action against an employee.

THE SEVEN ELEMENTS OF JUST CAUSE:
1. Was the employee given forewarning or foreknowledge of the possible or probable disciplinary consequences of his/her conduct? Some factors to consider:
   • How was the employee specifically notified of the behavior that needed correcting?
   • Is there documentation indicating dates and discussion of this notification?
   • Was the employee notified of the potential consequences for not correcting the behavior?
   • Did the employee acknowledge that they understood the behavior to be corrected and the consequences for not doing so?
   • Was the employee given a reasonable opportunity to correct the behavior?

2. Was the rule, policy or supervisory directive reasonably related to the orderly, efficient and safe operation of the department? Is the performance required something that the County/department might properly expect from its employees? Some factors to consider:
   • Was the focus on the performance or conduct and not the personality of the individual?
   • Is it reasonable to expect that the action being taken will restore or maintain the operation of the work area?
   • Is it reasonable to expect that the action being proposed will have the desired result?
   • If the matter is related to off-duty conduct, is there a nexus between the off-duty conduct and the employee’s assigned duties?

3. Did the County/department, before administering discipline, make a reasonable effort to discover whether the employee did in fact violate or disobey a rule, policy or directive of management? Some factors to consider:
- 14 -

- Was the employee interviewed?
- Were questions asked that would determine the facts?
- Were the employee’s comments fully considered?
- Was further investigation conducted based on the employee’s input?
- Were any mitigating factors addressed?
- Is there sufficient concrete information that the employee did, in fact, violate or disobey a rule, policy, standard or directive of management?

4. Was the investigation conducted fairly and objectively? Some factors to consider:
- Were questions asked of the employee and any witnesses to determine the facts and was the information reported fully considered?
- Were mitigating factors or was exculpatory evidence investigated?
- Was the employee given ample opportunity to explain the situation?
- Were witnesses suggested by the employee interviewed?
- Was all documentary evidence collected and maintained in a safe chain of custody?
- Was electronic evidence properly secured and not tampered with?

5. Was a progressive discipline approach taken with the employee? Some factors to consider:
- What progressive steps were taken to resolve the matter?
- Did the disciplinary action match the nature of the offense?
- Did the nature of the offense warrant bypassing some of the progressive steps?

6. Has the County/department applied rules, orders, and penalties even-handedly and without discrimination to all employees? Some factors to consider:
- What is the “past practice” in the department for actions of a similar nature?
- What is the “past practice” in the County for actions of a similar nature?
- Have the penalties been applied even-handedly for actions of a similar nature regardless of a person’s standing in the organization?
- Has the rule or order been enforced consistently in the past?

7. Was the degree of discipline administered by the County/department reasonably related to:
- The seriousness of the proven offense? (Did the punishment fit the crime?)
- The record of the employee and his/her length of service? (If the employee has years of positive performance, is the action severe enough to warrant the proposed discipline?)
- Previous discipline given to other employees in similar situations?

**SPECIFIC CAUSES FOR DISCIPLINE**
While there are many behaviors an employee can engage in that would provide “cause” for discipline, there are some actions that occur more frequently. Many, but not all, of these behaviors are outlined below with a brief description of the behavior covered by the particular concept.
A. Providing False Information/Dishonesty
Dishonesty is a very serious employment offense. The behaviors under this heading include theft of goods, services, or time; forgery or falsification of documents; fraud in any form; lying; misrepresentation; or any other form of dishonest behavior. A supported charge of dishonesty often will result in an increased level of discipline – even if it is the first employment offense.

B. Incompetence
To establish incompetence requires a showing that the employee has been fully trained and been given adequate coaching, mentoring and an opportunity to perform, but despite all these efforts still cannot and likely will not ever be able to perform the essential functions of the position.

C. Inefficiency or negligence
Inefficiency is proven by demonstrating that an employee is capable of performing the work at acceptable levels but does it in a manner that is unreasonably slow or cumbersome. Negligence is a different concept and involves the failure to use reasonable care while performing the work in question. Negligence usually involves a significant mistake by the employee in the performance of the work. It generally will not include a single, routine mistake but a series of routine mistakes over a period of time.

D. Neglect of duty
An employee who neglects his/her duty knows what is required to be done, is able to perform the work in an acceptable manner, but fails to perform the work at all or in the time required.

E. Insubordination
This normally requires a clear, lawful directive and a clear refusal to follow that directive. The employee must be advised that a failure to follow the directive will be considered insubordination that may lead to discipline up to, and including, discharge from employment. Insubordination also includes openly defiant behavior directed towards a supervisor or manager.

F. Violation of Conduct or Departmental Policies
This involves a breach of standards of conduct or departmental policy. County standards of conduct include such policies as the IT Usage Policy, Equal Employment Opportunity Policy, Conflicts of Interest and Workplace Violence. Not every violation of policy gives rise to discipline. The violation must be “willful”, which means that the employee knew of the policy and then failed to comply. Knowledge of the policy is generally shown by a record in the personnel file that the employee received the policy and/or attended a meeting where the policy was discussed.

G. Excessive Absenteeism or Tardiness
This occurs when an employee’s attendance, whether it is excessive tardiness or full day absences, adversely affects the operation of the department. There is no correlation to the employee’s amount of accrued leave balances and whether or not their attendance is an issue. In other words, an employee may have significant accrued leave balances and still have an attendance issue if their absences adversely affect the operation of the department.
H. Conviction of felony, misdemeanor, or offense
This involves three separate types of convictions: (1) any type of felony conviction; (2) any misdemeanor related to the employee’s duties for the County or involving “moral turpitude” (a limited number of crimes that are “wrong per se”); or (3) any offense – including statutory offenses that involve the employee’s duties for the County.

I. Discourteous treatment of the public or other employees
This occurs when an employee fails to demonstrate the appropriate level of professionalism and courtesy in the workplace.

J. Making a material misrepresentation to obtain or maintain employment
This involves a two-part analysis. First it must be determined that the misrepresentation was made to obtain or maintain employment. Second, the misrepresentation must be “material” (i.e. it must matter). A common example is misstating qualifications on a resume.

K. Conduct which adversely affects the employee’s job performance or operation of the department in which they are employed
There must be an adverse effect every time in order to support a case for discipline. This can be considered the “no harm, no foul” rule. Unless the behavior had an adverse effect on the department there is no cause for discipline.

L. Failure to maintain the license, registration, certificate, professional qualifications, education, or eligibility
This requires that a specific qualification be maintained in order to continue in a position. If the employee loses that particular qualification, for any reason, he/she is subject to discipline and often termination. For example, an RN who loses her registration can no longer work as a nurse, or an attorney who is disbarred can no longer work as a Deputy Public Defender. In some circumstances the employee may be demoted to a position that does not require that particular qualification.
CHAPTER 6       THE DISCIPLINARY PROCESS

WRITTEN REPRIMAND
A written reprimand is the first level of discipline. It is a written censure of an employee that may be given with no prior warning or counseling if warranted by the facts. Generally these will be produced in consultation with the departmental HR Team.

When collecting information necessary to draft a reprimand, make sure to obtain answers to the questions: who, what, where, when, and why. When giving an employee a written reprimand have the employee read it, discuss it with them, and have them sign that they received it. The document should be placed in the employee’s official personnel file. If the employee refuses to read and/or sign the reprimand then make a note on the document that they failed to do so, and then place it in his/her personnel file. Do not argue with the employee to obtain the signature.

SUSPENSION OR TERMINATION
A suspension is the temporary removal of an employee from the workplace on an unpaid basis. Termination means dismissal from County employment.

Generally, supervisors will not be required to decide on the appropriate level of discipline. A decision in such a case will follow an investigation, normally conducted by a member of the departmental HR team. The HR team member will prepare a report and may propose a level of discipline to the department. The supervisor will usually be interviewed in this process and may be consulted on the appropriate disciplinary response.

DISCIPLINARY REDUCTION
A disciplinary reduction is the removal of a regular or limited-term employee from their current classification due to performance deficiencies or physical disability, and permanently reassigning them to a lower class with a corresponding reduction in salary. A disciplinary reduction is not often used and the supervisor should consult with the departmental HR Team prior to considering this type of action.

ASSESSING THE LEVEL OF POTENTIAL DISCIPLINE
Each of the disciplinary actions outlined above is serious and needs to be supported by adequate proof in order to be sustained. The supervisor’s responsibility is to ensure that proper documentation has been maintained and an accurate explanation of events is provided to the investigator in order that he/she may assess the case properly.

The level of disciplinary action taken will depend on many factors such as:
• Is there a rule, procedure, policy or regulation that the employee violated?
• Is the rule written? Is the rule unwritten but well known to employees?
• Was the employee informed of the rule? When and by whom? Can this be documented?
• Are there labor agreements, laws, or regulations that indicate what level of disciplinary action should be taken?
• Is the inappropriate conduct new or has it been long term or on-going?
- Is the conduct so unacceptable that by itself it warrants termination?
- Are there multiple, related performance problems that should be considered?
- Are there contributing problems that are the responsibility of the County to correct?
- What is employee’s length of employment, class, job duties and responsibilities?
- What does a review of personnel file reveal about previous actions taken and the employee’s performance? What does it reveal about their performance history?
- Has discipline been progressive?
- What are the impacts of the employee’s actions on the workplace? Be prepared to explain and document.
- Are any witnesses involved in the action? Have they all been interviewed? Will they be available to testify at a hearing? Are there any credibility problems with these witnesses?
- Has all the evidence been considered, pro and con, before making a decision on level of discipline?
- How have similar situations been handled by the department? How have similar situations been handled by other county departments?
- Are there important departmental interests at stake? What are they?

“DUE PROCESS” REQUIREMENTS

Public employees in regular and limited-term positions in the County have what is termed a “property right” in their job. The federal and state constitution prohibits the state (of which the County is a subdivision) from interfering with a vested property right without “due process of law”. In the employment context this has translated into three requirements, which will be discussed below. These actions are outlined in the County MOU’s and the PSR, which should be referenced prior to initiating action with the employee.

NOTICE OF PROPOSED DISCIPLINE AND SUPPORTING DOCUMENTATION

The first step is to serve the employee a “Notice of Proposed Disciplinary Action” with the attachments that support the action. This is also known as a “Skelly” package. This notice indicates the proposed level of discipline, cites the facts supporting the discipline, provides the employee with all documentation on which the proposed discipline is based, and outlines the procedural rights of the employee to respond to the charges in writing and/or at a Skelly hearing. Generally, it is not the supervisor’s responsibility to prepare the “Notice of Proposed Disciplinary Action” that is given to the employee. The departmental HR Team prepares this package for signature by the program or department manager. This package is based upon information gathered during the HR investigation.

All disciplinary documents need to include the following:
1. Date of infraction or performance discussions;
2. Explanation of the issue;
3. Reason the conduct is unacceptable;
4. Statement of impact on the work of the department;
5. Instructions to follow in the future, if any;
6. Time frame for improvement;
7. History of any prior counseling or infraction, if any;
8. Warning of consequences if no further improvement;
9. Description of any appeal rights; and
10. Attachments of documents on which the discipline decision was based.

**OPPORTUNITY TO RESPOND PRIOR TO IMPLEMENTATION OF DISCIPLINE**
(“Skelly Right”)
Before a final action is taken, the employee has a right to state his or her version of the events or potential mitigating factors in response to the proposed action. This can be done either in writing or in a meeting with a designated departmental representative, known as the “Skelly Officer” who has the authority to sustain, modify or cancel the proposed disciplinary action. If the employee chooses to meet, it is commonly referred to as a “Skelly hearing”. The employee may be unrepresented or may be represented by the union or an attorney. This is not a formal hearing during which evidence is taken under oath and the witnesses subject to cross-examination. This hearing is the employee’s chance to state his or her version of events or to argue a variety of things, such as the facts are wrong, or incomplete; or the discipline is too severe because there are mitigating factors; or the discipline is being imposed in an unfair fashion.

The Skelly Officer conducting the hearing is under no obligation to provide an immediate answer to any of the issue(s) raised by the employee, but is expected to ask questions to clarify issues. At the conclusion of the hearing, the Skelly Officer should conclude with a statement, “Thank you. We will take everything you said into consideration.” This is all that is required. A Skelly hearing is valuable because it gives the employee a chance to respond and allows management an opportunity to double-check the facts and, if warranted, sustain, modify or cancel the discipline. After a Skelly hearing, the Skelly Officer may check with the any of the parties involved with the investigation or discipline decision to be sure the facts are correct and conduct any follow up investigation. After the necessary follow up is completed, the employee must be notified in writing of the Skelly Officer’s decision. If some type of disciplinary action is being taken, the employee receives a “Notice of Disciplinary Action”. The package will contain:

- a statement of the disciplinary action to be taken;
- a statement of the reasons for the disciplinary action, usually by reference to the intent letter which is attached;
- the effective date of the discipline;
- a statement of appeal rights; and
- any additional documents that the Skelly Officer used to make their decision that have not already been provided to the employee.

The employee has a certain window of time (depending on their bargaining unit) to file an appeal with Human Resources if he/she wishes to contest the disciplinary action. The penalty is not delayed pending an appeal.

**EMPLOYEE APPEAL RIGHTS**
The final element of due process is to provide the employee with the opportunity to appeal the disciplinary decision taken by the County. The disciplinary appeals process is outlined in each MOU and should be consulted for the proper procedure and timelines. Generally speaking, the first step of the appeal of a written reprimand
will be within the department. For a suspension or discharge, the employee is entitled to a full evidentiary hearing before a neutral arbitrator on the merits of the decision after the disciplinary action has been taken. The employee invokes that right by filing a grievance appeal with the appropriate department/agency Human Resources Department or their supervisor. If an appeal is filed, it is heard before an arbitrator selected by the County and the employee or his/her representative (usually the union). In disciplinary appeals the County presents its case first and assumes the burden of proof regarding the disciplinary action, which will be discussed in more detail later. In most cases, the decision of the arbitrator is final and binding on the parties. Prior to an arbitration hearing, the parties may meet with a mediator to try and resolve the issue. This meeting is non-binding and provides the parties an opportunity to hear arguments and to obtain the opinion of a neutral third party regarding the disciplinary action.

**Written Reprimand**

In cases of discipline amounting to the issuing of a written reprimand, the appeals process begins within the department. Generally, the department representative will meet with the employee and their representative and listen to the employee explain why the written reprimand is not warranted. The department representative should ask questions to clarify issues and take into account the employee’s arguments against the discipline. A decision should not be made at the time of the hearing but must be made within the timeframes outlined in the applicable MOU. The department representative should review the written reprimand and documentation against the employee’s arguments in making their decision to either uphold or deny the grievance appeal.

**Suspension or Discharge**

These disciplinary actions allow for the employee to make their appeal to a neutral arbitrator. Arbitration hearings are similar in many ways to court trials but are not as formal. They are usually held in a conference room at the Hall of Administration. Witnesses are called, take an oath, and are examined and cross-examined. The supervisor can usually expect to testify at the hearing. The rules of evidence and civil procedure followed in court cases are by and large adhered to. Attorneys may represent either or both parties in these hearings. Typically, County Counsel or the Human Resources Department will represent the County’s interests in the hearing. Often written closing briefs are submitted to the arbitrator and the supervisor may be called on to review the County’s brief to ensure that it is factually correct. After the hearing, the arbitrator issues a written decision. This can sometimes take several weeks. The arbitrator summarizes the facts, makes a decision based on the evidence, and provides the rationale behind the decision.

**SUPERVISOR OR MANAGER AS WITNESS**

A supervisor or manager may be required to testify in an arbitration hearing during an employee’s appeals process. Prior to doing so, the supervisor or manager would meet with the HRD Service Team and/or County Counsel to discuss the circumstances of the case and to prepare for the providing testimony at the hearing itself.

**BURDEN OF PROOF**

As explained earlier in this manual, when disciplining an employee the County bears the burden to prove that:
1) there was “cause” to discipline the employee; and
2) the discipline was appropriate, given the offense and any other relevant considerations.

In practical terms, when we say that County has the burden of proof for these two factors, it means that they must have evidence – testimony, business records, etc. – to support the disciplinary decision. The supervisor’s input here is critical. The County must be able to prove the facts in the case.

The second factor the County must show is the appropriateness of the penalty. Under the applicable MOU discipline is taken for “cause” and the “penalty must fit the offense.” The employee’s past record is also a factor to consider. Some cases may require discipline without prior warning. However, in most cases the County must be able to demonstrate the following before discipline is taken:

- The employee had been put on notice that his/her conduct or performance was unacceptable. Performance evaluations should provide this notice to the employee along with documented performance discussions during the performance cycle.
- The employee was told what was expected of them to meet performance standards.
- The employee was offered necessary assistance.
- The employee was warned of the consequences.
- The employee had a reasonable opportunity to improve.

POTENTIAL EMPLOYEE DEFENSES
As stressed throughout this manual, the actions taken by the supervisor are critical to laying the foundation for discipline that can be sustained during the appeals process. There are a variety of issues that can be raised on appeal on behalf of the employee if the foundation is not strong. More common issues on appeal are proven by demonstrating that management had practiced selective enforcement of rules, lacked proper documentation or did not utilize a progressive discipline approach. If rules are not consistently enforced it can be argued that the department does not really consider the rule to be essential to protect the department’s interest. Therefore, the argument goes, if enforcement is not consistent then in this particular case it must be solely for the purpose of persecuting a particular employee. Some other types of issues raised on appeal include:

**Condoned Behavior:** Absence of corrective action for the same misconduct in the past led the employee to believe that the conduct was permitted. A performance evaluation that makes no mention of areas of unacceptable performance can be seen as condoning the behavior.

**Disparate Treatment:** Inconsistency in the application of discipline to other employees committing the same offense.

**Forgiveness:** Minimal corrective action taken at the time of the incident led the employee to believe that the misconduct had been dealt with and now was forgiven. The employee argues that the department cannot implement more severe discipline at later date.

**Too Severe:** Level of discipline does not fit the misconduct. Department did not review all facts/considerations prior to recommending discipline.
**Conspiracy**: The department is purposely trying to get rid of the employee.

**Retaliation**: The employee has taken some previous protected action and the current discipline is in retaliation for the previous action.

**Lack of Training**: The County has not properly trained the employee to do the job.

**Past Work History**: The employee has performed well in the past and the incident or current performance is an aberration.

**Reasons Disciplinary Actions are Sustained or Reversed**:
Discipline is upheld when the following takes place:

a.) A thorough investigation was conducted and charges in the discipline are proven.

b.) The testimony of witnesses and the documentary evidence is consistent with the charges in the discipline.

c.) All procedures in the disciplinary process were properly followed.

d.) Department can show that it informed the employee of any deficiencies, and made clear what was expected.

e.) Where applicable, the employee was offered assistance in improving performance and given time to improve.

f.) The level of discipline is appropriate for the offense committed by the employee.

g.) Department can show, if challenged, that policies are reasonable and applied consistently and equally to all its employees.

Conversely, discipline may be modified or reversed if errors can be shown. Listed below are possible reasons discipline might be modified or rescinded:

a.) The charges cannot be proven, usually due to faulty memories, inadequate documentation, or because a thorough investigation was not conducted.

b.) Testimony at the hearing is inconsistent with the disciplinary documents.

c.) Performance evaluations do not support the argument that there was ongoing unacceptable behavior.

d.) Lack of appropriate and progressive discipline. For example, the employee with a performance problem had no previous record of corrective actions or admonishments.

e.) Procedures were not followed properly.

f.) The employee was not told what the problem was and expectations were not made clear regarding the alleged misconduct.

g.) The employee, with a performance problem, was not given help or an opportunity to improve.

h.) The level of discipline was too severe for the offense.

i.) Standards were not applied consistently and/or discrimination/retaliation can be proven.

Remember, the strength of the disciplinary action depends in large part on the work of the supervisor. If a solid foundation has been built with regular performance discussions that have been documented, the discipline that was imposed should be sustained during the appeals process.
CHAPTER 7 CONCLUSION

As has been stressed throughout this manual, the supervisor plays a critical role in developing a strong County workforce. Effective supervisory skills and the use of the tools outlined in this manual are keys to supporting employees in meeting their performance expectations. A supervisor that coaches, counsels and discusses performance, both good and bad, with employees on a regular basis will be able to address barriers to effective performance before they become larger. By using these strategies a supervisor also builds a strong foundation for discipline, if it becomes necessary to address the performance issues. For support and assistance with performance and disciplinary issues, please contact your departmental HR Team.