

The Skelly Process

Departmental Human Resources
Group Meeting
August 25, 2006

In the beginning....

Public Sector employees in California were only able to respond to the charges related to discipline **AFTER** they had been dismissed.

Is Skelly a real person????

- John F. Skelly, MD, was a physician in the State Department of Health Care Services.
- The Department fired him on July 11, 1972 for “intemperance, inexcusable absence without leave and other failure of good behavior during duty hours which caused discredit to the Department.”

The Skelly saga...

- The State Personnel Board upheld Dr. Skelly's termination and he appealed this decision to the California State Supreme Court.
- The California State Supreme Court ruled that Skelly had a property right to his job and could not be deprived of it without due process.

Property Rights

- “The California statutory scheme regulating civil service employment confers upon an individual who achieves the status of ‘permanent employee’ a property interest in the continuation of his employment which is protected by due process.”

Property Rights

- In *Board of Regents v. Roth*, the United States Supreme Court “made clear that the property interest protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money...The Fourteenth Amendment’s procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits. These interests – property interests – may take many forms.”

Property Rights

- The Roth court continues, “to have a property interest in a benefit, a person clearly must have more than abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect these claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined.” [Emphasis added.]

Property Rights

Ultimately, this “Skelly” right now applies to all California public sector employees when they may lose property rights (i.e., wages).

What *Skelly* requires...

- At a minimum, the pre-removal safeguards must include
 1. notice of the proposed action
 2. the reasons therefor
 3. a copy of the charges and materials upon which the action is based
 4. the right to respond, either orally or in writing to the authority initially imposing discipline.
- No requirement to provide an employee with a full trial-type evidentiary hearing prior to the initial taking of punitive action.

Skelly requirements

1. **The notice of proposed action.**

- What you intend or propose to do to the employee

2. **The reasons therefor**

- What is the reason for the proposed discipline?
- What policies, procedures, laws, etc. has the employee failed to follow?

Skelly requirements

3. A copy of the charges and materials upon which the action is based

- Must be given at the time the notice of adverse action is served.
- What are the supporting documents?
 - All backup material, including but not limited to department policies/procedures, witness statements, photographs, investigatory report & findings
- You must include everything, even if you believe the employee already has the document.

Skelly requirements

4. **The right to respond, either orally or in writing to the authority initially imposing discipline**

- There is no requirement that the employee attend the meeting; he/she can respond in writing to the charge.
- This right to respond must occur PRIOR to final disciplinary action.

Who can preside over a *Skelly* meeting?

- In *Williams v. County of Los Angeles* (1978) 22 Cal.3d 731, 737, the California Supreme Court held that an employee has the right to respond “before a reasonably impartial, noninvolved reviewer.”
- In subsequent cases, the State Personnel Board further clarified that this impartial person is “one who has not been directly involved with the investigation of the matters which led to the taking of the adverse action.”

Who can preside over a Skelly meeting?

- In addition, in *Coleman v. Regents of the University of California*, the court found that an employee has the right to present his/her side of the controversy before a reasonably impartial and non-involved reviewer “who possesses authority to recommend a final disposition of the matter.”
- In a case involving Kimberly S. Arnold, the State Personnel Board found that the person signing the notice of adverse action cannot act as the impartial Skelly hearing officer.

What *Skelly* means for you...

1. Read the relevant collective bargaining agreement.
2. How does the Agreement define “discipline”?
3. Does the Agreement place a limitation on when discipline must be ***initiated***?
4. Hold the *Skelly* meeting quickly! Do not linger!!

Sample *Skelly* Letter

RE: Notice of Proposed Discipline and *Skelly* Meeting

Dear Mr. Smith,

This is to inform you that the Department of _____ intends to suspend you for ten working days. The Department has scheduled a *Skelly* meeting for Friday, September 1, 2006 at 3:00 PM at 100 Main Street, Ste. 100 to discuss the charges noted below. You will have a full opportunity to meet with the Appointing Officer (or his designee) to respond to the charges and the proposed discipline.

Sample *Skelly* Letter cont'd

The charges are as follows:

1. Rude and unprofessional behavior
2. Gross insubordination

Specifically, the proposed discipline is based on the following facts:

Sample *Skelly* Letter cont'd

On August 23, 2006 at 11:00 AM, your supervisor, Michael Green, gave you a direct order to work with the _____ Department to resolve several issues. You refused Mr. Green's directive, stating that there was "no way in hell you would ever work with that department again." You then stormed out of his office and left the workplace for the remainder of the afternoon without prior authorization. You returned to work on August 24, 2006 and Mr. Green informed you that you were marked "absent without authorized leave" for five (5) hours on August 23, 2006.

Sample *Skelly* Letter cont'd

On August 24, 2006 at approximately 2:00 PM, you walked into Mr. Green's office, slammed his office door shut and then proceeded to speak to him in an elevated and menacing tone. He attempted to engage you in a discussion to address your concerns, but you continued to yell and raise your voice. Although Mr. Green ordered you not to leave while he was still speaking to you, you got up and abruptly left his office.

Your behavior on August 23 and 24, 2006 demonstrates rude and unprofessional behavior, and gross insubordination. Moreover, your behavior violates the Department of Human Resources' Policy Nos. 8956.1.a.(iii) and 4536.5.d.(iv).

Sample *Skelly* Letter cont'd

This is not the first time that you have exhibited inappropriate and insubordinate behavior toward your direct supervisor. In November 2005, you received a written reprimand for being insubordinate and in March 2006, you received a five day suspension for refusing a direct order and speaking to your supervisor in an unprofessional manner.

Enclosed with this letter are the materials on which these charges and proposed suspension are based. The materials include statements from witnesses to the incidents on August 23 and 24, 2006, the November 2005 written reprimand and the March 2006 5-day suspension.

Sample *Skelly* Letter cont'd

You are entitled to bring a representative of your choice to the *Skelly* meeting. Please contact me by 5:00 PM on Tuesday, August 29, 2006 to confirm that you will attend the *Skelly* meeting.

You are not required to attend the *Skelly* meeting. You may submit a written response and any relevant written materials for the Department to consider before making a final decision. If you choose this option, you must submit your written materials by close of business September 1, 2006. If you fail to attend the *Skelly* meeting, or submit a written response, the Department will make a decision on the proposed discipline based on the information and materials set forth above.

Sample *Skelly* Letter cont'd

Please contact me should you have any questions.

Very truly yours,
Departmental Personnel Officer

Enclosures: Department of Human Resources' Policy Nos.
8956.1.a.(iii) and 4536.5.d.(iv)
Witness Statements
November 2005 Written Reprimand
March 2006 Suspension

Cc: Director
Employee Personnel File
Union Representative

If in doubt...

Please contact DHR's Employee Relations
or the Labor Team of the City Attorney's
Office!!!!