

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 2015

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 4
Appeals Before the Civil Service Commission

Civil Service Rule XIV provides that employees may request an appeal of disciplinary actions before the Civil Service Commission. Rule XII provides that employees may appeal to the Commission for a review of substandard performance evaluations.

The attached guidelines are to assist Departments in preparing for and presenting cases before the Commission. Please note that these are general guidelines which may vary from case to case. The method of presenting individual cases will be decided in a meeting between the department, Employee & Labor Relations, and County Counsel.

The attached guidelines are based on the presumption that the employee's performance was substandard or did warrant disciplinary action. You may want to review these guidelines prior to issuing a substandard performance evaluation or taking disciplinary action to insure that you are in good position to defend your action if necessary. You are also encouraged to contact your Employee & Labor Relations Analyst to review your case prior to issuing a substandard performance evaluation or taking any disciplinary action.

Guidelines for Preparing for and Presenting Cases Before the Civil Service Commission

Appeals of Substandard Performance Evaluations

REFERENCE

Section 4 of Civil Service Rule XII provides that "Permanent employees may appeal to the Commission for a review of performance evaluations which are below a standard score or rating set by the Director." Rule XII further states that " Review, as used in this section, is defined as a fact-finding examination for the purpose of detecting and correcting any abuse of discretion."

Upon receipt of a written appeal for a review by the employee, Human Resources places the request for appeal on the agenda for the next meeting of the Civil Service Commission. At that meeting, the Commission will first decide whether to accomplish the review through a fact-finding committee of 2 commissioners or by the Commission as a whole. The Commission will then set a mutually agreeable date for the fact-finding review.

PREPARATION

A meeting will be scheduled by the attorney assigned to the case as soon as possible after an employee files an appeal. The appellant's immediate supervisor, the supervisor's manager, County Counsel, and the Employee & Labor Relations Analyst should attend this meeting. Any other management representatives with relevant input (e.g., EEO Manager) should also attend.

At this meeting, the team should put together the department's case, and anticipate and develop responses to the appellant's case. The department's case consists of:

- a. A listing of the standards/objectives which the appellant failed to meet
- b. Evidence, documents and/or oral testimony that the employee failed to meet the standards/objectives
- c. Evidence that the employee was counseled and given an opportunity to improve prior to issuance of the evaluation

A determination will also be made at this meeting as to whether Counsel will represent the Department before the Commission or whether the Department will represent itself. This determination will be based on the complexity of the case and on the experience level of the supervisor and manager involved.

CASE SUMMARY

A short summary (one page if possible) should be presented to the Commission and used as a "taking paper." This "taking paper" will help to keep the Commission focused on the pertinent issues of the case, and will assist the Department representative in presenting the case in a logical, understandable manner. The paper should contain:

- a. A listing of the standards/objectives not being met
- b. Concise statements describing how the employee failed to meet the standards including data on the employee's production/error rate, or complaints received
- c. A chronology of significant events including:
 - Beginning and ending dates of the rating period
 - Dates of specific incidents reflecting substandard performance
 - Dates of counseling sessions during the rating period
- d. Brief statements addressing anticipated allegations from the appellant

DEPARTMENT'S PRESENTATION

The Department should be represented before the Commission by the appellant's immediate supervisor, a manager from the Department who is familiar with the case, and, if necessary, by Counsel to the Department. The determination of whether Counsel will be required to represent the Department will be made at the initial planning meeting described above. If other individuals are needed to provide specific information or testimony, they should be called as witnesses and dismissed after testifying rather than remaining for the entire session.

- a. The case is introduced by briefly going over the "taking paper" and stating that the purpose of the fact-finding examination is to identify and correct any abuse of discretion.
- b. Either the manager or the supervisor presents the specifics of the case. To ensure clarity, only one person should present. The other can be called on to explain specific points, but the supervisor and manager should not divide up the presentation as this tends to cause the Commission to lose focus. The presenter should direct the Commission's attention to the "taking paper" and should refer to it as a guide. The case should be presented in a factual manner, without impugning the character or guessing at the motives of the appellant. Care should be taken to avoid references to the "attitude" of the appellant - focus on observable performance.
- c. During the appellant's presentation, management representatives should take notes of points raised by the appellant. Any inaccurate or misleading statements of significance should be briefly rebutted at the end of the appellant's presentation. Statements made by the appellant that are not pertinent, or that would not be of significance to the Commission should be ignored. It is vital to focus the Commission on management's case, rather than allow the appellant to obscure the case by engaging the Department in debates or discussions of irrelevant issues.

All management representatives must be aware of the non-verbal communications they present to the Commission. Without knowing it, you can easily give these signals by rolling your eyes, frowning, or shaking your head in disbelief at statements made by the appellant or his/her representative. The Commission may interpret such non-verbal communications as an indication that the individual does not openly listen to the employee on the job.

- d. The Department's case is concluded by making a closing statement summarizing the standards that were not met, describing how the employee failed to meet the standards, and stating that the Department did not abuse its discretion in evaluating the appellant.

Guidelines for Preparing for and Presenting Cases Before the Civil Service Commission

Appeals of Disciplinary Actions

REFERENCE

Civil Service Rule XIV provides that employees may appeal dismissal, demotion, or suspension actions to the Commission. In cases involving dismissal, demotion, or suspension, an appeal hearing by the Commission is mandatory, if requested by the employee. In cases other than dismissal, demotion, or suspension, a hearing is discretionary with the Commission. When discretionary, the Commission decides whether to have a hearing after a review of written materials submitted by the employee and by the Department or after a brief oral summary of the merits of the case by the petitioner.

Section 5.A. of Civil Service Rule XI provides that "The appointing authority may terminate a probationary employee at any time during the probationary period without the right of hearing by or appeal to the Commission except when an employee alleges, and substantiates in writing, discrimination ... as the reason for rejection."

Upon receipt of a request for an appeal hearing, Human Resources places the appeal request on the agenda of the next meeting of the Civil Service Commission. At that meeting, the Commission will decide whether to hear the appeal. At that meeting, County Counsel may argue, for the Department, that a hearing should not be granted. If the Commission decides to grant a hearing, or if a hearing is mandatory, the Commission will set a mutually agreeable date for the hearing.

PREPARATION

A preparatory meeting will be scheduled by the attorney assigned to the case as soon as possible after an employee files an appeal. The appellant's immediate supervisor, any managers involved in the decision to take disciplinary action, County Counsel, and the Employee & Labor Relations Analyst should attend this meeting. Any other management representatives with relevant input (e.g., EEO Manager) should also attend.

At this meeting, the team should put together the department's case, and anticipate and develop responses to the appellant's case. The department's case consists of:

- a. The Rule - The rule(s) which the employee has broken as cited in the Skelly letter.
- b. The Facts - A description of how the employee broke the rule(s). This is taken from the body of the Skelly letter.
- c. Substantial Proof - Evidence to show that the employee did violate the rule(s). This proof is in the form of the "material relied on" used by the deciding official in making the decision to discipline.

In addition to the above, the department's case should also answer the following questions:

- a. Was the employee given forewarning or foreknowledge of the possible consequences of misconduct? This usually consists of recordation of counseling sessions, but may also include policies signed by the employee.
- b. Did the department, before administering discipline, make an effort to determine whether the employee did, in fact, violate the rule(s)?
- c. Was the investigation conducted fairly and objectively?
- d. Have the rules and discipline been applied equitably and without discrimination to all employees?
- e. Was the degree of discipline reasonably related to the seriousness of the proven offense and to the record of the employee in his/her service with the organization?

CASE SUMMARY

A brief summary (one page if possible) will be presented to the Commission and used as a "taking paper." This "taking paper" will help to keep the Commission focused on the pertinent issues of the case, and will assist the Department representative in presenting the case in a logical and understandable manner. The paper should include:

- a. The rule which was violated
- b. A brief description of how the employee violated the rule
- c. A chronology of significant events including:
 - Dates of specific incidents leading to discipline
 - Dates of counseling sessions
 - Dates of any prior discipline
- d. Brief statements addressing anticipated allegations from the appellant

DEPARTMENT'S PRESENTATION

The Department should be represented before the Commission by the appellant's immediate supervisor, a manager from the Department who is familiar with the case, and by County Counsel. If other individuals are needed to provide specific information or testimony, they should be called in as witnesses and dismissed after testifying rather than remaining for the entire session. The specifics of each case will guide its presentation, but a general guide is as follows:

- a. Counsel introduces the case, raising any pertinent legal points, and briefly going over the "taking paper."

- b. Counsel calls witnesses to present the Department's case. Counsel will have gone over questions to be asked and answers to be given in advance of the hearing. The witnesses should present the case in a factual manner, without impugning the character of or assigning motives to the appellant. Care should be taken by witnesses to avoid references to the "attitude" of the appellant. The focus should be on observable performance.

During the presentation, Counsel may introduce exhibits to support the Department's case. These should include the Skelly decision letter, and the material relied on by the deciding official in determining to take disciplinary action.

- c. During the appellant's presentation, management representatives should take notes of points raised by the appellant. Any inaccurate or misleading statements of significance should be briefly rebutted at the end of the appellant's presentation. Statements made by the appellant that are not pertinent, or that would not be of significance to the Commission should be ignored. It is vital to focus the Commission on management's case, rather than allow the appellant to obscure the case by engaging the Department in debates or discussions of irrelevant issues.

All management representatives must be aware of the non-verbal communications they present to the Commission. Without knowing it, you can easily give these signals by rolling your eyes, frowning, or shaking your head in disbelief at statements made by the appellant or his/her representative. The Commission may interpret such non-verbal communications as an indication that the individual does not openly listen to the employee on the job.

- d. Counsel provides a closing statement summarizing the standards that were not met, describing how the employee failed to meet the standards, and stating that the Department did not abuse its discretion in evaluating the appellant.