

**Interest:** The Association believes the final step (appeal) of the discipline procedure should be before a neutral arbitrator for a final binding decision. A neutral arbitrator will alleviate the real or perceived bias that may come into play when the decision makers in the discipline procedure have regular interaction with the employee.

**Proposal:** The Association proposes to add a neutral arbitrator as an employee option for the final step of the discipline procedure.

## **ARTICLE 11 – DISCIPLINE**

### **1. - CITIZEN COMPLAINT PROCEDURE**

Citizen's complaints filed with the Sheriff's Office must be accepted by a sworn Sheriff's Office supervisor or, in his/her absence, the designated Officer in Charge. In any case should this not be practical, the complainant will be given an envelope and be requested to return the complaint in a sealed condition. All such reports must be forwarded to the appropriate Department Head.

### **2. - INITIATING DISCIPLINE – COUNTY EXECUTIVE OFFICER REVIEW**

Prior to initiating any discipline as hereinafter provided, an appointing authority considering discipline consisting of discharge, suspension without pay for thirty-two (32) or more scheduled work hours, demotion or reduction of wages shall first review the matter with the County Executive Officer.

No appointing authority shall dismiss any disciplinary action or impose any discipline less than that recommended by the county executive officer without reviewing the matter with the county executive officer.

The appointing authority may review minor proposed discipline with the county executive officer. Employees classified as exempt under the Fair Labor Standards Act shall not be disciplined by suspension without pay for less than a full work week, unless it is a penalty imposed in good faith for infractions of safety rules of major significance.

#### **f. Initiating Discipline - Notice of Proposed Action**

Except as provided in Section 3.08.1250, disciplinary action shall be commenced by an appointing authority preparing a written notice of proposed action containing the following:

- 1) The name of the employee.
- 2) The section number or numbers of the rules or regulations violated constituting the charges.
- 3) The reasons for which the disciplinary action is proposed to be taken on such charges.
- 4) Any materials upon which the action is based.
- 5) A statement informing the employee of his or her rights to respond, either orally or in writing, to the appointing authority within seven calendar days.

#### **g. Filing Charges**

At the expiration of the time specified in Section 3.08.1210(E), and after (or after for DSA represented employees) investigating and considering such responses, oral or written, as the employee may have made, the appointing authority may file, within forty (40) calendar days, a written order initiating discipline containing the following...

#### **h. Filing and Service of Order**

The appointing authority or designated representative shall personally serve one copy on the employee and send one copy to the Human Resources Director. No copy of such order may be placed in such employee's personnel file until the discipline has become effective as provided in Section 3.08.1260.

#### **i. Interim Suspension (administrative leave) with Pay**

Pending investigation by the appointing authority of charges against an employee, the appointing authority may, in writing, and with the approval of the County Executive Officer order the employee placed on immediate paid administrative leave of absence until charges are filed under County Code Section 3.08.1230. Such interim suspension may only be made if the appointing authority and County Executive Officer determine it is in the best interest of the department or county to do so.

If notice is served under Section 3.08.1210, the appointing authority may with county executive officer approval, in writing, order that such interim suspension continue until such interim discipline becomes effective as provided in Section 3.08.1260, or such charges are dismissed. Such further suspension may

only be made if the appointing authority and the County Executive Officer determines that it is in the best interest of the department or county to do so.

### **11.3– EFFECTIVE DATE OF DISCIPLINE**

- a. Discipline not involving termination shall become effective when either the employee has not filed a request for appeal hearing (within the ten (10) calendar days as required under Section 3.08.1280 or at the conclusion of a hearing when findings have been made by the commission).
- b. In the event the order initiating discipline involves discharge from employment or termination, the discipline shall become effective when the appointing authority has served the employee with a copy of the order and filed the original order with the Human Resources Director pursuant to Section 3.08.1240.

### **11.4- APPEAL**

#### **a. Appeal—Procedure**

An employee desiring to appeal shall file with the Human Resources Director ~~hearing body an answer admitting or denying, in whole or in part, the allegations of the order. Matters not admitted by the filed answer shall be deemed denied.~~ a notice of appeal selecting either binding arbitration or a hearing before the Civil Service Commission. Any appeal failing to elect binding arbitration shall be deemed to have selected the Civil Service Commission. Such ~~appeal answer~~ must be filed within ten (10) calendar days, of receipt of such order by such employee.

#### **b. Appeal—Hearing**

##### **Binding Arbitration**

If an employee selects binding arbitration, the Human Resources Director shall contact the State Mediation and Conciliation Service (SMCS) to provide, in accordance with its normal and customary procedures, a list of names of neutral parties who may serve as an arbitrator. Upon receipt of the list from SMCS, the County and Association shall meet and alternatively strike names from the list until the name of one individual remains, who shall serve as the arbitrator. The appointing authority shall be required to present its case first. Unless otherwise agreed by the parties, the arbitration process shall be conducted in accordance with the rules of the American Arbitration Association.

The employee and the County shall share the fees and expenses of the arbitrator equally. A court reporter may be included in the proceedings upon mutual agreement of the parties, the cost of which shall be shared equally between the parties. All other expenses shall be borne by the party incurring them and

neither party shall be responsible for the cost or expenses of witnesses called by the other party. A party requesting a transcript of the arbitration shall bear the cost thereof. The decision rendered by the arbitrator shall be final and binding on all parties.

### **Civil Service Commission**

After the date the ~~answer~~ appeal is filed with the hearing body, such body shall hold a hearing at special meeting to determine whether such disciplinary action shall be sustained. The hearing shall be scheduled at the earliest possible date taking into consideration adequate time to schedule the parties, commissioners and counsel. The appointing authority or designee and employee each shall have the right to be represented by legal counsel.

The hearing body shall have the right to the assistance of counsel in the conduct of the hearing. Hearings shall be private and all persons excluded there from except the appointing authority, or designee, Human Resources Director, secretary to the commission, employee, employee organization representative, attorneys, legal assistants or investigators as designated by an employee organization representative or attorney for either party, court reporter, and witnesses actually testifying, unless the employee files a written request for a public hearing with the hearing body.

All testimony shall be given under oath. The hearing body or counsel to the hearing body shall have the authority to administer the oath. All facts must be established by a preponderance of the evidence. The appointing authority shall have the burden to prove the grounds for the disciplinary action and that the proposed sanction is appropriate. The appointing authority shall be required to present its case first. The hearing body and its counsel shall have the right to ask questions of the parties and of any witnesses and each party shall have the right to present evidence in rebuttal.

Any evidence which is relevant and material to the disciplinary action may be received and the hearing body shall not be bound by the formal rules of evidence required of a formal court hearing.

### **~~c. Appeal—Findings~~**

At the conclusion of the hearing, the hearing body may sustain, modify or reverse the discipline imposed by the appointing authority and may make such findings and enter such orders as it deems appropriate. If the hearing body orders reinstatement of the employee the findings shall specify the effective date of the reinstatement.

## 11.5 - PEACE OFFICER BILL OF RIGHTS

Nothing under the provisions of Sec. 3.08.1040, et seq., shall be deemed to grant or deny any right or duty granted or denied by the Peace Officer Procedural Bill of Rights.

## ~~11.6 -- WITNESSES -- RIGHT OF EMPLOYEE, DURING DISCIPLINE~~

~~Any employee who is appealing disciplinary action under Chapter 3 of the Placer County Code, or as amended in this Memorandum of Understanding, shall be permitted to interview prospective witnesses at each witness' normal place of duty and during that witness' normal working hours with the approval of the witness officer's first line supervisor.~~

~~Permission to interview will be based upon the shift workload at the time of the request. All requests must be for a pre-described time period.~~

~~The witness officer may refuse to meet with the appellant officer or his/her representative. In case of such refusal, this privilege will be revoked.~~