

EMPLOYMENT PROTECTION SYSTEM

The Fresno County (hereinafter "County") Employment Protection System (hereinafter "EPS") shall govern all formal disciplinary actions for cause imposed by the Public Defender's Office on any Defense Attorney I/II/III/IV/Senior. Other than as provided herein, the County shall not impose any disciplinary action that adversely affects the pay of any Defense Attorney. Nothing in EPS shall be construed to provide, either explicitly or implicitly, a civil cause of action for breach of contract either express or implied arising out of a termination of employment.

Disciplinary actions shall only be imposed for cause. Consistent with this policy, certain levels of discipline shall be deemed informal and shall be exempt from review by any outside hearing officer(s) and certain levels of discipline shall be deemed formal and shall be subject to the review provided in this policy. Employee Performance Evaluations, Counseling Memos, and Oral and Written Reprimands shall not be considered formal disciplinary actions. Employees receiving one of these documents shall have the right to submit a written response to the County, which shall be included in the employee's personnel file, but shall have no other rights or remedies under this policy.

Formal disciplinary action is defined as disciplinary suspensions, administrative salary reductions, disciplinary demotions and disciplinary dismissals.

Grounds for disciplinary action include, but are not limited to:

- incompetency;
- inefficiency;
- insubordination;
- neglect of duty;
- absence without leave;
- dishonesty;
- fraud in securing employment;
- discourteous treatment of the public or other employees;
- drinking alcoholic beverages on the job, or reporting to work while under the influence of alcohol or intoxicants;
- addiction to narcotics or other habit forming drugs;
- conviction of a felony or misdemeanor involving moral turpitude;
- failure to pay just debts as reflected by multiple or repeated salary executions, court judgements, and/or repeated contacts by creditors during working hours;
- willful violation of any County code or lawful departmental or County regulation or order;
- improper political activity as specified in the County Ordinance Code;
- any conduct which bears some rational relationship to the employment and is of a character that can reasonably result in the impairment or disruption of County service,
- abuse of sick leave; and
- suspension or loss of license to practice law in the State of California.

Should an individual lose their license to practice law in the State of California, they shall be suspended immediately without pay pending termination or reinstatement of license to practice law.

Notwithstanding any other provision of EPS, if there is good cause to believe that a County employee may have engaged in such conduct which if true would warrant formal disciplinary actions, and which the Public Defender has determined imminently threatens to disrupt County service either because of the nature of the alleged conduct itself or because of its anticipated effect(s) on others in the County or on County service, the Public Defender may immediately place the employee on administrative leave with pay pending further investigation. In such event the Public Defender shall comply with the Notice and Order provisions of EPS as soon as practicable. During such time from the commencement of administrative leave with pay pending investigation until actual service of an Order for Disciplinary Action, the employee shall receive the full salary and employment benefits to which they may be entitled. In the event no formal disciplinary action is ultimately imposed, any documents pertaining to the incident that lead to administrative leave shall be removed from the employee's personnel file.

Prior to the effective date of any formal disciplinary action as provided herein, a written Notice of Intended Order for Disciplinary Action shall be served on the employee. Such Notice shall include an unsigned copy of the proposed Order for Disciplinary Action and copies of applicable documents, materials or other evidence supporting the allegations pertaining to the employee. The Notice shall inform the employee of the specific type of disciplinary action proposed. The Notice shall inform the employee of the right to deny the allegations or provide a written or oral response to the allegations to the Public Defender within ten (10) working days from the date of service of the Notice upon the employee. The Notice shall advise the employee that if he/she fails to reply to the Public Defender within the ten (10)-day period, or that if the denial is deemed by the Public Defender to be insufficient reason for the misconduct alleged in the proposed order, that formal disciplinary action shall be imposed. Unless the Public Defender has placed the employee on administrative leave with pay pending further investigation, the employee shall continue on duty with pay during such time between the service of the Notice for Intended Disciplinary Action and until such time as the final Order for Disciplinary Action is signed and served upon the employee, at which time the disciplinary action shall become effective.

Any employee facing formal disciplinary action shall have the right to be represented, at his/her own cost, by attorney, labor representative or other person selected by the employee.

Any employee who contests a formal disciplinary action as defined in EPS shall have the right to a lawful evidentiary due process review hearing before an impartial hearing officer. Within ten (10) working days of the service of the final Order for Disciplinary Action, the employee may submit a written request to the Fresno County Department of Personnel Services, attn: Labor Relations Division for a review hearing. If the employee does not request a review hearing or file an answer, the employee shall be deemed to have consented to the disciplinary action and the disciplinary order shall become final.

The employee, or their representative, and the County shall mutually agree on a hearing officer. The selection of the hearing officer shall be made within five (5) working days of the receipt of a list of seven (7) candidates referred by the California State Mediation and Conciliation Service, unless extended by mutual agreement. Each party shall have the right to alternately strike names from the recommended list until only one name is remaining.

The employee's formal written answer to the charges, denying the allegations the employee does not believe to be true and stating the basis for the denial or explanation of the employee's alleged conduct, shall be presented to the County and hearing officer no later than ten (10) working days after selection of the hearing officer. Reasonable efforts shall be made so that the hearing can be conducted within thirty (30) working days of selection of the hearing officer, unless the parties otherwise mutually agree to a later date. Once a date for the hearing has been determined, the hearing date may only be continued upon a determination of good reason by the hearing officer.

The hearing shall result in an appropriate record with a written report issued by the hearing officer containing findings of fact and conclusions that reference the evidence presented at the hearing. The employee shall have the right to be represented by legal counsel or any other person selected by the employee, at the employee's own expense. The County shall arrange for the services of a court reporter for the hearing. The hearing officer shall have the authority to issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents and other evidence as provided in California Code of Civil Procedure 1282.6.

At any hearing conducted pursuant to EPS, the County and the employee shall have the right to present, examine and rebut evidence, to call and cross-examine any witness on any matter relevant to the issues even though that matter was not covered in the direct examination and to impeach any witness regardless of which party first called that witness. The hearing need not be conducted according to technical or legal rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the kind of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized. The failure of an employee to appear 1) in person, 2) through counsel, or 3) other representative at the hearing shall be deemed withdrawal of the employee's appeal of the disciplinary action and consent to the disciplinary action, unless good cause for not appearing has been presented to and approved by the hearing officer. All expenses associated with the failure to appear at the review hearing, including the fees of the hearing officer, court reporter, and related expenses, shall be borne fully by the party that failed to appear.

The hearing officer shall issue a report and recommendation within thirty (30) calendar days after the conclusion of the hearing and submission of any supplemental evidence, briefs, arguments or other materials the hearing officer may request from the parties. The report shall be limited to the issue of whether or not cause exists for the discipline imposed. The report and recommendation shall either affirm, modify or reject the order of the Public Defender.

If the hearing officer affirms the County's disciplinary decision, the County shall furnish a certified copy of the record of the proceedings before the hearing officer to the employee at the employee's request and expense.

If the hearing officer modifies the discipline imposed by the Public Defender, the hearing officer may recommend:

- The restoration of salary and benefits to the employee in such amount and to such extent as is necessary to return to the employee the amount of lost salary and benefits due for such period of time that are inconsistent with the discipline recommended by the hearing officer.

If the hearing officer affirms or modifies the discipline imposed by the Public Defender, all costs of the hearing, including the fees of the hearing officer, court reporter, and related expenses, shall be borne equally between the employee, or their representative, and the County.

If the hearing officer rejects the discipline imposed by the Public Defender, the hearing officer may recommend:

- The restoration of salary and benefits to the employee in such amount and to such extent as is necessary to return to the employee all salary and benefits due for such period of time as the disciplinary action was in effect;
- The restoration by the employee of any termination benefits conferred during such time as the disciplinary action was in effect.

If the hearing officer rejects the discipline imposed by the Public Defender, all costs of the hearing, including the fees of the hearing officer, court reporter, and related expenses, shall be borne fully by the County.

If either party disagrees with the hearing officer's final decision, as provided by Government Code Section 71655, either party may file a writ of administrative mandamus pursuant to Code of Civil Procedure Section 1094.5 in the appropriate court within ninety (90) calendar days of the final decision. Such review by that court shall be based on the entire record. In reviewing the decision of the hearing officer, the reviewing court shall be bound by the hearing officer's material factual findings that are supported by substantial evidence. The party filing the writ of administrative mandamus shall be responsible for any associated costs.

In cases of salary and benefit restoration, the amount shall be reduced by any amount that the employee has earned from any other employment and/or collected from unemployment insurance, or with reasonable diligence might have earned from other comparable or substantially similar employment.

Employees hired on or after October 31, 2011, shall not be subject to the provisions of EPS until they have been employed a minimum of eighteen (18) months of continuous, uninterrupted County service in a Defense Attorney I/II/III/IV/Senior classification. Incumbents with less than eighteen (18) months of employment with the Public Defender's Office shall serve at the discretion of the Public Defender.

Effective October 31, 2011, employees who transfer, promote or demote from classifications outside of Representation Unit 31 into the Defense Attorney I/II/III/IV/Senior series, shall serve a one (1) year assessment period during which time EPS shall not apply. Said employees shall serve at the discretion of the Public Defender.

Effective October 31, 2011, incumbents promoting to a higher level within the Defense Attorney I/II/III/IV/Senior series, shall serve a one (1) year assessment period during which time EPS shall not apply and the Public Defender determines whether performance standards are being satisfied for the new classification (i.e. incumbents shall serve a one (1) year assessment period when promoted to each of the III, IV, and Senior levels). Should the Public Defender determine during the assessment period that performance is below standard, the incumbent shall be demoted to their previous classification/level.

There shall be no other appeal or remedy available to employees. This article is not subject to the Employee Grievance Resolution Procedure.