

**A REVIEW OF LOS ANGELES COUNTY'S
INVESTIGATION AND MANAGEMENT
PHASES OF THE DISCIPLINARY PROCESS**

MAY 23, 2016



Board of Supervisors

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First District

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Second District

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**CITIZENS'
ECONOMY
&
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**THE LOS ANGELES COUNTY
CITIZENS' ECONOMY AND EFFICIENCY
COMMISSION**

Executive Director
Edward Eng

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Jonathan S. Fuhrman, 1st District
Ed Munoz, 1st District
Steve Ward, 5th District
Fred Piltz, 2012-13 Foreperson-Civil Grand Jury

The mission of the Commission is to examine any function of County government at the request of the Board of Supervisors, on its own initiative, or as suggested by others, and to submit recommendations to the Board which will improve local government economy, efficiency, and effectiveness.

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May 23, 2016

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Dear Supervisors:

The Citizens' Economy and Efficiency Commission is pleased to report that it has completed its review of Los Angeles County's investigative and management phases of the disciplinary process, as directed by your Board in a motion made by former Supervisor Molina on October 30, 2012. This report was completed in December 2013, but at the request of key stakeholders involved in the equity process, we delayed issuing the report to allow the initial workload surge to stabilize and departments to get familiar with the new processes. The Task Force was reconvened in May 2015 to complete this study.

The attached report entitled, *A Review of Los Angeles County's Investigation and Management Phases of the Disciplinary Process*, is hereby submitted for the Board's review. During the course of our updated study, the Commission has found substantial improvements in virtually every phase of the process from two years ago, mainly:

- Average time between discovery of incident to the issuance of the Letter of Intent has been reduced from 264 days to 156 days;
- Average time from the Skelly Hearing to the issuance of the Letter of Imposition has been reduced, from 45 days to 34 days; and
- The overall life cycle from the discovery of an incident to the issuance of the Letter of Imposition of Discipline has been reduced from 352 days to 235 days.

Executive Director

Edward Eng

The Commission would like to acknowledge the cooperation and candid feedback from County management. We also appreciate the opportunity to present this study to your Board and recommend the Board consider adopting the recommendations of this report.

Should you or your staff have any questions, please contact the Commission's Executive Director, at (213) 974-1491, or via email at: eeng@bos.lacounty.gov.

With Warmest Regards,

A handwritten signature in black ink, appearing to read "Ed Eng", written in a cursive style.

Ed Eng
Executive Director
Economy & Efficiency Commission

C: Each Member of the Board
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TABLE OF CONTENTS

I. INTRODUCTION 1

II. COMMISSION CHARGE, SCOPE OF WORK AND METHODOLOGY 2

III. FINDINGS 3

A. DELAYS IN INVESTIGATION 6

A-1. Heavy caseloads directly impact Departments’ ability to expeditiously complete investigations and push the process to completion 6

A-2. The new screening process of the County Equity Oversight Panel (CEOP) originally added time to the investigative life cycle which resulted in additional workload to an already stressed system; but more recently the process has improved and the timeframe for resolution has shortened dramatically and the backlog reduced 6

A-3. Departments do not feel empowered to act even when they feel with a high degree of certainty which cases will be returned to them for investigation 7

A-4. “2nd bite at the apple,” another chance to file old complaints that were previously ruled unfavorably against the employee, was a factor contributing to the increase in claims and investigative delay 9

A-5. Departments expressed the desire for training and consistent guidelines on investigative procedures from the Department of Human Resources..... 9

A-6. Departments would like additional clarity and guidance from DHR and County Counsel on their rights and authority for more effective applications for employment and disciplinary policies, especially the departments’ rights once an investigation has commenced 10

B. SKELLY HEARINGS 11

B-1. The interpretation and implementation of scheduling of Skelly Hearings are inconsistent among Departments 11

C. OTHER DELAYS TO IMPOSE DISCIPLINE 12

C-1. Not all departments are taking advantage of CEOP’s training, educational, and preventive programs 12

C-2. Department managers expressed a considerable amount of frustration with a small number of the same doctors prescribing sick leave to employees going

out on pending disciplinary action	13
C-3. The County needs more effective tools to deal with “frequent flyers”, those identified as filing excessive and unsubstantiated claims	13
IV. RECOMMENDATIONS	14
<u>Recommendation 1:</u> That the Board consider directing County Counsel, CEOP and DHR to explore the “no further investigation” option of closing out a case if the complainant accepts all terms of a mediated settlement and agrees no further action is required	14
<u>Recommendations 2:</u> That the Board consider directing CEOP and DHR to develop a single platform system that permits electronic interfaces and on-demand information and access across all systems	14
<u>Recommendation 3:</u> That the Board consider directing DHR to encourage employees to file complaints involving the county Policy of Equity promptly to ensure that information can be gathered in a timely fashion and that both physical evidence and witnesses’ recollections are not lost or damaged with the passage of time	15
<u>Recommendation 4:</u> That the Board consider directing the CEO to allocate funding for a mandatory investigative training program, develop metrics, and provide the Board with an annual report on its effectiveness	15
<u>Recommendation 5:</u> That the Board consider directing DHR to institute a countywide policy to include the time and place for Skelly Hearing within the Letter of Intent	16
<u>Recommendation 6:</u> That the Board consider directing DHR to review and update the old 90-day standard for completing administrative investigations and on a semi-annual basis, provide a report to the Board on countywide as well as departmental performance metrics against this 90-day baseline	16
<u>Recommendation 7:</u> That the Board consider directing County Counsel, in concert with CEO’s Risk Management, DHR and the District Attorney, to identify physicians who may be abusing the system by providing inappropriate or fraudulent substantiation to employees seeking medical leave for stress or other reasons, give clear instructions on how to effectively enforce county procedures that ensure employees’ legitimate medical issues are respected while discouraging abuse and misuse of the system, and provide a progress report to the Board annually	16

Recommendation 8: That the Board consider directing DHR, County Counsel, and CEOP to review, update, and enforce the policies as set forth in the Misuse And Abuse Guidelines (MAAG), developed by CEOP 16

V. CONCLUSION 17

VI. ACKNOWLEDGEMENT 19

VII APPENDIX 19

1a. Board Motion 20
1b. Interview Questions 23
1b. Timeline Analysis 2011- 2013 24
1d. Timeline Analysis 2013 – 2015 25
1e. Data Request Letter 26

I. INTRODUCTION

At the request of the Board of Supervisors, the Citizens' Economy and Efficiency Commission has reviewed elements of the County's Civil Service System in two previous reports¹, focusing in particular on the process through which County employees may appeal disciplinary actions. The Commission found that, on average, it took over two years for such appeals to be resolved, validating anecdotal complaints from both management and employees.

The County's Civil Service Commission thereafter adopted several of this Commission's recommendations to streamline and expedite the appeals process. In a follow-up report, this Commission confirmed that the timeline for resolving appeals had been slashed down to six to nine months without significantly infringing on the rights of appellants or management. The Commission strongly believes that expediting the resolution of such appeals represents a tremendous gain both to appellants, who no longer are left in limbo for years on end, and for management, by bringing a greater perception of certainty to the County's disciplinary processes, and reducing the administrative overhead costs incurred during the appeals process, minimizing the risks of County exposure.

The previous studies examined the "back end" of the disciplinary process -- that is, the events occurring after County Departments issue a formal letter of imposition of discipline. However, there have been consistent anecdotal reports that the "front end" of the system -- the investigation and decision-making phase of the disciplinary process occurring between the event that warranted discipline and a Department's formal issuance of a letter of imposition of discipline -- similarly suffered from inordinate time delays.

The investigation of inappropriate or prohibited conduct, or the management of poor performance, is a surprisingly complex process. It ranges from the investigation of clearly illegal and prohibited conduct by employees, through conduct that may include inappropriate behavior towards fellow employees, to more mundane examples of sub-standard performance on the job. The County has a clear commitment to the principle of progressive discipline -- that employees should be informed clearly of what they did wrong and be given the opportunity to correct an issue with as much help as management can offer, to improve their performance, but that with repeated instances of misbehavior or continued unsatisfactory performance, the disciplinary responses become more severe.

Management responses can extend from simple counseling to the most severe response of terminating the employee. Employees may appeal terminations, or suspensions of more than five days, to the County Civil Service Commission; lesser actions, such as counseling, verbal warnings, written warnings, and suspensions of five days or less can

¹ 1. A Review & Analysis of Los Angeles County's Human Resources & Civil Service Commission Processes. 4 November 2010. Citizen's Economy and Efficiency Commission. <http://eec.lacounty.gov>.
2. Status Report on the Implementation of Recommendations from A Review & Analysis of Los Angeles County's Human Resources & Civil Service Commission Processes. 19 July 2012. Citizen's Economy and Efficiency Commission. <http://eec.lacounty.gov>

be grieved, appealed to the Director of Personnel, or submitted for arbitration through the Employee Relations Commission.

In addition, the County recently adopted a new formal policy on Equity in the Workplace, designed to handle complaints by employees alleging discriminatory conduct either by fellow employees or by their management. This policy created a county-wide office to review such complaints outside of the normal departmental management chain of command, intended to ensure that complaints were investigated and reviewed by an impartial review panel.

Lastly, a complex thicket of statutes and case law provides employees with explicit rights and protections within the workplace, and the disciplinary process must be informed by, and is constrained by, those rules. Prominent among those is the right to a "Skelly" hearing prior to the formal imposition of more serious discipline, at which an employee has the right to confront and rebut the reasons for the proposed disciplinary actions. Peace officers and firefighters have further specific rights under state statutes.

This report focuses on this complex "front end" of the disciplinary process, seeking ways to expedite the process, as we did with the appeals process, while not compromising the rights of either employees or management. It is our firm belief that faster resolution of performance management issues can provide substantial benefits to both the County's management staff and to our employees, and thereby to County government as a whole.

II. THE COMMISSION CHARGE, SCOPE OF WORK AND METHODOLOGY

During the past two years, in great part due to the diligent efforts of the Civil Service Commission, Department of Human Resources, Labor groups, and County Departments, significant improvements have been and are being made in reducing the entire timeframe of the disciplinary appeals process -- from beginning a hearing to resolving a disciplinary appeal.

On October 30, 2012, Supervisor Molina, citing the need to build on successes gained and lessons learned from prior reports, moved to direct² the Economy and Efficiency Commission to review County processes related to discipline and performance management, specifically, to look earlier in the performance management process prior to an appeal reaching the Civil Service Commission. This motion was unanimously approved by the Board.

The two objectives of this study are:

1. To identify major areas of concern that create undue delays in the investigative and management phases of the disciplinary process, the resolution of which could have significant impact on improving County operations.

² See Appendix 1a for Board motion.

2. To develop recommendations which can substantively improve the operation of the Los Angeles County investigative and performance management processes.

To undertake this charge, the Task Force collected data from a wide range of sources. Personal interviews³ were held with 10 Departments Heads and/or their Personnel Officers, Board Offices, Labor groups, CEO and his staff. To encourage candid responses in the interview process, all interviewees were assured that their comments would not be attributed to them individually, although their remarks might be used anonymously for illustrative purposes.

In addition, current performance management guidelines, investigative procedures, and information relating to caseloads were examined for consistency of interpretation, execution, and approval.

The Task Force also compiled and analyzed copies of the 20 most recent Letters of Imposition (from years 2011, 2012, and 2013) of formal disciplinary actions involving a suspension of greater than five days, reduction, or termination from each of 10 departments to establish a timeline⁴ of the various phases of the disciplinary process from the beginning of the alleged offense leading up to any formal disciplinary actions.

The final draft report was completed in December 2013 but was never released at the request of some key stakeholders. At that time, the Commission agreed that the equity complaint processes were still in its infancy stage and with the turnover of some key senior managers and staff, the Task Force would give time for the cases to cycle through this process and come back at a later date to review its progress.

The Task Force reconvened in May 2015 to complete this study. To ensure that this report reflects the most updated data, similar data (from years 2013, 2014, and 2015) was requested from the same departments and analyzed to establish a timeline⁵ containing the various segments of the disciplinary process from when an incident was first discovered up to the imposition of formal discipline.

As a result, our recommendations focus on practices and processes where improvements may be made in order to accomplish the Board's objective of shortening the overall disciplinary cycle.

III. FINDINGS

The Board of Supervisors directed this Commission to assess the County's performance management system because of consistent anecdotal reports that the process seemed inexplicably slow, and the Board's concern that these lengthy delays undermine both the effectiveness of County managers and the morale of the County's workforce.

³ See Appendix 1b for interview questions

⁴ See Appendix 1c for Timeline Analysis Summary (Cases from 2011, 2012, and 2013)

⁵ See Appendix 1d for Timeline Analysis Summary (Cases from 2013, 2014, and 2015)

The Commission began by gathering quantitative data, using a methodology similar to that which we employed in our prior two reports. In consultation with the Department of Human Resources, our Task Force chose 10 County Departments, including small (less than 500 employees), medium (500 to 5,000 employees), and large (more than 5,000 employees) organizations, and asked each to supply data on their 20 most recently⁶ completed disciplinary packages. Specifically, the Task Force sought to calculate the average "life cycles" of three disciplinary actions: (1) the calendar time from the discovery date of the incident, or recognition of poor performance, to the issuance of a letter of intent to impose discipline; (2) the time between the letter of intent and the Skelly hearing; and (3) the time between the Skelly hearing to the final letter of imposition of discipline, which concludes the internal process. In serious cases, the employee then has the right to appeal within the County to the Civil Service Commission and then to the Superior Court; and for less serious cases involving suspensions of no more than five days, the employee may file a grievance, appeal internally to the Director of Personnel or request an arbitration through the County's Employee Relations Commission.

From the initial selection of 200 cases (from years 2011, 2012, and 2013), the Task Force was able to compile the timeline data illustrated in Appendix 1c. On average, across all Departments and all types of cases, the process was taking almost a full year -- 352 days -- from the initial incident or observation to the final imposition of discipline. Further, within that process, it was taking 43 days -- nearly two months -- from the issuance of a letter of intent to holding a "Skelly" hearing (a hearing required by case law at which the employee can dispute the disciplinary action and present their side of the story to a senior manager within the Department who was not involved in the disciplinary decisions and who, therefore, can bring independent judgment to the issues at hand).

There is some variance among departments based upon their size, with smaller and larger departments doing somewhat better than medium-sized departments, and cases with less severe discipline (perhaps not surprisingly) moving faster than those with more severe discipline.

The first phase, which includes the investigational activities and management decision-making, takes the longest, averaging 264 days (with small Departments moving more quickly at 189 days, but medium-sized Departments averaging 339 days). The second phase, which covers the scheduling and conduct of the Skelly hearing, was averaging 43 days (with small or large Departments completing this in 32 or 33 days, while medium sized Departments averaged 65 days). Finally, the third phase, which encompasses the administrative actions taken by management to impose discipline, was averaging 45 days (with small Departments completing this process in 16 days, large Departments in 63 days, while medium sized Departments averaged (58 days).

⁶ The letter to departments requesting their 20 most recent Letters of Imposition was issued in 2013 and again in 2015

These data sets came from a relatively small sample size. Nonetheless, the data presents a fairly consistent story that accords closely with the anecdotal reports and with the assessments of nearly all the senior Department managers we interviewed. Further, these data were the first quantitative analysis available of the County's disciplinary process.

Based upon the data we have collected, the Commission believes that the existing timelines are far too long and indeed undermine the effectiveness of the County's performance management system. The Chief Executive Office has a target that Departments ought to resolve and act upon disciplinary issues within 90 days. Clearly, Departments have been unable, for a number of reasons, to meet this goal.

As alluded to earlier in the report, the Commission has updated this report with a second set of data points, representing the most recent 200 cases (from years 2013, 2014, and 2015) from the same departments, resulting in the timeline data as illustrated in Appendix 1d. From this set of data, on average, across all Departments and all types of cases, the process is taking 235 days -- from the initial incident or observation to the final imposition of discipline, an improvement of 33% over previous results.

Within this process, the first phase, which includes the investigational activities and management decision-making, continues to take the longest, averaging 156 days, representing an improvement of 41%. The second phase, which covers the scheduling and conduct of the Skelly hearing from the issuance of the Letter of Intent, was averaging 45 day, about the same as previous results. Finally, the third phase, which encompasses the administrative actions taken by management to impose discipline from the date of the Skelly Hearing, was averaging 34 days, an improvement of 24%.

The Commission also undertook a series of interviews with Department Heads and senior personnel officers, as well as with the Department of Human Resources and Board Offices, to explore more thoroughly the process Departments use, reasons why the process takes as long as one year to complete, and to identify potential changes or reforms that might expedite the process while protecting the rights of both employees and management.

Effective performance management systems depend critically upon timely and demonstrable results. If there are no perceived consequences to inappropriate behavior or poor performance, then management loses an important tool, colleagues in the workplace can become unmotivated, and morale among both management and employees suffers.

Fortunately, the County's Department of Human Resources has begun rolling out a new computerized application called Performance Management Tracking System (PMTS) to assist Departments in the performance management process. The roll-out of this system began on June 30, 2012, and provides one central database for managing discipline data information within departments as well as across all departments, enabling County management to track these timelines on a real-time basis. The system will allow managers to document actions and store data, track assignments and electronically notify key personnel of next steps or necessary approvals, and generate reports to help

departments measure the overall efficiency of their internal processes. As all County departments adopt this system (as of this writing, there are 5 departments that have not migrated their data over to this system), management will gain a critical and valuable tool to assess and improve their performance.

Using aggregate data from PMTS, the average case cycle time from case discovery to the imposition of discipline was in FY 2010-2012, 175 days before the implementation of PMTS. Since its full implementation, the average case cycle time has steadily decreased to: 142 days in FY 2012-13; 119 days in FY 2013-14; and 78 days in FY 2014-15, a 55% reduction in cycle time.

A. DELAYS IN INVESTIGATION

This initial period includes the basic investigation phase that begins when an incident is reported, or when department management become aware of a problem. The analysis, however, is complicated because there are two different processes involved, one covering “routine” departmental issues, and a second, new process designed to cover issues of equity or discrimination. The County Policy on Equity (which replaced the County’s former Sexual Harassment Policy) adopted in 2011, established a county-wide oversight panel (the County Equity Oversight Panel, or CEOP) to receive and investigate complaints of discrimination against members of a protected class and then recommend to departments appropriate disciplinary actions. Thus, a significant fraction of disciplinary issues are, at least initially, reviewed outside the line department.

The Commission found that the following factors contributed to the delay between the discovery of an incident and the letter of intent to impose discipline.

A-1. Heavy caseloads directly impact Departments’ ability to expeditiously complete investigations and push the process to completion.

1.1 For disciplinary issues investigated within departments, there is broad agreement by Department Heads that the overall workload has exceeded current staffing levels as a result of years of budget curtailments and staff reductions. Typical staffing levels, particularly in larger departments, seemed to be one investigator per thousand employees, but this leads to individual workloads of 50 – 60 cases per investigator, with much larger numbers when CEOP referrals are included. A majority of the managers lamented that the backlog of investigations is taking a significant portion of their time throughout the day. One large County department commented, “I receive approximately 20 to 30 emails every day relating to disciplinary issues. Currently, it is just not an efficient process. Departments need help.”

A-2. The new screening process of the County Equity Oversight Panel (CEOP) originally added time to the investigative life cycle which resulted in additional workload to an already stressed system; but more recently the process has

improved and the timeframe for resolution has shortened dramatically and the backlog reduced.

- 2.1 The screening process involves an initial review for identification of cases by the CEOP's Intake Specialist Unit into categories: "A" cases, defined as jurisdictional and requires full investigation; "B" cases, also jurisdictional, concurred by CEOP and referred back to departments for follow up; and "C" cases, non-jurisdictional cases that are referred back to departments for handling.
- 2.2 Interviews showed that all Department Heads believe that although well-meaning, this unfunded mandate created heavy workloads for them. Already burdened by heavy workload, most Departments reported a surge of 30% to 40% in complaints when CEOP was established, with a few Departments reported spikes as high as 60%. Comments ranged from, "The long initial processing time of 6 to 9 months by CEOP's Intake Unit took its toll on my staff, CEOP does good quality work and is working its way out, but it is just overwhelming," to "CEOP is getting more refined and the process has dramatically improved and cases are now taking less time but it is still an evolving process. We are still learning to work with their investigative process."

A-3. Departments do not feel empowered to act even when they feel with a high degree of certainty which cases will be returned to them for investigation.

- 3.1 A majority of interviewees reported that a majority of their equity cases are either B or C cases. There is general consensus that even though the number of B and C complaints is large, 9 out of 10 cases have no merit and are eventually kicked back to Departments for investigation. Although in most of these cases, Departments believed they can predict with high certainty those that will come back to them for investigation; they don't feel that they have the discretion or authority to take action until after the CEOP process is completed. A majority would like to have some leeway to allow for some review by department management or some administrative remedies before it goes to CEOP. One Department commented, "We need a 'dismiss' option. A majority of the managers are so afraid to take any action even when they know with high predictability which cases are going to be classified as jurisdictional or non-jurisdictional, they are paralyzed."
- 3.2 While the number of jurisdictional A cases is smaller than that of either B or C cases, most of them lead to some disciplinary action. Some Departments reported that even after 3 to 6 months there was no action or response from CEOP, causing these cases automatically to go back into their systems to restart.

CEOP responded that initially, getting documents from Departments on A cases was a problem, which delayed the process from of 2 to 3 weeks; however, the

process is now improving with departmental administrative managers now designated as the as point person for contact. They acknowledged that the reinvestigation of B cases is an issue, but stressed that there is no need for Departments to reinvestigate a case if CEOP had already investigated it. CEOP also emphasized that even though a case is with CEOP, it does not preclude Departments from conducting their own investigation in parallel on the non-equity issues in the case.

Equally strong concerns were voiced by Labor groups that Departments appeared to be just waiting for CEOP updates and not urgently pursuing the resolution of cases. One Union Leader commented, “Departments are not conducting investigations in parallel while cases are in CEOP. Departments are no longer trying to reach agreements aggressively.” Most recently, SEIU has established a Committee to address the entire disciplinary process including CEOP’s established procedures, and collect independent data to assess performance and effectiveness.

In order to move cases quicker through the process, CEOP has created a “Fast Track” process for cases that are identified as sensitive and complex by Departments. In addition, they have proactively met with each Department to discuss and clarify the filing, investigative and final panel briefing processes for appropriate disposition and discipline. There seems little doubt that improvements in the CEOP’s internal processes, and their efforts to interface more effectively with line Departments, have contributed to the reduction in average timelines that we have observed.

3.3 The inability of departments’ systems to digitally interface with CEOP’s Customer Relations Management System leads to the continued reliance on the paper process, thus prolonging the completion of cases.

The Task Force found that initially Departments felt hamstrung by the intensive yet repetitive printing and scanning routine as each case progresses through the review and approval process. As one Executive Manager noted, “Everything is paper-based, very labor intensive. Example, putting together the final package for panel review is a very time-consuming process.” Another Department Head observed, “Getting the technological solutions to relieve the backlog is just not a priority in the County.”

CEOP has modified their system to provide instantaneous updates to Departments who request them. Departments are also now able to upload their documents directly to the CRM system or email the documents to a special CEOP mailbox for screening and processing. This represents a significant reduction in the burden placed on line Departments and is a welcome improvement to the overall process.

Additionally, DHR's County Equity Investigations Unit (CEIU), with the cooperation of County departments, implemented a Managed File Transfer Protocol (MFTP) that provides for the electronic delivery of County Policy of Equity investigative reports, including audio recordings, to all departments using a secure electronic file transfer. The MFTP protects the privacy and confidentiality of the investigations; eliminates the need for extensive printing and copying; and eliminates the need for department representatives to travel to the CEIU offices to pick up case files. The MFTP is much more efficient and has resulted in significant savings in cost, travel, and time.

A-4. "2nd bite at the apple," another chance to file old complaints that were previously ruled unfavorably against the employee, was a factor contributing to the increase in claims and investigative delay.

The Board of Supervisors created CEOP to better manage County risk but also gave some employees who lost their original appeal an opportunity to file the identical complaint with CEOP, which resulted in added workload to Departments. This was a significant issue as reflected in Departments' comments

4.1 A majority of Departments perceived that employees believe that CEOP would initially investigate everything. Therefore, employees that lost their initial cases now feel they have a second chance with CEOP, which starts the investigative process all over again, hence, leading to a "second bite at the same apple." Comments capturing this view ranged from, "Old stale cases now have new life and become resuscitated," to "This new structure added organizational costs in terms of time added to the investigative life cycle and other administrative burdens."

In contrast, Union leaders complained that each time a new charge is brought on an employee; old charges are revived and tagged on the same employee. One Union leader's comment reinforced this frustration, "An employee charged with being rude to a customer will all of a sudden, have tardiness added on from several years back." Another Union leader commented, "When an employee gets cleared on a charge of being impolite to a customer, he is still reminded that it is County policy not to be rude to the customer."

A-5. Departments expressed the desire for better training and consistent guidelines on investigative procedures from the Department of Human Resources.

Departments uniformly conveyed the need for better training and guidelines from the Department of Human Resources (DHR) on how to conduct investigations, especially from Law Enforcement and Safety agencies. There was a surprising variation among the procedures different Departments used in investigating complaints, and in their understanding of what were appropriate or permissible techniques. One particular example was whether interviews with witnesses or complainants could be recorded; one Department felt that ability would be quite

helpful, another already does that routinely, and a third felt that was entirely unnecessary. One Dept. Head suggested that his Performance Management investigators would benefit greatly if they had the types of training materials and guidelines that DHR now provides to the Leave Management and Return to Work units.

Several Department heads also noted the need for greater access to on-line training, particularly for Departments with widely dispersed personnel and shift schedules outside the typical workday.

Fortunately, DHR has already begun work on providing investigatory guidelines for a variety of performance management issues, and DHR hopes to make these available by June 2016. Having more standardized approaches to investigations will likely result in faster turnaround, more consistent reporting, and stronger justification for any disciplinary decisions made by Departments.

A-6. Departments would like additional clarity and guidance from DHR and County Counsel on their rights and authority for more effective applications for employment and disciplinary policies, especially the departments' rights once an investigation has commenced.

6.1 A common issue raised by Departments was how to handle employees who go out on stress leave or medical leave as they are being investigated or as they anticipate disciplinary actions. There was clearly a great sense of frustration among Department leadership on how to handle these cases. Almost every Department reported that the investigation or disposition of the case grinds to a halt when employees go out on leave. Department heads shared an intense desire for better guidance from both County Counsel and DHR on how to handle these sorts of cases and what latitude they have in working with employees on stress leave. Some Department Heads noted that while County Counsel provides strong support on individual cases, they would like to have more assistance in establishing general guidelines.

Comments made by one Department reflected the general view of others, “The current policies related to Stress leave, Medical Leave, and Return to Work are inadequate for use by Departments. Most Departments take a hands-off approach if an employee is on sick leave, schedule gets deferred indefinitely.”

In fact, however, the County does have some strong tools that can be used when employees go out on stress leave. For example, if a significant portion of the stress an employee claims is due to a good-faith disciplinary action, or a pending action, that provides the County with a valid cause for denying the stress claim under the workers' compensation system. Further, the County can effectively challenge medical “directives” and are not necessarily barred from contacting employees out on stress leave.

6.2 The CEO's Risk Management personnel have developed close working relationships with Departmental Return-To-Work (RTW) teams, but the Departments' Performance Management teams are often located in an entirely separate section and often are neither trained in nor made aware of the tools available to the Departments. Nor has County Counsel provided guidelines which Departments could use to be more assertive with employees on leave and thereby expedite the performance management process. County Counsel has typically focused more on protecting the County from liability from impinging on employees' rights than on helping management drive the performance management process to a reasonably quick conclusion.

DHR, through their Learning Academy, has conducted Leave Management training and the like, but needs more focus. Departments also requested more on investigative training, especially in the area of fraud investigation.

B. DELAYS SCHEDULING THE SKELLY HEARINGS

The County of Los Angeles provides permanent employees due process rights that are consistent with the Skelly guiding case law and the County's Civil Service Rules when imposing disciplines by means of a discharge, demotion, reduction, or suspension greater than 5 days.

Prior to imposing disciplinary action, employees have a right to a copy of the written notice of the intended action (i.e., Letter of Intent), which includes a statement concerning the proposed action, and the specific grounds and facts upon which the action is based

Our findings revealed that all departments interviewed complied with the Skelly process. However, the implementation steps or procedures varied widely.

B-1. The interpretation and implementation of scheduling of Skelly Hearings are inconsistent among Departments.

1.1 There is considerable variance in the manner that a Department to set a Skelly hearing date in the body of the letter of Intent; the pendulum swings from one end (firm and unwavering) to another (flexible and accommodating). The conflicting opinions are expressed in the following diverging views: One Department Head commented, "Lacking any real guidance from County Counsel or DHR although they both are always very open, we give 'reasonable notice' to employees, if no show or response, we move forward without them depending on cases." In contrast, another Department Head said, "We are not sure or understand how much latitude we have legally. Even though at times we know it is mostly a delay tactic, we reluctantly try to be overly accommodating to avoid any legal issues down the line."

Union groups concurred that the inclusion of a Skelly date in the letter of intent is not always consistent but praised that most Departments are very generous in granting extensions. One Union Leader commented, “This is an area of least delay. Departments are generally flexible in granting hearings but we try to schedule a Skelly within 5 weeks.” Another offered this perspective, “The issue is not so much the scheduling of the hearings but the quality of the hearings. Cases get resolved when employees feel that they are being listened to. But with some Departments, employees feel that the managers’ minds are already made up regardless of the facts.”

1.2 Both Departments and Labor groups agreed that while the CEO’s policy to complete all administrative investigations within 90-days is aspirational, there is no real enforcement or consequences to the violation of this stated policy. Consequently, there is not an urgency to reach resolution in a timely manner.

C. OTHER DELAYS TO FINAL IMPOSITION OF DISCIPLINE

During the course of interviews, the Task Force attempted to identify other factors that impeded the completion of the disciplinary process.

When asked for an assessment if the current performance management system for discipline is working, most Department Heads replied that while the performance management system as related to discipline is not perfect, it is adequate but pointed to County culture as the biggest challenge in trying to reform the system. The way Departments deal with ambiguity and changes varied widely, ranging from overly authoritative in some cases to extreme cautious in others.

Our findings reflected several common concerns that hampered implementation of disciplinary policies and therefore delaying the completion of cases.

C-1. Not all departments are taking advantage of CEOP’s training, educational, and preventive programs.

The Commission noted that initially not all Departments have a strong working relationship with CEOP. Lower level managers and supervisors sometimes view CEOP in an adversarial relationship, one that either interferes with their ability to manage their workforce or one which adds substantially to the departments’ workload. As noted earlier, CEOP has provided proactive leadership and training to Departments to demonstrate that preventative training can ultimately reduce Department incidents and thereby adversarial perceptions by those outside CEOP. The Department of Parks and Recreation may provide a good example of the more positive relationship between a Department and CEOP that can be demonstrated to other Departments.

In addition, CEOP has developed many templates in a notebook and has electronically sent them to all Departments. They have also met with Department HR managers on how to use the various templates.

C-2. Department managers expressed a considerable amount of frustration with a small number of the same doctors prescribing sick leave to employees going out on pending disciplinary action.

The Commission heard from Department managers that some employees going out on stress or other medical leave prior to or soon after receiving notice of an incident of discipline, sought documentation of their need for leave from a few of the same doctors. These doctors were consulted by employees much more frequently than other doctors who provided paperwork for employees seeking medical leave. In addition, upon returning to work, the restrictions some doctors placed on the work that the employee was capable of doing were extreme and very limiting so that the employee would be able to perform almost no work related to their position based upon the doctors' prescription. Most Departments commented that this was a problem to some extent and it appears this phenomenon occurs countywide. The general view of Departments is reflected in comments ranging from, "We can't move forward because we don't know if it is legal or not. We don't always get consistent advice from the County," to "Employees know how to play the game, they have the same doctors writing excuse notes. We are told we can't do anything about it," to "Some restrictions are just ridiculous. We have orthopedic doctors certifying mental stress for employees. The same doctors write whatever they want and we have an obligation to accommodate them."

DHR provided the Task Force with a sampling of employees on leave within the Performance Management Tracking System from three departments of varying sizes—small, medium, and large. Within this representative sampling, it was found that on the average, approximately 6% of employees on leave have been referred to DHR for possible violation of Countywide Disciplinary Guidelines, with small departments at 3.5%, medium size departments at 4.4% and large departments leading with 7%. These percentages are small, but considering the size of Los Angeles County, the actual numbers are substantial and should be dealt with immediately. The CEO Leave Management Unit should work with County Counsel and DHR to establish guidelines for departments to clarify or address work restrictions that are vague and ambiguous.

C-3. The County needs more effective tools to deal with "frequent flyers", those identified as filing excessive and unsubstantiated claims.

3.1 Departments interviewed have identified employees filing multiple claims as "frequent flyers," and their claims take up an inordinate amount of administrative time to resolve. These perceived frivolous claims can range from "preemptive" to "retaliatory."

One Department head expressed frustration, "The policy language is just too broad, we need better procedures to deal with this group of frequent flyers," to "Each time a fact is added to the original case, the process starts all over, we need better policies to deal with frequent flyers," to "The pendulum has swung

too far toward employees. Managers are scared. We need to take action without the fear of them filing another claim.”

3.2 CEOP has developed the Misuse And Abuse Guidelines (MAAG) for dealing with frequent flyers. Departments interviewed are aware of the existence of the guideline but felt that the document has not been helpful because the qualifying criteria have been set too low. As one Department Head commented, “The MAAG is used only in very extreme cases. It is rare and infrequent.” Another Senior Department Manager said, “The MAAG has all the ingredients but it needs to be updated. It is a risk management issue.”

3.3 Union groups interviewed stated that they never heard of such a policy but noted that they are starting to develop their own process for tracking members who have excessive filings.

IV. RECOMMENDATIONS

Based on the findings of this report, the opinions of a majority of those interviewed and the analysis of County’s civil service policies, the current system for resolving disputes and imposing disciplinary action has significantly improved.

To ensure continued progress, there are clearly areas in which the County can improve. Our recommendations are not intended to support and advocate for management, or in any way interfere with the rights of employees for fair and equitable treatment, but rather suggest a number of ways to shorten the investigative cycle and expedite the resolution of cases.

Recommendation 1: That the Board consider directing County Counsel, CEOP and DHR to explore the “no further investigation” option of closing out a case if the complainant accepts all terms of a mediated settlement and agrees no further action is required.

Policy makers and organizations are increasingly recognizing that mediation, and other forms of alternative dispute resolution have a particular quality in the workplace. DHR offers a professional mediation process to help provide a quicker and sometimes more economical response than the traditional employment trial process. However, in all cases, the investigation continues even after a settlement has been reached with a complainant. This may be warranted in some cases, but many others could benefit from an expedited mechanism to close the case and avoid the unnecessary expenditure of further resources.

Recommendations 2: That the Board consider directing the CEO to allocate funding for DHR to develop a single platform system or expand the current

Performance Management System that permits tracking and reporting of equity cases across all systems.

Departments have raised concerns over their ability to track Equity cases because of their volume and sensitivity. DHR can modify PMTS, or develop a similar tracking system, to track the various types of Equity cases from the point of allegation to final decision and any subsequent appeals. The benefit of having a tool that tracks these cases both centrally (DHR and County Equity Oversight Panel) and locally (departments) would be, similar to the benefit provided by PMTS which includes a seamless report generating ability both Countywide and within the department, as well as timeline alerts for individual cases. The development of a tracking tool or expansion of PMTS to track Equity cases will undoubtedly assist departments to more effectively and timely investigate and respond to employee complaints.

Recommendation 3: That the Board consider directing DHR to encourage employees to file complaints involving the County Policy of Equity promptly to ensure that information can be gathered in a timely fashion and that both physical evidence and witnesses' recollections are not lost or damaged with the passage of time.

As the “Employer” the County has a legal obligation to investigate and stop inappropriate workplace conduct no matter how old the alleged conduct is. Nonetheless, prompt reporting of issues or inappropriate conduct allows management to address problems in a timely fashion; management, the complainant and fellow employees all benefit from a rapid resolution of complaints. Lengthy delays in reporting inappropriate conduct can complicate the investigation of complaints: evidence may be lost or destroyed, witnesses become unavailable, and recollections fade. Further, the perception that inappropriate conduct is not being addressed undermines employee confidence in their management and in the CEOP process.

Recommendation 4: That the Board consider directing the CEO to allocate funding for a mandatory investigative training program, develop metrics, and provide the Board with an annual report on its effectiveness.

Currently, investigative training is provided by DHR and contractors. During the course of our interviews, many Departments expressed the desire for specialized, high quality investigative training and deemed the training conducted by the Auditor and Controller department many years ago as extremely useful and productive.

CEOP has published a Reference Manual, equipped with templates and instructions for electronic access, and provided training to Departments on using the various templates. This has been helpful, but Departments need more intensive assistance.

Recommendation 5: That the Board consider directing DHR to institute a countywide policy to include the time and place for Skelly Hearing within the Letter of Intent.

Some Departments are confident in proceeding with planned discipline if the employee does not show up for his or her scheduled Skelly hearing, others remain paralyzed. Departments that have adopted this policy seem to complete this process more quickly, with fewer continuances, than other Departments.

Recommendation 6: That the Board consider directing DHR to review and update the old 90-day standard for completing administrative investigations and on a semi-annual basis, provide a report to the Board on countywide as well as departmental performance metrics against this 90-day baseline.

Recommendation 7: That the Board consider directing County Counsel, in concert with CEO's Risk Management, DHR and the District Attorney, to identify physicians who may be abusing the system by providing inappropriate or fraudulent substantiation to employees seeking medical leave for stress or other reasons, give clear instructions on how to effectively enforce county procedures that ensure employees' legitimate medical issues are respected while discouraging abuse and misuse of the system, and provide a progress report to the Board annually.

The Commission believes that County Counsel and the District Attorney should investigate more thoroughly the surprisingly high number of prescriptions issued by a very small number of doctors. The County should determine if the prescriptions by those few doctors are indeed medically justifiable and warranted and if the conditions imposed on many of their employee patients meet appropriate medical standards and County guidelines (or if those doctors are simply contributing to the routine abuse of the protections the County provides its employees). Investigation should extend to the State Worker's Compensation organizations in order to learn if similar situations arise in other counties and to benefit from the experience at the state level in dealing with this issue.

Recommendation 8: That the Board consider directing DHR, County Counsel, and CEOP to review, update, and enforce the policies as set forth in the Misuse And Abuse Guidelines (MAAG), developed by CEOP.

The County already has a policy dealing with frequent flyers and it is very clear; 5 unsubstantiated complaints over 5 years is the limit, although this standard is not overly helpful, in part because of the normal time it takes to resolve complaints and

formally determine that they were unsubstantiated. (While that process is playing out, the complainant is free to continue filing complaints, many of which seem to be retaliatory or to represent an abuse of the system.) However, Department managers are not using even the tools they do have. CEOP has to ensure that departments are following the guidelines, both to protect employee rights but also to protect the integrity of the system.

V. CONCLUSION

This report is intended to identify issues delaying the completion of cases, take a fresh look at the operation of the systems from an independent and unbiased perspective, and make some judgments based on feedback, data analysis and a need for new and improved efficiencies.

Clearly, the County has devoted a great deal of effort developing processes to better manage County risks and improve the current system of resolving disputes related to employee disciplinary actions. However, some of those efforts have created unintended consequences; for example, while the Board created the CEOP to better manage County risks, it also added tremendous administrative burden and workload that resulted in additional time to the already long life cycle to complete cases. This was a significant issue as reflected in our findings but the situation has dramatically improved. As noted in the findings, there is increased collaboration between Departments and CEOP.

Some delays found in the report can be attributed to the inconsistent implementation of County procedures, i.e., scheduling of Skelly Hearings, addressing issues related to employees going out on stress/medical leave with the same few doctors writing excuses to support his or her claim, and dealing with varying processes such as how to address frequent flyers-employees who file multiple frivolous claims. While some County procedures are found to be cumbersome and need updating, there is also compelling evidence that County culture, for the most part, is risk-averse out of fear for legal ramifications. This conservative approach often leads to indecisiveness in making authoritative judgments.

Our recommendations suggest a number of ways to shorten the investigative cycle and expedite the resolution of cases. For example, one desired outcome will be to reduce the delays between the discovery of incident and the issuance of the Skelly letter. This will logically happen as more cases are worked through by CEOP after the initial surge. Recommendation #1 proposes the possibility of shortening this cycle with the option that departments do not investigate further after a complainant accepts all terms of a DHR mediated settlement. Recommendation #2 suggests the development and launch of a new database that would give Departments electronic access to case updates, as well as outcomes to all past cases, thus eliminating the need to constantly request updates from CEOP and giving both sides the confidence to better predict outcomes. In Recommendation #3, although the County cannot legally enforce time limitations on when complaints must be filed, the Commission continues to encourage employees to file

complaints timely and management to address alleged conduct promptly. All parties benefit when issues are promptly reported and addresses. To strengthen the knowledge and skills of the County's workforce, Recommendation #4 calls for additional investigative training which would result in more consistent practices for all Departments and leveraging the use of templates for different levels of disciplinary actions. Similarly, Recommendation #6 brings a greater focus on clarification on County policies which would lead to substantive improvements in operational efficiencies.

Another desire outcome is to reduce the delay in scheduling the Skelly Hearings. By establishing a policy to include the date, time and place in the body of the Letter of Intent as suggested in Recommendation #5, Departments can reduce this delay and move confidently and respond accordingly.

There is also a great deal of frustration for Departments when dealing with employees who go out on stress or medical leave upon finding out that they will be disciplined. This frustration is further exacerbated by employees bringing in notes from a small number of the same doctors causing a great deal of uncertainty on what Departments can do in these situations. Departments are hesitant to take any real action since those interviewed believe they just don't have the legal expertise to handle these cases. Recommendation #7 encourages the District Attorney to take a hands-on approach to develop enforcement procedures and assist Departments in achieving their goals and objectives.

Those filing excessive number of unsubstantiated complaints have been identified as "frequent flyers." Department managers and employees both devote a large amount of time conducting discovery and gathering relevant facts related to these cases. To discourage this unrestrained behavior, similar to Recommendation #3, Recommendation #8 proposes that the County review, update and enforce the use of the standards as set forth in the Misuse and Abuse Guidelines developed by CEOP.

In conclusion, the Commission found that the County has made solid progress in the investigative and management phases of the County's Disciplinary system. The improvements to the processes stem, in large part, from the efforts that were initiated and recommendations enacted even before this final report was formally submitted to the Board. The Department of Human Resources, CEOP, and Departments deserve substantial credit for moving quickly on our recommendations during the long and arduous interviews and data analysis process. The Commission would also like to commend the Department of Human Resources for their development and implementation of the Performance Management Tracking System, a centralized database to aggregate departmental and countywide metrics and trends, which will further enhance the overall efficiency of the disciplinary system.

VI. ACKNOWLEDGMENT

The Commission gratefully acknowledges the substantial contributions of our respondents. These interviewees were generous with their time, candor and sharing of their understanding of the internal and external environments. Their help has been instrumental in our efforts to craft recommendations that we hope will improve County government.

VII. APPENDIX

- 1a.** Board Motion
- 1b.** Interview Questions
- 1c.** Timeline Analysis: 2011 to 2013
- 1d.** Timeline Analysis: 2013 to 2015
- 1e.** Data Request Letter

Appendix 1a- BOARD MOTION

Appendix 1a BOARD MOTION



STATEMENT OF PROCEEDINGS FOR THE
REGULAR MEETING OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF LOS ANGELES HELD IN ROOM 381B
OF THE KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012

Tuesday, October 30, 2012

9:30 AM

S-1. 11:00 a.m.

Status report by the Los Angeles County Citizen's Economy & Efficiency Commission regarding the implementation of the November 2010 Study of Los Angeles County's Human Resources and Civil Service Commission Processes, as arranged by Supervisor Molina. (Continued from meetings of 9-25-12 and 10-23-12) (12-4399)

Dr. Freda Hinsche Otto, Chair, Study Task Force, and Jonathan Fuhrman, Commissioner, Los Angeles County Citizen's Economy and Efficiency Commission, and Lisa Garrett, Director of Personnel, and Epifanio Peinado, Assistant Director, Department of Human Resources, presented a report and responded to questions posed by the Board.

Ruben Soto, Lisa Pompa, Keenan Sheedy, Eric Preven, Dr. Genevieve Clavreul and Arnold Sachs addressed the Board.

After discussion, Supervisors Molina and Antonovich made a joint motion to:

- 1. Direct the Executive Director of the Economy and Efficiency Commission to review County processes related to discipline and performance management, identify specifically how these processes can be improved, and prepare a report to this Board of its findings and recommendations by June 30, 2013. Key to this examination will be:**

- a. Reviewing departmental discipline/performance management processes from beginning to end, identifying where and how processes can be streamlined and improved and how consistent standards in evaluation and documentation can be applied to enhance fairness and communication throughout the process;**
 - b. Examining current investigator caseloads and identifying appropriate caseload levels for investigators including best practice strategies in managing cases and prioritizing casework with an emphasis on strategies for attaining a 90-day time period for investigation completion; and**
 - c. Consulting with County department employees, managers, labor and our Department of Human Resources (DHR) to determine the strengths and weaknesses of our current performance management process and making appropriate best practice recommendations.**

- 2. Direct the Chief Executive Officer and County Counsel to work with the Civil Service Commission to establish a pilot program to ensure that Civil Service hearing officers are available for voluntary mediation sessions, which would take place prior to a Civil Service hearing in an effort to reduce the number of Civil Service hearings needed;**

- a. For the pilot program, the Chief Executive Officer will be asked to set aside an amount not to exceed \$50,000 in a revolving fund to be utilized to pay up to four hours of hearing officer time for each voluntary mediation session. Parties seeking voluntary mediation will be entitled to one paid mediation session prior to hearing. Scheduled hearing dates shall not be delayed as a result of the parties' election of mediation. If the mediation is successful, the involved department will reimburse the costs of mediation to the fund because the department will have saved additional costs that would have been incurred for a Civil Service hearing, (i.e., Hearing Officer and court reporter per diems); and**

Appendix 1b
INTERVIEW QUESTIONS

We have established a timeline for each of the disciplinary phases-from (1) investigation of incident to Letter of Intent (2) Letter of Intent to Skelly Hearing (3) Skelly Hearing to Imposition of disciplinary action. Describe your Department's disciplinary process related to each of the phases. Which phase(s) of the process is most frustrating or problematic for you? Why?

Do you feel the County provides your department with adequate guidelines and support?

What are you most frustrated with and why?

What changes would you recommend that would improve the process?

Appendix 1c
TIMELINE ANALYSIS (2011-2013)

	<u>Time between Incident Disc & Letter of Intent</u>	<u>Time between Letter of Intent & Skelly Hearing</u>	<u>Time between Skelly Hearing & Letter of Imposition</u>	<u>Time between Incident Disc & Letter of Imposition</u>
All Depts	264	43	45	352
Large Depts	265	33	63	361
Medium-Sized Depts	339	65	58	462
Small Depts	189	32	16	237
All Depts/ 10-day Suspension	252	44	39	335
Large Depts	224	36	44	304
Medium-Sized Depts	352	61	64	477
Small Depts	180	35	9	224
All Depts/ 15-day Suspension	261	36	37	334
Large Depts	328	29	27	384
Medium-Sized Depts	283	51	57	391
Small Depts 15 days	171	30	29	230
All Depts/ 30-day Suspension	273	43	67	383
Large Depts	238	39	99	376
Medium-Sized Depts	394	55	89	538
Small Depts	187	43	13	243
All Depts/ Discharges	289	49	26	364
Large Depts	285	31	31	347
Medium-Sized Depts	340	88	38	466
Small Depts	243	27	9	279
All Depts/Appeals	277	52	30	359
Large Depts	231	40	20	291
Medium-Sized Depts	380	87	52	519
Small Depts	222	29	19	270

Appendix 1d
TIMELINE ANALYSIS (2013-2015)

	<u>Time between Incident Disc & Letter of Intent</u>	<u>Time between Letter of Intent & Skelly Hearing</u>	<u>Time between Skelly Hearing & Letter of Imposition</u>	<u>Time between Incident Disc & Letter of Imposition</u>
All Depts	156	45	34	235
Large Depts	172	43	40	255
Medium-Sized Depts	193	54	43	290
Small Depts	104	38	20	162
All Depts/ 10-day Suspension	205	41	29	275
Large Depts	199	56	35	290
Medium-Sized Depts	251	66	51	368
Small Depts	165			198
All Depts/ 15-day Suspension	150	39	34	223
Large Depts	177	30	34	241
Medium-Sized Depts	185	47	44	276
Small Depts 15 days	89	39	26	154
All Depts/ 30-day Suspension	154	41	44	239
Large Depts	256	43	57	356
Medium-Sized Depts	187	55	47	289
Small Depts	119	26	27	172
All Depts/ Discharges	174	55	24	253
Large Depts	236	69	25	330
Medium-Sized Depts	154	52	33	239
Small Depts	132	44	12	188
All Depts/Appeals	134	53	31	218
Large Depts	139	62	31	232
Medium-Sized Depts	171	58	41	270
Small Depts	93	38	20	151

Appendix 1e **Data Request Letter**

REQUEST FOR DATA RELATED TO DISCIPLINARY CASES

Dear Mr./Ms. (Department Head),

The Civil Service System Task Force was reestablished in response to the Board of Supervisors' request on October 30, 2012, (see Agenda No. S-1 of the attached Statement of Proceedings from that date), to review County processes related to discipline and performance management and prepare a report to the Board of our findings and recommendations.

A draft report was completed in August 2014 but was not released to allow key stakeholders involved in the equity process more time to work through the initial heavy caseloads. The Commission is now prepared to update this report with the most recent data available.

We are again requesting copies of your department's issuance of the 20 most recent *Letters of Imposition* of formal disciplinary actions involving a suspension greater than five days, reduction, or termination. Our intent is to establish a timeline of the various phases of the disciplinary process from the beginning of the alleged offense leading up to any formal disciplinary actions. For each of the letters, please include:

- Date of incident
- Date of the letter of intent to take disciplinary action
- Dates of any Skelly hearings on the proposed suspension, reduction or discharge
- Dates of the formal action taken ; and
- Identify which cases were appealed and the date of the appeal.

In addition, please indicate any previous informal or formal actions taken for the employee in each case, including discussions, coaching, counseling, written warnings, written reprimands, or previous suspensions, reductions, or terminations

We respect the confidentiality of individuals involved in such cases and ask that you remove/cross out the names, employee numbers, and any other identifiable data on the letters.

To ensure the timely completion by the due date of the Board's directive, we respectfully request the data from you by April 24, 2015.

Should you have any questions, please feel free to contact me via email or at (213) 974-1491.

With warmest regards,



Edward Eng
Executive Director
Economy and Efficiency Commission