

# **PERSONNEL RULES**



**COUNTY OF SAN BERNARDINO**

**HUMAN RESOURCES DEPARTMENT**

**EMPLOYEE RELATIONS DIVISION**

**REVISED APRIL 19, 2016**

## **BOARD OF SUPERVISORS**

Robert Lovingood	First District
Janice Rutherford	Second District
James Ramos	Third District
Curt Hagman	Fourth District
Josie Gonzales	Fifth District

Gregory C. Devereaux  
Chief Executive Officer

Revised April 19, 2016

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**RULE 1  
CODE OF ETHICS AND COMMITMENT  
TO COUNTY PUBLIC SERVICE**

**1.1 – Purpose**

This code establishes the standards of conduct required of all public officials and employees for the proper operation of County government and has the force of law. These standards are intended to strengthen public service and to maintain and promote faith and confidence of the people in their government.

**1.2 – Responsibilities of Public Office**

Public officials and employees are agents of the public purpose and serve for the benefit of the public. They shall uphold and adhere to the Constitution of the United States, the Constitution of the State of California, and the Charter of the County of San Bernardino, rules, regulations and policies of the County, and shall carry out impartially the laws of the Nation, State, and County. In their official acts, they shall discharge faithfully their duties, recognizing that the public interest is paramount. All public officials and employees must demonstrate the highest standards of morality and ethics consistent with the requirements of their position and consistent with the law.

**1.3 – Dedicated Service**

In the performance of their duties, all officials and employees shall support governmental objectives expressed by the electorate and interpreted by the Board of Supervisors and the County programs developed to attain these objectives. Officials and employees shall adhere to work rules and performance standards established for their positions by the appointing authority. The County requires all officials and employees to use good manners, to be considerate, to be accurate and truthful in statement and to exercise sound judgment in the performance of their work. During the hours covered by active County employment, no official or employee shall work for any other employer or agency and neither conduct nor pursue any unauthorized activity for remuneration. Officials and employees shall neither exceed their authority nor breach the law nor ask others to do so. They shall work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of the work.

**1.4 – Nondiscrimination**

No official or employee shall grant any special consideration, treatment, or advantage to any person beyond that which is available to every other person in similar circumstance. No person shall be favored or discriminated against with respect to any appointment in the County service because of family or social relationships, sex, gender, gender identity, gender expression, sexual orientation, race, religion, national origin, marital status, age, physical or mental disability, medical condition, genetic information, pregnancy, childbirth or any other protected status, political opinion or political affiliation.

**1.5 – Oath of Allegiance**

Pursuant to State law, all officials and employees must execute an Oath of Allegiance as follows:

“I ....., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.”

**1.6 – Confidential Information**

All officials and employees are obligated to maintain the confidentiality of records and information as required by law, regulation, and if applicable, professional duty. No official or employee shall either disclose or remove from County offices such confidential information except as authorized or required by law, regulation, or professional duty. No official or employee may use confidential information for personal gain or benefit or any other non-work related purpose. All personnel records shall be confidential and shall not be publicly disclosed unless such disclosure is required or permitted by law.

**1.7 – Use of Public Property**

Officials and employees are prohibited from using County-owned equipment, materials, or property for personal benefit or profit unless specifically authorized by the Board of Supervisors as an element of compensation.

### **1.8 – Conflict of Interest**

No official or employee shall engage in any business or transaction or shall have a financial or other personal interest or association which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political association. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active County employment providing such acts do not constitute a conflict of interest as defined herein. An employee is also subject to applicable provisions of the California Government Code, including but not limited to Sections 1090, 1126, 87100, and/or any other conflict of interest Code, policy or rule applicable to County employment.

### **1.9 – Political Activity**

It is the intent of the Board of Supervisors that every County employee participates in the political process to the extent that such participation does not interfere with the orderly performance of County employees' duties and functions. The provisions of California State Government Code 3201-3205 and 3302 and any future amendments thereto are hereby incorporated as part of this Rule. Employees engaged in political activity in violation of any personnel rule, County policy, labor contract, or regulation governing the conduct of County employees shall constitute cause for disciplinary action.

### **1.10 – County/Employee Responsibility**

The County shall provide all employees appointed to a regular classified or unclassified position with the County, with a copy of these Rules or access to them electronically. It shall be the responsibility of employees to become aware and knowledgeable of these Rules.

### **1.11 – Delegation of Approval**

Any action which requires the approval of the Director of Human Resources may be taken by a Human Resources employee who has been delegated that responsibility in writing by the Director of Human Resources.

**RULE 2  
ORGANIZATION AND ADMINISTRATION OF  
THE CIVIL SERVICE COMMISSION**

**2.1 – Members and Officers**

The Civil Service Commission (hereinafter referred to as the Commission) shall consist of five (5) members. The officers shall be a Chairperson and Vice-Chairperson. The Chairperson and the Vice-Chairperson shall be elected by the members of the Commission in January of each year for a period of one (1) year.

**2.2 – Qualifications for Membership**

Members of the Commission shall be qualified electors of the County and shall be selected on the basis of interest in upholding high standards of public service employment, County productivity, and the fair treatment of County employees; as well as knowledge of merit system principles and personnel administration. A member of the Commission shall not hold any salaried County office or employment.

**2.3 – Appointments**

All appointments shall be made by minute record of the Board of Supervisors and shall continue in effect until a successor is appointed in accordance with Section 1302 of the Government Code. Each Supervisor shall appoint one (1) member of the Commission. Except as provided above, a vacancy occurring during a term of office shall be filled for the unexpired term through an appointment made pursuant to the same process as the original appointment.

**2.4 – Term of Office**

Except as hereinafter provided, Commissioners will serve a term of four (4) years with terms to be staggered to begin on February 1 of the appropriate year and to end on the last day of January. No Commissioner shall serve more than two (2) consecutive four-year terms unless specifically permitted by the Board of Supervisors. Commissioners shall serve at the pleasure of a majority of the Board of Supervisors.

**2.5 – Civil Service Commission/Support Staff**

The Commission support staff is an employee in the Classified Service, who will provide direct staff support with direction and control vested in the Commission. Responsibilities include:

- a. Act as secretary.
- b. Prepare agendas.
- c. Formulate procedures.
- d. Conduct assessments and prepare reports.
- e. Coordinate with the Board of Supervisors, Human Resources, County Counsel, agencies, departments, and exclusive recognized employee organizations in the development of projects and the conduct of activities.
- f. Accomplish other duties as assigned by the Board of Supervisors, provided that such duties do not conflict with Commission responsibilities.

**2.6 – Legal Counsel**

Legal counsel to the Commission is provided by a representative of the County Counsel's office, who is not the same individual who represents County management on personnel matters or matters before the Commission. Duties are to provide legal interpretations and procedural advice to the Commission and to clarify, when requested, other legal matters that may arise in the conduct of Commission business.

**2.7 – Reimbursement**

Each member of the Commission shall receive a stipend for each meeting attended. Limitation on number of meeting days may be prescribed by the Board of Supervisors. The stipend and expenses for attendance at meetings are specified in the current Salary and Fee Ordinance of the County of San Bernardino.

**2.8 – Regular Meetings**

Regular meetings of the Commission shall be twice each month at the times and places set forth in a resolution of the Commission. Resolutions setting forth meeting times and places shall be available to public inspection during normal



working hours in the office of the Commission. Meeting agendas shall be mailed not later than the third working day preceding a regular meeting to the County Human Resources office and to each exclusively recognized employee organization and any other moving party.

A regular meeting of the Commission may be canceled at a previous regular meeting or by specific request of a majority of the Commission members. The specific reason for canceling the regular meeting shall be entered into the Commission minutes. The Commission Representative shall notify all interested parties concerning the cancellation of a regular meeting.

## **2.9 – Special Meetings**

Special meetings may be called by the Chairperson or, in the Chairperson's absence, the Vice-Chairperson, upon giving reasonable advance notice to each Commissioner, or upon the written request of a majority of the Commission. County Human Resources, each exclusively recognized employee organization and any other moving party shall be notified orally or in writing of a special meeting not later than twenty-four (24) hours prior to said meeting being convened.

## **2.10 – Public Meetings**

All meetings shall be public except that nothing contained in these Rules shall be construed to prevent the Commission from holding executive sessions as allowed or required under law.

## **2.11 – Rules of Order and Procedures**

"Robert's Rules of Order," except where otherwise dictated, shall guide the Commission in its proceedings.

## **2.12 – Quorum**

Three (3) members of the Commission shall constitute a quorum. Commission action on a matter shall require a majority of those present with a quorum in attendance.

## **2.13 – Communication**

Communications and requests to the Commission shall be made in writing, and the substance of such requests together with the action taken will be recorded in the minutes.

In any disciplinary appeal or other proceeding involving a dispute under the Personnel Rules, neither party shall have an ex parte communication with a hearing officer or the Commission or any member of the Commission. Ex parte communication means a party's written communication where the other party is not contemporaneously provided a copy of the written communication or a party's oral communication when the other party is not present during such oral communication. A hearing officer who engages in ex-parte communications may be removed from the hearing in question by the Commission.

## **2.14 – Minutes**

The Secretary shall cause to be recorded in the minutes:

- a. The time and place of each meeting of the Commission.
- b. The names of the Commissioners present.
- c. All official acts of the Commission.

A Commissioner's dissent shall be recorded in the minutes. The minutes shall be written expeditiously and shall be presented for approval or amendment at the next regular meeting. The minutes, or a true copy thereof, shall be open to public inspection.

## **2.15 – Commission Responsibilities**

The Commission responsibilities encompass, within the authority of the County Charter and the County Code, the following:

Judicial – As an autonomous entity, vested with the authority within the County structure to hear, collect supporting data, evaluate, adjudicate, and prepare formal authoritative rulings in the area of appeals pursuant to these Rules.

Investigative – The investigation of personnel activities may be conducted at the direction of the Board of Supervisors, upon a majority vote of the Commission, or upon petition of an exclusively recognized employee organization or citizen group concerning the enforcement and effect of these Personnel Rules. The Commission shall report the findings, conclusions and recommendations of any investigation to the Board of Supervisors for appropriate action.

#### **2.16 – Jurisdiction**

The Commission serves as a hearing body for adjudicating employee appeals on matters as set forth in these Rules. The Commission shall have jurisdiction only in regard to those matters that are specifically appealable to the Commission under those sections of the Personnel Rules where the right of appeal is expressly granted. The Personnel Rules shall not be grounds for a grievance, appeal or complaint except as provided for in these Rules. The Commission shall not have authority to adjudicate grievances appropriate under an applicable Memorandum of Understanding grievance procedure or matters arising out of implementation of the Employee Relations provisions of the County Code or any claims by an employee alleging harassment, discrimination, or violation of state or federal laws or regulations, or retaliation for filing a claim of harassment, discrimination, or violation of state or federal laws or regulations.

#### **2.17 – Power of Subpoena**

The Commission shall have the power to issue subpoenas requiring the attendance of witnesses at a formal appeal hearing or the production of documents or things. All subpoenas authorized under this process shall be served in accordance with Code of Civil Procedure section 1987, except as follows. Service of a subpoena for the production of documents or things shall be made at least 30 calendar days prior to the date set for the pre-hearing conference. Any production of documents or things shall be made no later than 10 calendar days prior to the date set for the pre-hearing conference. No subpoena for the production of documents or things shall be issued less than 30 days prior to the date set for the pre-hearing conference, or after such date, unless good cause can be shown. A determination of good cause shall be made by the presiding authority for the hearing, i.e., the Commission or a hearing officer, after consultation with the parties. If the Commission is the presiding authority and there is not sufficient time to place the request for a late subpoena on the Commission's agenda prior to the date set for hearing, the Commission Chair shall make the decision regarding good cause.

The Commission shall have the power to issue subpoenas requiring attendance or production of documents or things as the Commission determines necessary for conducting investigations pursuant to Rule 2.15. Subpoenas to be used by the Commission in its investigations shall only be issued pursuant to a motion approved by the Commission. All subpoenas authorized under this process shall be served in accordance with Code of Civil Procedure section 1987.

Upon a written or oral motion of a party or any person who has been subpoenaed, the Commission or hearing officer, as applicable, may quash a subpoena or issue a protective order on the same grounds that subpoenas may be quashed or subject to a protective order by a court of competent jurisdiction in the State of California. If no hearing officer has been appointed and it would be prejudicial to any party to wait for the Commission to convene to hear such motion, then the Commission chair may rule on such matter.

Any person duly subpoenaed to appear and testify or to produce documents or things and who willfully neglects or refuses to appear and testify or to produce such documents or things, may be subject to the civil and criminal penalties of contempt, unless good cause is shown.

#### **2.18 – Confidential Records**

All Commission records of investigations conducted pursuant to Rule 2.15 or Rule 4.21 shall, consistent with the law, remain confidential until such time as a determination is made by the Commission that such are disclosable public records, provided that if there is a public hearing, all documents or recordings that are part of the record of that hearing are disclosable public records.

#### **2.19 – Personnel Rules**

The Personnel Rules are promulgated by the Board of Supervisors. The Rules, when adopted, are published and become the responsibility of the Director of Human Resources or designee. The Director of Human Resources or designee is responsible for the implementation and the administrative interpretation of these Rules and the maintenance of records related thereto.

#### **2.20 – Adoption and Amendment of Personnel Rules**

Personnel Rules are drafted by Human Resources; however, the Commission may recommend additions or alterations to the Rules to the Director of Human Resources or designee. Exclusive recognized employee organizations, agencies or departments may submit suggested Rule changes in writing to the Director of Human Resources or designee or to

the Commission for consideration. If the Director of Human Resources or designee does not concur with recommendations of the Commission or exclusive recognized employee organizations, separate recommendations may be made to the Board of Supervisors, which is the final authority.

All changes to the Personnel Rules, including any amendments to existing or proposed Rules, shall first be referred to and reviewed by the Commission at a regular meeting, before being presented to the Board of Supervisors for adoption. The Commission and the Director of Human Resources or designee will jointly coordinate any recommended changes to these Rules, advise exclusive recognized employee organizations of such recommendations at least ten (10) working days prior to the aforementioned regular meeting of the Commission, and provide to those organizations the opportunity to confer with County representatives prior to such meeting of the Commission. Copies of the proposed Rule or amendment will be provided to the Commission, Director of Human Resources or designee, appointing authorities and exclusive recognized employee organizations at least ten (10) working days prior to a public hearing by the Board of Supervisors. A copy of any proposed rule or amendment shall also be placed on file with the Clerk of the Board of Supervisors. The rule or amendment in whole or part shall become effective immediately upon approval of the Board of Supervisors unless some other effective date is specified in the action by the Board of Supervisors.

If any of the provisions of the Personnel Rules are in conflict with the provisions of a Memorandum of Understanding reached pursuant to Government Code Section 3500 et. seq. the Memorandum of Understanding shall be controlling without further Board of Supervisors' action.

### **2.21 – Procedure**

Matters of procedure adopted by the Commission which may affect the administration of these Rules shall be furnished to the Director of Human Resources or designee and exclusive recognized employee organizations.

### **2.22 – Request for Reconsideration**

Within 10 business days following the Commission's final decision, a member of the Commission who voted in the majority on a Commission action may file a written request for reconsideration, or make an oral motion for reconsideration if made prior to the conclusion of the meeting during which the contested decision is made, on one or more of the following grounds:

1. The Commission's decision is contrary to law;
2. The Commission's decision is not supported by the evidence;
3. The Commission member has discovered new material evidence which could not with reasonable diligence have been discovered before the Commission meeting during which the vote was taken.

The Commission must vote on the request or oral Motion for Reconsideration at the next scheduled Commission meeting. If the Commission fails to act on or continue for good cause the oral motion or request at the next scheduled meeting there shall be an automatic dismissal of the request for reconsideration.

### **2.23 – Request for Reconsideration; Waiver**

Any assertion, issue, or point not raised in a request or oral motion for reconsideration shall be deemed waived and any new assertion, issue, or point shall not be raised in a hearing or in oral argument. If a request for reconsideration asserts any factual matter contained in the record, the request shall set forth the place in the record where such material is found.

### **2.24 – Action on Request for Reconsideration**

At the meeting during which the request is considered, the affected parties shall be limited to presenting oral argument on the merits of the request. If a request or oral motion for reconsideration does not meet one or more of the grounds listed in Rule 2.22, the Commission shall deny the request. The Commission may grant reconsideration and review the matter on the same record or may schedule a hearing to take further evidence. The matter may be referred to a hearing officer, and if a hearing officer heard the case initially, the Commission may assign the matter to the same or a different hearing officer. If reconsideration is granted, the Commission may affirm or modify its previous decision or enter a new and different decision on the existing record after reconsideration.

### **2.25 – Assignment of Responsibilities**

Administrative matters listed below have been assigned to the Director of Human Resources or designee for management action as it relates to a specific provision of these rules.

Appeals concerning any of the below can be made to the Commission. Except as may be otherwise specifically provided in these Rules, appeals shall first be submitted to Human Resources for administrative investigation within

fifteen (15) working days after the person is aware of the conditions precipitating the appeal. If the appeal is not resolved within ten (10) working days after submission to Human Resources, an appeal to the Commission may be filed. Such appeal must be filed within five (5) working days of the notice of results of the administrative investigation or within five (5) working days of the expiration of the ten (10) working days period for administrative investigation. Upon appeal, the Commission, after consideration, may uphold or reverse any decision made by the Director of Human Resources or designee regarding any of the below-listed items.

- a. Position/Classification Allocations
- b. Examination Eligible Lists
- c. Placement and Restoration on Eligible List
- d. Removal from Eligible List
- e. Disqualification from Examinations
- f. Request to Test Prior to Six (6) Month Wait
- g. Admission to Promotional Exam
- h. Extension of Eligible List
- i. Change of Appointment
- j. Reinstatement/Requalification
- k. Selective Certification
- l. Application of Medical Standards
- m. Subdivision of Eligible List

#### **2.26 – Time Limits**

The Commission shall have the authority or jurisdiction under this section to extend for good cause any time period contained in these Rules. Where a time period is set by a provision of these Personnel Rules for filing a particular document with the Commission or for taking a particular action, there shall be compliance with such a requirement unless the Commission extends the time period for filing a document or taking such action upon good cause shown by the party making the request for the time extension.

The time period for filing an appeal or requesting a hearing with the Commission may be extended for good cause, not to exceed an additional ten (10) calendar days beyond the original time period. The time period for taking any other action specified in these Rules may be extended by the Commission for good cause with the length of the extension to be determined by the Commission.

The term “working days” for the purpose of time limits under these Personnel Rules is defined as the days that the County is normally open to conduct business, i.e., Monday through Friday, 8 a.m. to 5 p.m., excluding County holidays. Unless otherwise specified, the term “days” shall mean calendar days.

#### **2.27 – Mailing Address**

Every applicant for employment and every employee of the County of San Bernardino shall provide to the County his or her current mailing address and every change of mailing address. Every person who appeals any matter to the Commission or who requests that the Commission initiate any proceedings shall provide to the Commission his or her current mailing address and every change of mailing address during the proceedings and his or her e-mail address. It shall be sufficient service upon each person of any notice or document placed in the U.S. mail, first class postage prepaid, addressed to the person at the last mailing address provided to the Commission, or if no address was provided to the Commission, then the last address provided to the County. No extensions of time frames shall be granted due to failure to provide current mailing address and any change in mailing address. Failure to respond to written notification from the Commission shall be deemed an automatic withdrawal of the appeal.

The representative of any person shall also provide the representative’s current mailing address and every change of mailing address during the proceedings and his or her e-mail address, and may direct that notices or documents, except those related to representation, be sent to the representative’s address.

**RULE 3  
CLASSIFICATION OF POSITIONS**

**3.1 – Classification Plan**

All positions shall be part of a classification plan established by Human Resources which provides for the grouping of positions into a system of classes, the description and definition of positions in class specifications, representation units, and rules and procedures which provide for maintenance of the plan.

**3.2 – Classified and Unclassified Service**

a. Service – All positions are assigned to the Classified or Unclassified Service based on the general functional nature, character of duties, or term of employment of positions as defined below:

1. Classified Service – Includes those authorized and classified positions to which appointments are made through a competitive process governed by merit system requirements and in which an employee can achieve regular status in the classification.
2. Unclassified Service – The Unclassified Service includes those jobs and working conditions normally associated with fixed term temporary employment; recurrent employment; extra help employment; employment in services or positions demonstrably special; and the following officers, positions, or employees unless otherwise determined by the Board of Supervisors.
  - (a) Any elective County officer; any public member of a Board or Commission; any person serving without compensation; any person employed to conduct a special inquiry or render professional, scientific, technical, or expert service of a temporary nature; any position placed in the Unclassified Service by the Board of Supervisors in accordance with the San Bernardino County Charter; any position which by law serves at the pleasure of the appointing authority.
  - (b) Persons employed on contract or other limited tenure assignment unless specifically included in the Classified Service by the Board of Supervisors.
3. Rights of Individuals in the Unclassified Service – Persons in the Unclassified Service do not have Commission appeal rights as they serve at the pleasure of the appointing authority except as otherwise provided by law.

Notwithstanding this provision, if the Commission determines that an unclassified employee is required by law to have a hearing in regard to the discipline of the unclassified employee, then the Commission shall have jurisdiction to conduct such a hearing pursuant to procedures established by the Commission. The Commission shall not have jurisdiction over the unclassified employees that are designated by the County of San Bernardino Charter, Article II, Section 6.

4. Conditions of and Placement in the Unclassified Service

- (a) Upon recommendation of Human Resources and approval of the Board of Supervisors, positions may be placed in the Unclassified Service subject to any applicable legal requirement.
  - (b) Working conditions and benefits of Unclassified Service positions will be determined when the position is authorized by the Board of Supervisors.
  - (c) The Director of Human Resources or designee shall make recommendations to the Board of Supervisors regarding regulations, compensation and working conditions governing employment for unclassified positions not assigned to an established representation unit.
  - (d) Persons appointed to positions in the Unclassified Service are hired and terminated at the discretion of the appointing authority except as otherwise provided by law. Persons hired must meet the minimum qualifications of the classification.
  - (e) An employee holding a regular position in the Classified Service shall retain classified status while holding the position even if such position is placed in the Unclassified Service by action of the Board of Supervisors.
- b. Class – All positions are assigned to an appropriate classification (class) based upon but not limited to an analysis of the duties performed, responsibilities, supervision received or exercised, organizational considerations, and the qualifications necessary to perform those duties. A class may include one or more positions. New classes, their representation unit, and appropriate salaries are recommended by the Director of Human Resources or designee

and approved by the Board of Supervisors.

- c. Class Specification – Class specifications are the official description of the representative duties, responsibilities and supervisory relationships of a class.
  - 1. Classification specifications shall be written and maintained by Human Resources for all positions in County service. The specifications shall include a class title, class definition, class or distinguishing characteristics, representation unit assignment, and description of typical duties and responsibilities of positions allocated to the class.
  - 2. Until a specification is written, the examination announcement shall serve as the written classification specification.
- d. Classification Series – A series consists of a grouping of two (2) or more classes performing similar work, but at different levels of responsibility, difficulty, and pay.
- e. Position Authorization – Positions are authorized as regular, recurrent, or extra-help based on the following criteria:
  - 1. Regular – Regular positions are authorized by the Board of Supervisors. Regular positions may be budgeted at either a full-time or part-time level, and incumbents may be in either the Classified or Unclassified Service. Employees in regular positions in the Classified Service can gain regular status pursuant to the provisions of these Rules upon completion of the required probationary period.
  - 2. Recurrent – Recurrent positions are authorized by the Director of Human Resources or designee. Certifications are made for an indefinite period of time to meet seasonal or on-call staffing needs. All recurrent positions are in the Unclassified Service and employees do not gain regular status.
  - 3. Extra Help – Extra help positions are authorized by appointing authorities. These positions are created for a limited period to cover unanticipated workloads, emergency, extra workloads of limited duration, necessary vacation relief, paid sick leave, and other situations involving a fluctuating staff. Extra help appointments shall not be used as a way of circumventing the purpose of regular service appointments and shall have a reasonable time limit. No extra help employment shall exceed twelve (12) months without the approval of the Director of Human Resources or designee. All extra help positions are in the Unclassified Service and employees do not gain regular status.

### **3.3 – Maintenance of the Classification Plan**

The Director of Human Resources or designee shall be responsible for the classification investigation of all positions in both the Classified and Unclassified Service. Classification review of positions may be conducted through various types of classification studies outlined in Section 4, Classification Review Procedures.

### **3.4 – Classification Review Procedures**

- a. Representation Unit and Job Family Review Procedures – Representation units and job families may be reviewed on a systematic basis and shall be studied pursuant to any applicable provisions of appropriate Memoranda of Understanding in force and effect. Upon completion of a representation unit or job family study, the recommended classification concepts, allocations, representation unit assignments and any new salary recommendations shall be submitted to the Board of Supervisors for review, adoption and resolution of appeals, if any. A job family is a grouping of jobs that perform similar types of work and require similar types of training skills, knowledge, and expertise. This differs from a classification series, which consists of a grouping of two (2) or more classes performing similar work, but at different levels of responsibility, difficulty, and pay.
- b. New Position Review Procedures – Before a new position is approved by the Board of Supervisors, an appointing authority shall submit a request for classification of the new position to the Director of Human Resources or designee. The request shall contain a description of the duties and responsibilities of the new position. Human Resources shall report its classification recommendations to the appointing authority who shall report the recommendations on classification, representation unit, and salary to the Board of Supervisors. When the need for a new position is urgent, it may be authorized by the Board of Supervisors subject to classification review. All new positions are subject to a verification review by Human Resources no less than six (6) months after the position has been filled. If any change is made to the classification allocation as a result of a verification review, the rules on upgrading or downgrading shall apply.

c. Reorganization Study and Special Study Review Procedures

1. Reorganization Studies – Whenever a department or unit thereof is substantially reorganized, the classification allocation of positions within the department or unit may be reviewed with the appointing authority and a determination made as to the need for classification review and investigation. As a result of any reorganization study, employees with regular status shall be placed in equivalent classifications within the affected department if positions are available. If a change in classification allocation of a position results due to the reorganization, the rules on upgrades and downgrades shall apply. When a reorganization results in a surplus of employees or an employee fails to meet the required job standards and qualifications resulting from the reorganization, provisions governing layoff shall apply. Whenever positions are transferred from one appointing authority to another without significant change in duties, employees with regular status shall retain rights to such positions.
2. Special Studies – Special studies include exceptional situations such as the need for improved career patterns, unique recruitment needs, gradual departmental restructuring of duties, or legal or contractual mandates.
3. Requests for Approval of Reorganization or Special Studies – Requests for reorganization or special classification studies may be filed by regular employees or exclusively recognized employee organizations through the appointing authority, by appointing authorities, or by the County Administrative Office. Requests not initiated by the County Administrative Office shall be submitted to the County Administrative Office for initial review. Request for study will then be forwarded to Human Resources for further review. Human Resources will provide a written response to the appointing authority as to whether the study was accepted or a general reason why it was not accepted.
4. Recommendation of Authorized Reorganization or Special Studies – After conducting a classification analysis of positions authorized for an approved study, the Director of Human Resources or designee will notify the appointing authority and the study initiator of the recommended classification allocation. Recommended allocations shall be submitted to the Board of Supervisors and will become effective upon Board of Supervisors approval.

d. Exclusively recognized employee organizations shall be notified of all recommendations made under this section.

**3.5 – Classification Appeal Procedures**

All classification allocation appeals will be filed with the Commission. Classification allocation appeals will be processed in accordance with appeal procedures contained in a current MOU or, in the absence of an appeal procedure in a MOU, in accordance with an appeal process mutually agreed to between the parties to the appeal and the Commission. The decision of any delegated review body shall be in a form of a recommendation to the Board of Supervisors for final action. Hearing bodies will follow appeal procedures established, and will provide written justification to the Board of Supervisors on classification appeal recommendation.

Appeals of recommended allocations may be filed by incumbents in positions allocated or exclusively recognized employee organizations. The burden of proof on any classification appeal rests with the appellant to establish why the recommended allocation is not appropriate. The content of and decision on classification appeals shall be restricted to consideration of the recommended and the requested classification. All classification appeals shall be limited to a discussion of duties and responsibilities performed at the time the position was studied.

Exclusively recognized employee organizations shall be notified of all proceedings under this section.

**3.6 – Results of Classification Studies**

- a. Upgrading – A change in the title of the position accompanied by an assignment of the position to a classification at a higher salary range constitutes an upgrading. Incumbents are not automatically upgraded when their positions are upgraded, but must compete through an examination and appointment process, unless the process is waived by the Commission. Exclusively recognized employee organizations shall be notified in writing of any request for waiver of examination under this section.

The examination to qualify an incumbent for promotion to an upgraded position may be waived by the Commission and the incumbent continued in current status at the request of the appointing authority, under the following conditions:

1. The position upgrading has resulted from a classification study and retention of the incumbent in such position is approved by the appointing authority.
2. The incumbent has been in the position and has performed the new grade-determining duties for the length of the probationary period of the new class.

In all other cases, upgraded positions are to be filled by examination in accordance with the rules on examinations

and appointments.

Employees with regular status promoted to an upgraded position shall be required to serve a probationary period in the new classification consistent with rules governing probation unless a waiver is granted by the Commission.

Incumbents not appointed to the upgraded position retain status in their current classification and may request a transfer to a vacant position in their current or equivalent classification, be retained in the position as an underfill or trainee in accordance with these Rules, or be laid off according to the provisions of the appropriate Memoranda of Understanding.

Where vacant positions are not available to accommodate a transfer request, employees may request a voluntary demotion and shall have rights governed by the provisions of these Rules.

- b. Downgrading – A change in the title of the position accompanied by an assignment of the position to a classification with a lower salary range shall constitute downgrading. Upon request, an employee with regular status occupying a position, which has been downgraded, shall be placed on an eligible list for any classification equivalent to his/her former classification for a period of two (2) years. Equivalent classification is hereby defined as one requiring all of the following: (1) the same kind and amount of experience; (2) the same degree of skills, knowledge, and abilities; and (3) a salary level no higher than the employee's former classification. The process of list placement indicated in Rule 6.4 shall apply.

Employees underfilling positions that are downgraded may be eligible for a promotion to the newly allocated level. The criteria and process indicated under Rule 3.6(a), Upgrading, shall apply.

Employees appointed from the eligible list shall retain the same status they held in their classification at the time of the downgrading. Employees with probationary status when downgraded shall be credited for time completed in their probationary period. If no vacancy is immediately available, the employee shall remain on the eligible list in accordance with Personnel Rule 5.

- c. Other – Study recommendations may result in the reclassification of a position, though the salary range remains unchanged. Employees may be appointed to the newly allocated classification in accordance with the criteria and process indicated under Rule 3.6(a), Upgrading.

### **3.7 – Technical Title Change**

A change in the title of a classification without any change in salary range or substantial change in the relevant grade-determining duties or requirements shall constitute a technical title change. There is no impact to the incumbent.



## **RULE 4 EXAMINATIONS**

### **4.1 – Purpose**

The fundamental consideration of the examination process is to serve the best interests of all segments of the public. The purpose of the examination process is:

- a. To provide qualified persons for County employment and for promotions insuring equal employment opportunity as a necessary element of the basic merit system principle.
- b. To insure that interested parties are informed of the examinations with special recruitment efforts tailored to reach and attract members of protected classes.
- c. To insure that all examinations are valid, impartial, free from personal, political, and non-merit considerations, and consistent with law.

### **4.2 – Need**

All regular positions in the Classified Service, and recurrent and extra help positions shall be filled by persons who have qualified in examinations, except as otherwise provided by these Rules.

Departments have the responsibility to notify Human Resources as soon as a vacancy is anticipated and to provide Human Resources with a complete description of the duties of the position.

Recruitments may be conducted and examinations may be held and appropriate eligible lists established when deemed appropriate by the Director of Human Resources or designee. Any examination announcement need not reflect an immediately available position.

### **4.3 – Definition**

An examination is a reasonable and impartial method of systematically and fairly evaluating an applicant's fitness for performing position requirements. An examination may be assembled or unassembled and may consist of one (1) or any combination of performance tests; written tests; rated interests; audiovisual tests; rating of the application, supplemental application, or resume; or work performance of promotional potential evaluations. Examinations may include tests of ability, physical and psychological fitness, interests, knowledge, and skills.

### **4.4 – Contents**

The Human Resources Department has sole responsibility for examinations. Appointing authorities have the responsibility for selection interviews delegated to departments. Examinations and selection interviews shall consider the following:

- a. Analysis of Job Duties
- b. Availability of Applicants
- c. Equal Employment Opportunity (EEO)
- d. Occupational Standards
- e. Professional Testing Principles
- f. Supportable Past Experience

All examinations shall be analyzed for job relatedness. Examination material shall relate to the fitness of the applicant for the work, duties, and requirements of the classification to be filled and shall be confined to the measurement of knowledge, skills, and abilities necessary to perform specific tasks. Any pertinent factor or trait that affects job performance of public relations may be considered, including a documented presumption of public reaction.

Investigations and oral tests may include an inquiry into an applicant's work background and behavior for purposes of determining specific skills or abilities to perform specific tasks and to insure a commitment to the mission of the agency.

Failure to examine or consider all applicants shall not invalidate an examination.

The Director of Human Resources or designee shall appoint deputy examiners as needed who may be representatives of departments, the public, interested organizations, or other public jurisdictions. Deputy examiners will be subject to training in cross-cultural awareness and equal employment opportunity.

#### 4.5 – Type

The type of examination shall be determined by the Director of Human Resources or designee in accordance with the provisions of these Rules. The following are types of examinations, which may be established separately or in any combination:

- a. Open – All interested who qualify are admitted.
- b. Closed – Only County, San Bernardino County Fire Protection District, or Board Governed Special Districts employees who had been laid off, are extra-help, recurrent, contract, or who hold a regular position in a classification of County, San Bernardino County Fire Protection District, or Board Governed Special Districts employment are admitted. These examinations may be limited to a particular agency or department.
- c. Standard – Routinely open once during a six (6) month or one (1) year period to establish or replenish an eligible list in situations with a large applicant pool.
- d. Request – Initiated by special departmental request where an immediate need exists and the Director of Human Resources or designee has determined that there is no viable eligible list.
- e. Periodic – Alternately open and close throughout the year to maintain a sufficient number of candidates to meet an ongoing need in situations with an adequate application pool.
- f. Continuous – Open through the year in situations where a critical need exists in hard to recruit situations.
- g. Qualifying – Any examination for an employee who is working in trainee, underfill, extra-help, recurrent, or provisional status used in qualifying employees for positions in the Classified Service.
- h. Lateral Entry – Employees of other recognized public agencies with regular status or those who have completed twelve (12) months of continuous full-time, satisfactory service in a comparable classification who obtained their positions through a competitive process and have performed satisfactorily. “Recognized public agencies” shall mean those that employ a system that meets State Merit System Guidelines. A “comparable class” shall mean one that possesses the same or greater minimum requirements and qualifications and/or duties and responsibilities.

Classifications for which lateral entry examinations are appropriate shall be limited to those approved by the Director of Human Resources or designee and have continuous recruitment needs and/or demonstrated recruitment difficulties. Applicants meeting the criteria described may be list placed on appropriate lists should a recruitment be deemed impractical by the Director of Human Resources or designee.

#### 4.6 – Publicity of Recruitments and Examinations

The Human Resources Department shall post the notice of the recruitment and examinations for regular and classified positions for a minimum of five (5) working days. The notice shall include:

- a. The title of the position.
- b. A brief statement of the duties.
- c. The approximate rate of pay.
- d. Any special requirement prior to appointment or prior to the acquisition of regular status and/or special conditions of employment.
- e. Minimum requirements.
- f. A statement of the topics included in the examination.
- g. Proposed dates of written examination, if any.

#### 4.7 – Requirements

Minimum eligibility requirements for a vacant position shall be determined by the Director of Human Resources or designee and shall be job related in accordance with legal requirements, considering classification specifications, the duties of the position, the occupational standards, the labor market, and past experience. Such requirements shall be based upon an evaluation of the duties and skills required. Artificial barriers to employment will be eliminated; members of protected classes will be given every reasonable access and encouragement to employment and promotion within San Bernardino County government. Applicants may be required to submit additional information about their job related qualifications, or to submit evidence of their possession of licenses or certificates, or of the completion of courses of study or training.

Failure to supply such information or evidence may disqualify an applicant. Ethnic or personal information may be requested consistent with the law. Applicants shall be required to successfully complete a medical examination prior to beginning employment.

#### **4.8 – Citizenship**

Citizenship may be required for specific positions or classifications consistent with applicable laws and regulations. Proof of legal authorization to work in the United States is required for County employment.

#### **4.9 – Residence**

Unless otherwise required by law, there shall be no residence requirements for employees in regular positions except that, an appointing authority may determine that the conditions of the job require an employee to respond within a reasonable period of time to a place of employment or jobsite. Such determination may be appealed to the Commission.

#### **4.10 – Filing of Application**

Applications for examinations must be filed on forms authorized by County Human Resources. Unless otherwise specified on examination announcements, all applicants must indicate interest in employment by submitting a completed County application form by the posted deadline. No appointment shall be finalized until a completed official application form is received by Human Resources.

Applications whether accepted or rejected, will not be returned. It is the responsibility of the applicants to show that they clearly meet the minimum requirements for the examination. The applicants shall certify to the correctness of all statements made on the application. After filing, information on the application may be amended only with the permission of the Director of Human Resources or designee.

#### **4.11 – Application Review**

Applications shall be reviewed under the direction of the Director of Human Resources or designee for eligibility. Any application may be denied which is submitted by a person who (whose):

- a. Is not eligible for examination under the provisions of these Rules.
- b. Application was received after the last day for accepting applications as specified in the notice or amendment thereto, unless waived by the Director of Human Resources or designee.
- c. Does not meet the minimum qualifications as prescribed in the examination announcement.
- d. Does not meet the legal requirements as set forth in Federal, State, or County law.
- e. Has intentionally made a false statement of any material fact or has practiced or attempted to practice any deception or fraud in the application, examination, or selection process.

#### **4.12 – Modification or Suspension of Examination**

The Director of Human Resources or designee may modify the examination process as listed on the examination announcement, by notifying eligible applicants of the modification. Any part of the examination process may be suspended at any time; and, if there are ten (10) or fewer eligible examinees remaining, the examination may be waived and all examinees certified, provided that the appointing authority interviews all those certified.

#### **4.13 – Admission**

All applicants who have not been excluded for cause may be admitted to the examination. No applicant shall be given preferential treatment. Information available to one (1) candidate shall be available to all candidates in the same circumstance. The Director of Human Resources or designee may admit any persons to the examination for the purposes of evaluating their qualifications.

#### **4.14 – Examination Grades**

Applicants shall be graded on a scale in which an adjusted score of 100 represents the highest degree of competency, which can reasonably be expected. Final passing grades shall place applicants in the following converted score ranges:

- 95 – 100
- 90 – 94
- 85 – 89
- 80 – 84
- 75 – 79
- 70 – 74

The examination may be composed of one (1) or several tests that are graded independently or jointly with weights assigned to each test representing relative value, importance, or other technical considerations. Weights shall be expressed in terms of their contribution to the total examination grade in percentages. Upon approval of the Director of Human Resources or designee, scores from appropriate comparable tests may be applied to similar tests using a conversion formula established by the Director of Human Resources or designee. When appropriate, the Director of Human Resources or designee may assign examination grades to applicants for placement on eligible lists for the same or lower grade classifications. The Director of Human Resources or designee may specify the maximum number of eligibles to be qualified and certified in the examination or any part thereof.

#### **4.15 - Attempt to Defraud in the Examination Process**

Any examinee who is caught in the act of cheating or is found to have cheated in an examination shall be disqualified from the remainder of the examination process and shall be barred from reapplying for said examination for a period of twelve (12) months. Cheating includes but is not limited to, copying, aiding others, plagiarism, using any tools or materials not specifically permitted during the examination, or any other action that may reasonably be construed as cheating. Current employees caught cheating may be subject to disciplinary action pursuant to Rule 10.

#### **4.16 – Retesting**

An applicant may submit an application for the same test only once within a six (6) month period unless specifically stated otherwise on the announcement. Scores of identical parts of the testing process may be transferred from one examination to another within a one (1) year period upon approval of the Director of Human Resources or designee. The Director of Human Resources or designee may waive these restrictions when warranted.

#### **4.17 – Correction of Examinations**

Prior to computing grades, test questions may be re-keyed or deleted on the basis of item analysis, administrative review or valid objections of applicants. Objections must be registered immediately upon completion of the examination on the feedback forms provided. Any such deletions or corrections shall be entered on the official keyed copy of the examination together with the reasons for such deletion/correction. After grades are assigned, only administrative errors may be corrected. The names and attained scores of applicants may be disclosed only with the approval of the Director of Human Resources or designee.

#### **4.18 – Examination Review**

All examinations shall be standardized. A standardized test is one for which the conditions of development, administration, and scoring are the same. Each test (written, oral or performance) is developed using the same systematic procedure. Each test is administered using the same setting, directions to examinees, test materials and time factors. Each test is scored the same way. Standardized tests shall not be subject to applicant review. Reviewing tests compromises their confidentiality and tends to cause scores to increase due to applicants becoming test-wise rather than being more knowledgeable about the subject matter.

#### **4.19 – Veterans' Preference**

In any open examination resulting in a numerical score, five (5) grade points shall be added to the final examination grade for any successful (achieved a passing grade) applicant who is not currently a County employee and who has served in any branch of the United States armed forces for ninety (90) consecutive days under honorable conditions, and all National Guard or military reserve activated by the Federal Government for any period of time, and ten (10) points for individuals who have a service connected disability rate at not less than ten percent (10%) by an authorized agency in the U.S. Government.

In any open examination, resulting in a numerical score, five (5) grade points shall be added to the final examination grade for any successful applicant who is not currently a County employee and who is the spouse of any such United

States veteran separated from the service under honorable conditions who, while in service, was disabled, thereby being permanently prevented from engaging in gainful employment, or is the widow(er) of any such veteran who died or was killed in such service and who has not remarried.

Applicants seeking the benefits of this section must submit proof of their eligibility at the time of application with a DD214 form. Evidence of disability (i.e. letter from Veterans Affairs, dated within the last twelve (12) months, indicating percentage of disability, or verification from the County of San Bernardino Department of Veterans Affairs if letter from the Department of Veterans Affairs is not available, and a legible copy of the Form DD214) must be submitted with each application at the time of filing.

#### **4.20 – Completion**

An examination process is completed on the date the Director of Human Resources or designee approves examination scores and establishment of the eligible list. The eligibility of successful applicants shall commence as of this date. Applicants shall be notified of the results of the examination.

#### **4.21 – Appeals**

Appeals may be made by applicants or their designated representatives on any part or process of an examination including the minimum qualifications for the position. Appeals must be filed within thirty (30) calendar days after the date of mailing of examination results. Human Resources shall investigate the circumstances surrounding the appeal and take appropriate administrative action within ten (10) working days to resolve any complaints. Written appeals from administrative actions may be made to the Commission within five (5) working days from the date of legal notification of the results of an administrative investigation. The Commission may establish procedural rules for conducting examination appeal hearings. The Commission may order an investigation if complaints are filed within time limits. Such hearing or investigation shall be completed within sixty (60) calendar days of such order. The Commission may use its discretion as to whether the appellant shall appear in person. The decision of the Commission on any appeal shall be final. Examination appeals shall not impede the normal appointment process. Appointments made will not be reversed in the absence of any wrongful conduct or action of the appointee.

#### **4.22 – Waiver of Examination**

When a vacancy occurs or is anticipated in a position requiring exceptional qualifications, the appointing authority may submit a written request for suspension of competition and examination with the Director of Human Resources or designee. A waiver may be granted if the Director of Human Resources or designee finds that the position requires exceptional qualifications, competition is impractical, and the position can best be filled by the selection of some designated person of recognized attainments.

## **RULE 5 ELIGIBLE LISTS**

### **5.1 – Definition**

An eligible list is an arrangement of applicants for County employment or promotion who are qualified as a result of an examination process. Lists are maintained in accordance with the County's classification of jobs. The period of eligibility may not be less than six (6) months or more than one (1) year unless otherwise determined by the Director of Human Resources or designee. The types of eligible lists are:

- a. Open – Persons who are qualified by competitive examination or service to fill regular, recurrent, or extra help positions.
- b. Closed Promotional – Persons in a regular position in a classification of County employment and who have qualified in examinations for advancement.
- c. Lateral Entry – Persons who are qualified by a lateral entry examination.

Closed promotional lists must contain a minimum of three (3) names of eligible candidates. Lacking three, an Open examination shall be undertaken and a list of additional candidates will be certified from the resulting Open list for the same class, or as otherwise approved by the Director of Human Resources.

### **5.2 – Subdivision of Lists**

The Director of Human Resources or designee may subdivide an eligible list according to any one or combination of factors:

- a. Geographical area.
- b. On-Call – Persons who will serve on an on-call basis.
- c. Recurrent – Persons who qualify by examination. This list also includes terminating employees who, prior to separation, may request placement on the recurrent list. The names of such employees shall be placed on the recurrent list upon the approval of the Director of Human Resources or designee. A request for placement on the recurrent list requires that the department from which the employee is terminating be willing to rehire the employee.
- d. Shift Assignment – Persons who will work a shift other than a Monday through Friday day shift.
- e. Extra Help – Persons who will serve on a temporary basis.
- f. Part-time – Persons who will serve in a position working less than eighty (80) hours per pay period.
- g. Departmental – Employees who hold a regular position in the department where the promotional vacancy exists.
- h. County only – Employees who hold a regular position in the County.
- i. Any other special or objective factor.

Separate eligible lists may be established for various groups, departments, subdivisions of departments, or by tested skills. Any lists subdivided as defined in subsections g. and h., are intended for other than entry-level, such as supervisory, management, or higher-level professional positions. Such lists must contain a minimum of three (3) names of eligible candidates. Lacking three, a list of additional candidates will be certified from the Open list for the same class, or as otherwise approved by the Director of Human Resources.

### **5.3 – Placement of Names**

Except for the Unclassified Service or as otherwise provided by these Rules, the name of any person qualified for County employment or promotion must be placed on an appropriate eligible list. The Director of Human Resources or designee may specify conditions or restrictions on the certification of an applicant as a condition of candidacy. Eligibles may also be placed on lists for lower or parallel classifications according to a formula established by the Director of Human Resources or designee. In addition to names placed on lists through the examination process, the Director of Human Resources or designee may place names on lists according to:

- a. Layoff – Persons who have been or will be involuntarily downgraded or separated without fault on their part.
- b. Disability retirement returnees or “qualified injured worker.”
- c. Transfer – Persons who have attained regular status and wish to be considered for assignment to other groups or non-agency departments.
- d. Leave of Absence – Persons who have been granted a leave of absence without right to return to their former position.
- e. Waiver – Persons who have been qualified for appointment or promotion by waiver of examination. Eligibility for appointment shall expire ninety (90) calendar days after action by the Director of Human Resources or designee. Eligibility should be confined to the single position for which the waiver was granted.
- f. Voluntary Demotion – Persons who have attained regular status and wish to be considered for a lower level class in which they have held status or meet the minimum requirements of the lower level class.

#### **5.4 – Removal of Names**

Names shall be removed from any eligible list after appointment, or when the eligible list expires. The acceptance of extra-help or recurrent work by persons on permanent eligible lists shall not affect their certification for regular work positions. Names shall be removed from the promotional eligible lists upon granting a leave of absence without right to return to the job. The Director of Human Resources or designee may remove names from an eligible list of any person who (or for whom):

- a. Is not offered an appointment after three (3) selection interviews.
- b. Fails to appear for any job interview or declines a job offer.
- c. Fails to answer an availability inquiry or keep Human Resources informed of a current status.
- d. Waives three (3) interviews for the same class or whose reasons for waiving certification or appointment are not satisfactory.
- e. Demonstrated unsatisfactory work performance in a similar position while on extra help, recurrent or other employment status with the County.
- f. Valid departmental objection has been filed by the appointing authority; such objection must be in writing and specify the reason for the objection.
- g. Demonstrated loss of skill or ability.
- h. Fails to meet minimum requirements, medical standards, or who has falsified the application or application materials, or for any valid cause relating to an applicant’s character and ability to perform satisfactorily on the job.
- i. Failed to comply with conditions of employment as a County employee.
- j. Violated the Code of Ethics, Rule 1, or other provisions of these Rules.
- k. Is hired into a higher classification.
- l. Is unable to be reached by phone, mail and email.

#### **5.5 – Restoration to Eligible Lists**

The Director of Human Resources or designee may restore the names of persons to the eligible list by renewing or reactivating their eligibility.

#### **5.6 – Extension of Eligibility**

The Director of Human Resources or designee may extend the eligibility of persons qualified by examination for a period not to exceed one (1) year from the date of the commencement of the extension.

## **5.7 – Inactive Status**

Applicants whose names are on the eligible list may request inactive status and their names shall be removed from the active eligible list. Upon notification, such names may be restored to the eligible list for the remaining period of eligibility. Eligibility shall not be extended by reason of such inactivity.



## **RULE 6 CERTIFICATION**

### **6.1 – Definition**

Certification is the process whereby available applicants are referred by Human Resources to the appointing authority for selection.

The Director of Human Resources or designee shall establish standard procedures for list certification.

### **6.2 – Certification**

The appointing authority shall request certification by submitting a Personnel Requisition which shall contain necessary information for the proper and prompt filling of positions. Upon receipt of the Personnel Requisition, the Director of Human Resources or designee shall order certification of persons on the appropriate eligible list in accordance with the provisions of these Rules. If eligibles fail to report for their department scheduled interview, they shall be presumed to have declined the position for which the vacancy exists. The Director of Human Resources or designee may require that any person certified be interviewed and considered. In no instance shall fewer than three (3) individuals be interviewed and considered except as provided for in Section 6 of this Rule. Failure to afford all candidates on the list an opportunity to be interviewed and considered may result in a request for recertification to be denied.

### **6.3 – Appropriate Eligible List**

The Director of Human Resources or designee shall determine the appropriate eligible list for each position, which shall be based on:

- a. The classification of the position.
- b. Special qualifications required to perform the duties of the position.
- c. Subdivisions of the eligible list pursuant to Rule 5.2.

With the consent of the appointing authority and the Director of Human Resources or designee, eligible lists for a lower grade classification may be used to fill the position with a trainee or underfill if rationale is consistent with the County approved EEO Plan, layoff avoidance program, or other operational need.

### **6.4 – Order of Preference for a List Certification**

Certification first shall be made for those candidates on layoff and from candidates who have been separated from the service on disability retirement who have been granted requalification on the basis of determination that they are no longer incapacitated, provided that they meet the requirements of an approved certification request for that position. All such former employees shall be assured the right of an interview prior to the final selection and appointment to the position. Certification may then be made from other established lists. The Director of Human Resources or designee shall determine the appropriate certification list to be used.

Determination of those referred will be made from the appropriate eligible list on the basis of highest attained score but will be listed alphabetically. The Director of Human Resources or designee will certify in groups of ten (10) or more. If less than ten (10) names are on the eligible list, all names on the list will be certified. If more than ten (10) names are available once certification parameters have been applied, the top ten (10) applicants will be referred to the department plus any tied scores at the tenth place. In instances where it can be demonstrated that a greater number of applicants would be needed due to special circumstances, such as a high failure rate in a background process, additional names may be certified in the interests of efficiency.

Additionally, any regular employee who has submitted a written request for transfer or voluntary demotion will be referred for all regular openings, along with those applicants certified, provided that they meet the requirements of an approved certification request for that position. Appointing authorities, may, at their discretion, choose to interview any of the transfer/voluntary demotion candidates appearing on their certification list.

The appointing authority may request referral of an eligible former employee or of any person on the recurrent list. In an emergency requiring immediate employment in order to avoid work stoppage or to meet work deadlines, referral may be made of persons immediately available for appointment with the approval of the Director of Human Resources or designee. Written justification for an emergency referral must clearly state the nature of the emergency and the impact on the County department if such emergency referral is not approved.

### **6.5 – Selective Certification**

Whenever the possession of a skill, knowledge, or ability, including bilingual ability, will enhance efficiency or promote better public service, the Director of Human Resources or designee may restrict certification to those persons who possess such skill, knowledge, or ability. The Director of Human Resources or designee may also restrict certification to current County employees only.

The Director of Human Resources or designee shall be responsible for evaluating each request for selective certification. Upon request, the appointing authority will submit written justification for any request for selective certification. Every reasonable effort will be made to ensure that no circumvention of merit system principles of these rules will occur if the request is approved.

### **6.6 – Insufficient Names on a List Certification**

When an eligible list contains fewer than three (3) available names, the appointing authority may elect to:

- a. Make an appointment from those certified;
- b. Accept certification of additional names from the most nearly appropriate eligible list as determined by the Director of Human Resources or designee;
- c. Temporarily assign an employee to the position in accordance with applicable Memorandum of Understanding provisions;
- d. Make a provisional appointment, in accordance with Rule 7.2(g), and request that additional eligibles be submitted; or
- e. Call for a new examination.

### **6.7 – Acceptance of Certification in Lower Classification**

The Director of Human Resources or designee may authorize certification from a related higher level or equivalent list to a position in a lower or equivalent classification with similar duties and responsibilities. Acceptance of appointment to the lower level classification shall not affect the candidate's status on a higher list.

### **6.8 – Department Objection to a Name on a List Certification**

The appointing authority may submit a written request to remove from the eligible list, the name of any person certified. Such objection shall contain the reasons for the department's rejection, and the objection shall be sustained only with the approval of the Director of Human Resources or designee. The Commission may restore or remove names on department certification lists.

### **6.9 – Selective Eligibility**

Candidates may request certification of their name to certain shift assignment, job types, or geographic areas.

### **6.10 – Emergency Certification**

In an emergency requiring immediate employment in order to avoid work stoppage, or to meet work deadlines, referral may be made of persons immediately available for appointment with the approval of the Director of Human Resources or designee.

## RULE 7 APPOINTMENTS

### 7.1 – Definition

An appointment is the offer and acceptance of a job made in accordance with these Rules and the laws governing same. The offer must be made by the appointing authority or authorized representative of the appointing authority and only to a person eligible under these Rules for the type of appointment offered.

### 7.2 – Types of Appointments

- a. Regular – All regular positions in the Classified Service when vacant, shall be filled by appointment of an eligible candidate certified from an appropriate eligible list and the appointee shall be required to successfully complete the required probationary period, except as otherwise provided in these Rules. No regular appointment shall be completed until the applicant has successfully passed the probationary period.
- b. Trainee – Underfill appointments to regular positions made from an appropriate eligible list of a lower classification for a prescribed period of time during which the employee must qualify for the higher classification or be terminated. The employee shall be required to qualify by one (1) or more of the following:
  1. Additional experience.
  2. Additional schooling.
  3. Possession of a State certificate or license.
  4. Trainee period Progress Report.
  5. Successful completion of an appropriate examination.

The original trainee appointment must be made on a competitive basis. During the period of a trainee appointment, the trainee shall be in an at-will status and will not obtain regular status if they are in a classification identified as a trainee classification. Appointments to the higher classification are subject to a probationary period.

An appointment to trainee status underfilling a classification that would be a promotion is considered an appointment to a promoted class.

- c. Underfill – Appointments to regular positions made from an appropriate eligible list of a lower classification for either training or budgetary purposes. If such appointment is a trainee underfill, the procedural process shall be that described in paragraph (b) herein. If such appointment is a budgetary underfill, the incumbent shall remain at the lower level classification and shall not be assigned to higher level duties.
- d. Recurrent – Appointments of persons to a position for an indefinite period on an on-call basis. Such an appointment may be for eighty (80) hours or less per pay period and does not require work in twenty-six (26) consecutive pay periods per year. Recurrent employees may be placed on recurrent employee rosters maintained by the department called to work at the discretion of the department. Recurrent employees serve at the pleasure of the appointing authorities.
- e. Extra Help – Appointments of persons to cover needs including but not limited to: seasonal peak workloads; emergency workloads of limited duration; vacation and paid sick leave relief; and other situations involving a fluctuating staff. Extra help employees serve at the pleasure of the appointing authority. No extra help appointment shall exceed twelve (12) months without approval of the Director of Human Resources or designee.
- f. Dual – Appointment to a filled regular position for a limited period of time shall be known as a dual appointment. Such employees enjoy all of the benefits of regular employees except regular status.
- g. Provisional – Unless otherwise provided by these Rules, appointment of a person not on an eligible list is provisional and may be made under any one of the following conditions:
  1. There is no existing list for the classification.
  2. The eligible list contains less than three (3) names, and the appointing authority has filed written objection to the employment of each person on the list with the Director of Human Resources or designee.
  3. Persons on the list are not available for appointment under the terms and conditions of employment prescribed for the position.

Such appointments shall be subject to review and approval by the Director of Human Resources or designee. All provisional employees must meet the minimum requirements for the class to which appointed or demonstrate reasonable attainment thereof. Provisional appointments shall terminate not later than two (2) pay periods after certification of qualified applicants from an appropriate eligible list or twelve (12) months from the date of the original appointment, whichever occurs first. The appointing authority may submit a written request and justification to the Director of Human Resources to extend the provisional appointment in six (6) month increments. No more than two (2) extensions may be granted for each provisional appointment.

- h. **Notification** – Within ten (10) work days from the date of employment, the employee's appointing authority or designee shall advise the employee in writing of the type of appointment received and whether the position is in the Classified or Unclassified Service. A copy of the notification shall be sent to the Director of Human Resources or designee. When an employee receives a new appointment or when their employment status is changed, a new notification shall be provided to the employee.

### **7.3 – Change of Appointment**

At the written request of the appointing authority, the Director of Human Resources or designee may change an extra-help or recurrent appointment to regular providing the initial certification was from an eligible list used for regular appointments and the employee has completed six (6) months of satisfactory service. Such appointment is subject to a probationary period.

### **7.4 – Oath of Allegiance**

No appointment shall be completed until the applicant has subscribed to an oath of allegiance or affirmation as required by law and such oath or affirmation shall constitute written agreement to be bound to these Rules.

### **7.5 – Medical Standards**

Medical standards shall be established for each job or group of jobs in the County service under the direction of the Director of Human Resources or designee. Standards shall be reasonably related to job requirements. The Director of Human Resources or designee may waive the medical standards for an applicant and place restrictions and conditions on continued employment.

### **7.6 – Medical Examination**

Applicants who have been offered positions are required to take a medical examination. No applicant shall commence employment prior to completion of, or without a medical examination. Medical examinations shall be conducted by a physician employed by the County for this purpose unless the Director of Human Resources or designee authorizes an examination by another physician. The purpose of the medical examination is to determine the medical and physical fitness of the applicant to perform the duties of the position. Inquiry may be made into the medical history and present medical condition of the applicant. The County medical examiner shall submit a report to the Human Resources Department containing a recommendation and any essential information, such as work restrictions, requested by the Director of Human Resources or designee for proper placement, restriction, accommodation, or counseling of applicants. The information presented to the Director of Human Resources or designee will not include confidential medical information of the applicant without a release or authorization from the applicant/employee. If an applicant is notified that he/she has failed the preplacement medical examination, they will be provided an opportunity to provide at their own expense an independent medical opinion to the contrary. The County will have both opinions reviewed by a third doctor, chosen by the County, for a final determination as to whether the applicant meets the medical standards for the position.

### **7.7 – Legal Requirements**

No applicant shall be appointed to any position in the County service who does not meet the legal requirements for the position. If a name has been improperly placed on the eligible list, the name shall be removed.

### **7.8 – Probationary Period**

During the probationary period, the appointing authority shall review, examine and monitor the conduct, capacity, efficiency, skill, responsibility, integrity, and effectiveness of an employee to determine whether the employee is fully qualified for employment in the classification and position to which the employee has been appointed.

Except as otherwise provided in the appropriate Memorandum of Understanding or the County Code, the length of probationary period shall be twenty (20) pay periods (1,600 service hours). Probationary period progress reports shall be made by the appointing authority on forms approved by the Human Resources Department and may be made in increments of any sequence of thirty (30) days performance. Mandatory probationary period progress reports are required on the following schedule:

<b><u>Probationary Period</u></b>	<b><u>Progress Reports Required</u></b>
Thirteen (13) pay periods (1,040 service hours)	Within four (4) to six (6) pay periods and within two (2) pay periods prior to completion
Twenty (20) pay periods (1,600 service hours)	Within four (4) to six (6) pay periods, within eleven (11) to thirteen (13) pay periods, and within two (2) pay periods prior to completion
Twenty-six (26) pay periods (2,080 service hours)	Within four (4) to six (6) pay periods, within eleven (11) to thirteen (13) pay periods, and within two (2) pay periods prior to completion

The probationary period is completed at the end of the business day in which the probationer completes the required number of service hours, unless the probationary period is extended as provided below or the Director of Human Resources or designee, upon written request of the appointing authority, approves the early completion of the probationary period.

Probationary periods shall be extended for the reasons provided for in the applicable Memorandum of Understanding. In addition, an appointing authority may extend the probationary period in multiples of three (3) pay periods with a maximum extension of fifteen (15) pay periods. The appointing authority shall inform the employee and the Department of Human Resources of the extension prior to the end of the probationary period.

A transfer of a probationary employee shall initiate a new probationary period, unless waived by the Director of Human Resources or designee. A reassignment of a probationary employee shall not initiate a new probationary period; however, at the discretion of the appointing authority, the probationary period may be extended in multiples of three (3) pay periods with a maximum extension of fifteen (15) pay periods, in accordance with these Rules.

If the work performance or conduct of a probationer, who has not attained regular status in another classification of County employment, is found to be below standards acceptable to the appointing authority, the appointing authority shall terminate the probationer. A promoted employee who has attained regular status in another classification of County employment who does not successfully complete the probationary period in the promoted class shall be returned to the former department and classification or a comparable classification without right to review or appeal. Such return shall not be considered disciplinary action. However, the right of a promoted employee, who has attained regular status in another County classification, to return to their former department and classification shall not be construed to prohibit disciplinary action from being taken for misconduct occurring during the promotional probationary period. For example, a promoted employee who engages in misconduct during the probationary period may be disciplined in addition to being returned to the former department and classification. Any employee serving a probationary period due to a voluntary demotion has no return rights.

Disciplinary actions imposed during a probationary period are not subject to review or appeal to the Commission unless the employee has attained regular status in a previous classification since the employee's most recent date of hire.

An employee serving a probationary period due to a voluntary demotion does not have a right to appeal disciplinary actions to the Commission.

### **7.9 – Waiver of Probationary Period**

When an employee is certified for a probationary appointment to a regular position after thirty (30) days of continuous recurrent, extra help, or provisional service in the classification, such service may be credited toward completion of the probationary period, provided that the evaluation of work performance was on the same basis and met the same standards included in the evaluation of probationary work performance. An employee who is rehired into a class in which the employee previously held regular status may have the probationary period waived. Such waiver is subject to the approval of the Director of Human Resources or designee and the appointing authority.

### **7.10 – Requalification to Eligible List**

The eligibility of former or voluntarily demoted employees for appointment without examination shall be termed requalification. Requalification is a privilege and is based upon past successful work performance. Employees who

resign, retire, or are voluntarily demoted after acquiring regular status may be requalified and placed on appropriate eligible lists. The eligible period for requalification begins immediately after the date of resignation or voluntary demotion and ends five (5) years after the date of resignation or voluntary demotion. The duration of list placement shall normally be one (1) year, but the time period may be lengthened or shortened by the Director of Human Resources or designee.

The Director of Human Resources or designee may determine whether or not to grant the former or voluntarily demoted employee's request for requalification based upon previous employment with the County. Former employees shall not be granted requalification eligibility unless their former appointing authority is willing to rehire and indicates that all aspects of their work performance, including attendance and work history were satisfactory. If the hiring department has no position vacancies in the appropriate classification, the employee's name may be placed on the appropriate eligible list based on the performance criteria stated above.

An employee under age 55 who is separated from the service because of a disability retirement, and who is subsequently determined pursuant to the medical examination ordered by the Board of Retirement to be physically and mentally capable of performing in a position previously held, and whose disability retirement allowance is subject to cancellation by the Board of Retirement pursuant to the provisions of the Government Code, shall be eligible for requalification for County employment. There shall be no time limitation for requalification eligibility of former employees on disability retirement who are found to be no longer incapacitated for service in the position held when retired for disability. The names of such employees who request requalification shall be placed on the appropriate eligible list in Group 1. The duration of eligibility shall not exceed one (1) year. Before the disability retirement allowance of an individual who is no longer regarded by the Retirement Board as being incapacitated from performing the duties attendant to the classification occupied at the time of retirement may be cancelled, that individual shall be offered an unconditional opportunity to be reinstated to the classification held at the time of retirement, as required by Section 31730 of the California Government Code.

#### **7.11 – Definition of Direct Hire**

The rehire of an employee by their former employing department without examination, shall be termed a direct hire. Direct hire is a privilege based upon past satisfactory work performance and work history. Employees who resigned, retired, or accepted employment with another County department may be rehired in any classification in which they held regular status upon request of their former employing department. The eligible period for direct hire ends five (5) years after the date of separation. There shall be no time limitation for direct hire of a disability retired former employee who is regarded by the Retirement Board as no longer being incapacitated to perform the duties of the classification held at the time of retirement.

## **RULE 8 WORK PERFORMANCE**

### **8.1 – Purpose**

The purpose of a performance evaluation is to provide a systematic method of measuring, recording, and improving the work effectiveness and development of all County employees with regular status in their current classification. Work Performance Evaluations are intended to be supportive and corrective and may reveal work insufficiencies that require corrective or disciplinary action.

### **8.2 – Standards**

County employment requires establishment of standards for both conduct and production. Production standards refer to work achievement required from an individual job and are the responsibility of the employing department. Conduct standards refer to acceptable behavior, and enforcement is the responsibility of the employing department concurrent with these Rules and department standards. Conduct standards include the ethical standards of conduct in Rule I, Code of Ethics, and job-related behavior, and enforcement is the responsibility of the employing department. Conduct standards may be established by the State, County, or employing agency or department and may be expressed in law, rules, regulations, policies, or generally accepted practices. Employees will be informed of all conduct and production standards related to their employment.

### **8.3 – Duty of Departments**

It is the duty of the department to evaluate the work accomplishments and conduct of employees, to inform employees of their evaluations in writing, and to assist employees in improving work effectiveness.

### **8.4 – Employee's Responsibility**

It is the responsibility of the employee to meet and to strive to exceed the minimum standards established for work accomplishment and conduct, to strive to improve work effectiveness, and to perform at highest competency levels.

### **8.5 – Evaluations**

A systematic method of periodic evaluations of employee's performance shall be established. Such evaluations will be made at least annually and whenever needed to maintain a record of an employee's work performance. The evaluation shall include the following elements:

- a. A written record to be reviewed and acknowledged in writing by the employee; no change shall be made after review and acknowledgement except for appeals which are upheld under Rule 8.8, or by mutual consent of the parties.
- b. A copy for the employee.
- c. An evaluator and at least one (1) reviewing official, except for evaluations of department heads, agency administrators and assistant department heads. The evaluator shall be the employee's immediate supervisor or a supervisor with knowledge of the employee's work performance.
- d. A discussion between the evaluator and the employee being evaluated on the content of the performance evaluation.
- e. A provision whereby an employee may submit a written answer or exception to any evaluation or statement made on the evaluation which must be filed with the evaluator and forwarded to the appointing authority. Such answer or exception must be acknowledged by the appointing authority and shall become an official part of the evaluation.

### **8.6 – Employees on Extended Paid Leave**

If an employee is on extended paid leave when his/her annual evaluation is due, the evaluation shall be held in abeyance until such time the employee returns from leave. Upon the employees return, the evaluation shall be completed and provided to the employee within two (2) pay periods from the date employee returns to duty.

## 8.7 – Use

Evaluations of performance shall be considered for all relevant personnel actions and shall be reviewed for training or other personnel management needs. An overall evaluation of “Meets Job Standards” or higher will satisfy the requirement for certification and recertification of competency required by Rule 9.9, Retirement.

## 8.8 – Appeals

In addition to the right of an employee to file a written response to a Work Performance Evaluation as provided in Section 5 (e) above, and except as may be provided for in a current Memorandum of Understanding, an employee with regular status in the employee’s current classification may appeal the content of a Work Performance Evaluation with an overall rating that is below standards in the following manner:

- a. Within ten (10) working days from receiving an official copy of an appealable work performance evaluation as defined above, an employee may file a written appeal to the evaluator’s supervisor. The appeal must state the specific point(s) and justification of disagreement with the evaluation. For purposes of this section “official copy” is a completed Work Performance Evaluation signed by the employee, or noted by the rater that the employee refused to sign, and signed by the rater, and reviewing official. Any time limit in this procedure may be extended by mutual written agreement of the parties.
- b. Within ten (10) working days after receiving the appeal, the evaluator’s supervisor will provide a written decision to the employee including the basis for the decision.
- c. If the employee is not satisfied with the decision of the evaluator’s supervisor, the employee may appeal to the appointing authority. Such appeal must be made in writing within ten (10) working days following the employee’s receipt of the written decision of the evaluator’s supervisor. The appeal must be accompanied with copies of the Work Performance Evaluation and any supporting documentation.
- d. Within ten (10) working days of receipt of the appeal, the appointing authority shall schedule a meeting with the employee and the employee’s representative, to thoroughly discuss the appeal. The appointing authority shall submit a written response to the employee and the employee’s representative, within ten (10) working days after meeting with the employee.
- e. If the employee is not satisfied with the appointing authority’s response, the employee may submit a written appeal to the Employee Relations Division within ten (10) working days of the receipt of written response of the appointing authority.

Within ten (10) working days of receipt of the appeal, the Director of Human Resources or designee shall review the appeal with the appointing authority, and shall, with full and final authority on behalf of the County, either resolve the appeal with the employee or their representative or refer the appeal to the next step. Notification of the outcome of this step shall be made in writing to the employee, the employee’s representative and the appointing authority.

- f. If the appeal has not been satisfactorily resolved by the County, the employee may file a written appeal to request a hearing. Such appeal must include copies of any pertinent documents, and must be filed with the Employee Relations Division within ten (10) working days of notification of the decision by the Director of Human Resources or designee.
- g. Prior to arbitration, the parties may, by mutual agreement, utilize mediation to attempt to resolve the issues of dispute.
- h. Within five (5) working days of the receipt of the appeal, the Employee Relations Division Chief or designee shall meet with the employee or representative and select a hearing officer from the list maintained by the Commission. The parties shall contact the hearing officer to schedule a mutually acceptable hearing date.
- i. Only those documents provided to and/or by the employee at the time the appealed evaluation was originally issued, or submitted with the appeal pursuant to all prior steps above, will be admitted into evidence at the hearing. Admissible testimony and documentation shall be limited to that which is related to the employee’s performance during the rating period applicable to the evaluation under appeal and the rating period immediately prior. Parties to the appeal will be limited to not more than two (2) hours each for presentation of witness testimony and/or oral arguments. The hearing officer’s findings and advisory recommendations shall be transmitted to the appointing authority, the employee, the employee’s representative and Human Resources, in writing, within twenty (20) working days after the close of the hearing.



- j. Within twenty (20) working days after receiving the hearing officer's report, the appointing authority shall review the matter and shall render a written decision to the employee with a copy to the employee's representative, and the Employee Relations Division. If the appointing authority fails to render a decision within the twenty (20) working days provided, the hearing officer's recommendations will become final and binding.
- k. The cost of a hearing officer's services shall be split equally between the County department of the appellant, and the employee, or if represented, by the employee's representative, including any cancellation fee if both parties are mutually responsible, otherwise the party responsible shall pay the entire cancellation fee.
- l. At any step in the process, if the employee's appeal is upheld, a new Work Performance Evaluation will be completed within five (5) working days, or, if appropriate, the employee's personnel records will show that "no Work Performance Evaluation prepared for the period (date) thru (date)." If a salary step increase has been withheld, and if the appeal results in the employee receiving an overall evaluation of at least "meets job standards," the step advance will be processed within three (3) pay periods from the date the appeal is upheld and will be retroactive to the date it was originally due.
- m. If the decision of the appointing authority agrees with the Work Performance Evaluation as rendered, a copy of the appeal, hearing officer's report, and the decision will be placed in the employee's permanent personnel file and become a permanent attachment to the appealed Work Performance Evaluation.
- n. If the employee voluntarily resigns from County employment prior to the opening of a hearing pursuant to step "i" of this process, such resignation shall constitute a withdrawal of any unresolved appeal(s) filed under this section.
- o. The above appeal process is not within the jurisdiction of the Commission appeal procedure. The decision of the appointing authority on any appeal under this section shall be final.

#### **8.9 – Records**

Each department shall keep the Work Performance Evaluations in a confidential personnel file. All copies of performance evaluations, documents of commendation or penalty, or anything else that has a bearing on employment status shall be forwarded to Human Resources, which may only then be considered part of the employee's official record. Work Performance Evaluations, documents of reprimand or penalty, or any other record or document that has a bearing on employment status may be removed from an employee's personnel file only upon request by an employee and approval of the appointing authority and the Director of Human Resources or designee, except as may be otherwise provided for in a current Memorandum of Understanding.

**RULE 9  
ASSIGNMENTS AND SEPARATIONS**

**9.1 – Policy**

Transfers, voluntary demotions, and job changes are used to retain employees or to change assignments as needed in the best interests of County government. In addition, such actions are used for proper placement of personnel and for employee development.

**9.2 – Definition of Voluntary Demotion**

A voluntary demotion is the appointment of an employee from an incumbent position to a position in a different classification for which the maximum rate of pay is lower and where the employee has voluntarily requested or agreed to such appointment in writing. A voluntary demotion to a trainee classification underfilling a classification that would be a promotion may only be made from a certification list. A demoted employee shall serve a probationary period unless the employee has previously held regular status in the classification demoted into, or unless the Director of Human Resources approves a waiver requested in writing by the appointing authority or employee.

**9.3 – Definition of Transfer**

A transfer is the appointment of an employee from a position under one appointing authority to a position in the same class under another appointing authority. Placement on the transfer list requires that employees have regular status in their current classification. Direct transfer between two appointing authorities does not require that the employee have regular status.

If the employee being transferred has attained regular status in the class, a new probationary period shall not be required; however, a transferred employee shall serve a performance review of four (4) pay periods. If the employee being transferred has not yet attained regular status, a new probationary period will be initiated, unless waived by the appointing authority subject to the approval of the Director of Human Resources or designee. During the review period, employees who are found to be below standards acceptable to the appointing authority shall be returned to the former department and classification or a comparable class without right to review or appeal. Transferred employees may return to the former department within the review period upon their request. Employees who have returned to their former department and classification or comparable class by their own request shall not be placed on the transfer list for six (6) months following their return unless there is sufficient justification for the Director of Human Resources or designee to waive the six (6) month period.

**9.4 – Definition of a Reassignment**

A reassignment is a relocation of an employee in the same classification, under the same appointing authority to a different work unit and work location.

**9.5 – Transfer/Voluntary Demotion Procedure**

Employees may submit written requests for transfers or voluntary demotions to Human Resources. Names of employees on transfer lists will be referred to departments pursuant to Personnel Rule VI, Section 4. Employees will be placed on voluntary demotion lists and referred to employing departments if the Director of Human Resources or designee has determined the employee's employment history is appropriate to the job qualifications of the lower class, or if the employee has held regular status in the requested classification. An appointing authority and an employee may initiate a transfer or voluntary demotion without being referred from a list.

**9.6 – Job Changes**

A job change is an appointment of an employee with regular status from a position in one classification to a position in another related classification with the same maximum rate of pay if there is evidence of the employee's ability to perform competently in the new position and/or their employment history is appropriate to the job qualifications of the new classification as determined by the Director of Human Resources or designee. Job changes are not initiated through the placement on an eligible list and must be arranged between an employee and a hiring department. Interdepartmental job changes may be arranged with the approval of both appointing authorities. All job changes require the approval of the Director of Human Resources or designee. Such employee retains regular status in the previous classification but shall be required to serve a probationary period in the new classification, unless waived by the Director of Human Resources or designee. An employee who has retained regular status in another classification of County employment who does not successfully complete the probationary period in the classification he/she job changes into, shall be returned to the former department and classification or a comparable classification without right to review or appeal. An interdepartmental job change during a probationary period shall initiate a new probationary period, unless waived by the Director of Human Resources or designee.

## 9.7 – Automatic Resignation

An employee absent without approved leave for three (3) consecutive working days who fails to notify the immediate supervisor and provide an acceptable reason for the absence to the appointing authority or who otherwise abandons employment with the County, shall be considered to have automatically resigned from County service as of the last day on which the employee worked or the last day of approved leave unless the appointing authority approves additional leave with or without pay to cover the absence.

Automatic resignation may apply in any circumstance where the employee:

- a. Fails to obtain approved leave prior to any period of absence for three (3) consecutive working days;
- b. Fails to return to work, for three (3) consecutive working days, following an approved leave of absence or upon expiration of an off work order;
- c. Refuses to accept or fails to respond to an offer of accommodation that would permit the employee to return to work;
- d. Fails to provide appropriate documentation to substantiate any period of absence for three (3) consecutive working days; or
- e. Fails to cooperate with the appointing authority's attempts to engage in the interactive process such that, based on the information available to the appointing authority in the absence of the employee's cooperation, the appointing authority is unable to determine if an accommodation would allow the employee to return to employment.

Before a separation from service takes effect as a result of an automatic resignation, the employee shall be given written notice of the facts supporting the proposed action and provided an opportunity to respond to the appointing authority. The employee shall have five (5) working days from the date of service of the written notice to respond to the appointing authority.

If the employee does not respond within five (5) working days from date of service of the written notice, the proposed action shall become final and the employee shall be determined to have automatically resigned. The employee will be given written notice that the response was untimely and the employee is determined to have automatically resigned.

If, based on the evidence provided by the employee in any timely response, the appointing authority determines that the reasons for the automatic resignation have been refuted or that good cause has been shown, the employee shall not be considered to have automatically resigned.

If the employee submits a response and the appointing authority finds that the proposed action is justified, the appointing authority shall serve on the employee written notice that the employee has been determined to have automatically resigned from County service and the effective date of such resignation.

An employee who responds to the appointing authority, but whose response was found to be untimely or insufficient to justify reversing the automatic resignation, may, within five (5) working days from date of service of the corresponding written notice from the appointing authority, appeal the appointing authority's decision to the Commission. The appeal to the Commission must be in writing and should contain all the information the employee believes supports his or her position. The issue shall be considered during a regularly scheduled Commission meeting and the employee shall have no right to a full evidentiary hearing.

Should the Commission determine by a preponderance of the evidence, that one or more of the circumstances outlined in (a) through (e) above have been met, or that the employee's response was untimely, the employee's appeal shall be denied and the decision of the appointing authority shall be sustained.

## 9.8 – Resignation

- a. An employee wishing to leave in good standing shall file a written resignation with the appointing authority. The employee shall give at least two (2) weeks notice of intention to leave the service, unless the appointing authority consents to the employee leaving sooner. The written resignation shall be immediately forwarded to Human Resources. The filing of the written resignation with the appointing authority shall be deemed official notice to and acceptance by the appointing authority. Oral resignations shall be considered accepted at the time said resignation is made unless the employee withdraws the decision to orally resign prior to the end of the employee's next scheduled shift. An employee who withdraws a resignation may be subject to disciplinary action for failure to work scheduled hours and the employee shall not be paid for any scheduled time the employee fails to work during the reconsideration period. Once a written resignation is tendered or an oral resignation is tendered but not withdrawn

prior to the end of the reconsideration period, the resignation may not be withdrawn by the employee without the consent of the appointing authority. A written record of the resignation shall be provided to the appointing authority, with a copy to the employee. Failure to provide a written resignation and/or at least two (2) weeks notice may result in an employee being marked as ineligible for requalification.

- b. If a regular employee has an appeal pending before the Commission regarding a suspension, demotion, reduction in salary step or deduction of accrued leave, but thereafter resigns or retires (including a service or disability retirement) after filing of but prior to completion of the appeal, the employee shall forfeit any and all right to pursue the disciplinary appeal, and the appeal shall be automatically dismissed. A retirement shall be considered a resignation, and the only available remedy is an appeal pursuant to Rule 9.8(c) if an employee believes that the retirement or resignation was obtained by fraud, duress, or coercion.
- c. Resignations are not subject to review or appeal except when obtained from an employee with regular status by fraud, duress, or coercion. An employee alleging that the employee's resignation was obtained by fraud, duress, or coercion may appeal the resignation to the Commission within ten (10) working days of the employee's submission of the resignation to the appointing authority. Any such appeal must be in writing and include facts, specific incidents and/or courses of conduct which the appellant reasonably believes supports his or her appeal and which, if proven, could, in the opinion of the Commission, support a finding that the resignation was obtained by fraud, duress or coercion. After such a showing has been made, the Commission may grant a hearing. At any such hearing before the Commission, the employee shall have the burden of proof to establish by a preponderance of the evidence that the resignation was obtained by fraud, duress or coercion. A resignation may only be set aside by the Commission if the employee meets the above established burden of proof.

#### **9.9 – Retirement**

- a. Except as provided in Rule 9.9(b), separation from the service because of retirement shall be considered resignation and can only be appealed subject to the requirements of Rule 9.8(c).
- b. In the circumstance where a regular employee is dismissed for cause from County employment pursuant to Rule 10.2 and files a timely appeal to the dismissal pursuant to Rule 11, but thereafter obtains a non-disability service retirement prior to the completion of the appeal, the employee may proceed with the appeal of the dismissal pursuant to Rule 11. If an employee is reinstated to employment following an appeal pursuant to Rule 11, the employee will be required to suspend the retirement benefit prior to reinstatement to County employment. No new appeal may be filed under Rule 9.8 (c) based on the employee's subsequent retirement (resignation).

**RULE 10  
DISCIPLINARY ACTIONS**

**10.1 – Suspension, Demotion, Reduction in Salary Step, Deduction of Accrued Leave, and Dismissal**

All suspensions, demotions, reductions in salary step for a specified time period, deduction of accrued leave, and dismissals of persons with regular status in the Classified Service shall be made in accordance with these Rules.

**10.2 – Cause for Suspension, Demotion, Reduction in Salary Step, Deduction of Accrued Leave and Dismissal**

An employee with regular status in the Classified Service may be demoted, suspended, reduced in salary step, deducted of accrued leave, or dismissed only for cause. The following are declared to be causes for such action although charges may be based upon causes other than those listed herein:

- a. Failure to meet reasonable work performance standards and requirements.
- b. Discourteous treatment of the public or other employees.
- c. Willful or negligent disobedience of any law, ordinance, Memorandum of Understanding, County or Department rule, regulation, policy or procedure.
- d. Careless, negligent, misappropriation, waste, theft, or improper use of County property, vehicles, equipment, or funds, including use for private purposes or involving damage or risk of damage to property.
- e. Off-duty and/or on-duty conduct by a County officer or employee which is job-related or discredits the County, department, or agency or which is incompatible with the due and faithful discharge of his or her duties.
- f. Tardiness, absenteeism, absence without leave approved by the County, or any other misuse of County time or leaves.
- g. Failing to cooperate in or misrepresentation during an administrative investigation.
- h. Practicing deception or fraud in the securing of a job appointment, promotion, or benefit.
- i. Failure to supply full information as to character, reputation, medical history, or acts which, if known at the time of appointment, might have resulted in a disqualification of the employee for the job to which appointment was made.
- j. Dishonesty, including falsification of an official statement or document.
- k. Conflict of interest or any violation of ethical standards established by state or federal law or County rule, policy, or ordinance.
- l. Inefficiency, incompetence, or negligence in the performance of duties.
- m. Failure to perform assigned task(s), failure to follow a supervisor's direction, or failure to discharge duties in a prompt, competent and/or responsible manner.
- n. Harassment, discrimination, retaliation or failure to cooperate with the implementation and application of the EEO Plan.
- o. Reporting to work under the influence of drugs or alcohol or possessing, transferring, selling or using drugs or alcohol in County offices, vehicles, work areas, or on County property during work hours, including paid or unpaid break periods, or any time while in County uniform.
- p. Improper withdrawal or limitation of service or any action which interferes with or is disruptive of the County mission or the public services.
- q. Insubordination.
- r. Any act inconsistent with these Personnel Rules.
- s. Failure to possess, keep in effect, or report loss of any license, certificate or other similar requirement specified in the employee's class specification or job announcement or as required by State and/or Federal law.

- t. Abuse or mistreatment of patients, clients, or others that the County is responsible for care, safety, or custody of.
- u. Violating the terms of a Last Chance Agreement.
- v. Conducting personal business or work on County time.
- w. Sleeping on job.
- x. Concealing or failing to report or act upon, when reasonably expected to do so, accidents or incidents of misconduct.
- y. Workplace violence, threats or intimidation.

### **10.3– General**

- a. Employees in a probationary status as a result of a voluntary demotion or those who have not attained regular status since their most recent date of hire may be dismissed, demoted, reduced in step, deducted of accrued leave, or suspended without right to review or appeal to the Commission.
- b. Reassignments are not subject to review or appeal under the Personnel Rules except when used exclusively for disciplinary purposes. An employee alleging that a reassignment was exclusively for disciplinary purposes may appeal the reassignment action to the Commission. The employee must file any such appeal request in writing with the Commission within five (5) working days of notice of the reassignment. Any such appeal must be in writing and include facts, specific incidents and/or courses of conduct which the employee reasonably believes supports his or her appeal and which, if proven, could, in the opinion of the Commission, support a finding that the reassignment was exclusively for disciplinary purposes. After such a showing has been made, the Commission may grant a hearing. At any such hearing before the Commission, the employee shall have the burden of proof to establish by a preponderance of the evidence that the reassignment was exclusively for disciplinary purposes and that the facts and reasons relied upon by the appointing authority are not supported by the evidence. If the employee meets the above established burden of proof, the Commission shall order the reassignment withdrawn and that the employee be restored to the employee's former assignment.
- c. Unless a single act or omission is of sufficient gravity to warrant the disciplinary action, the appointing authority must show that the employee has been warned and given an opportunity to correct faults warranting the disciplinary action.
- d. A written copy of these Rules in a place available to the employee, or accessible to them electronically, as provided in Rule 1.10, constitutes presumptive proof of the employee's knowledge of said Rules.

### **10.4 – Notice of Proposed Action**

Prior to the issuance of a written order to suspend, demote, reduce in step, deduct accrued leave, or dismiss an employee with regular status, written notice of the proposed disciplinary action shall be given before such action is to be taken. The written notice must include:

- a. Notice of the proposed disciplinary action;
- b. Reasons for the proposed action pursuant to Rule 10.2;
- c. A copy of charges stating specific incidents or specific courses of conduct, and a copy of the written materials pertaining to those incidents or course of conduct; and
- d. A notice to the employee of the right to respond in writing and/or orally to the proposed disciplinary action before said discipline is imposed. The notice to the employee of the right to respond must specify at least the five (5) working day period. A longer notice might be warranted in specific cases because of the volume of material or complexity of the issues involved.

The notice of proposed disciplinary action must be in writing and be signed by the appointing authority or the acting appointing authority. Upon receipt of the employee's response, the appointing authority shall review the response and determine the appropriate course of action. This may include imposing the same level of disciplinary action, modifying with less severe disciplinary action, or rescinding the notice of proposed action.

Copies of the notice of proposed discipline shall not be distributed to the Commission and Human Resources unless a

disciplinary order is ultimately issued and served.

#### **10.5 – Order of Disciplinary Action**

An employee's response pursuant to Rule 10.4 shall be considered by the appointing authority or the acting appointing authority and a determination made of appropriate action. Disciplinary action to suspend, demote, reduce in salary step, deduct accrued leave, or dismiss shall be made by written order. Said order will contain the effective date of disciplinary action, the right of appeal, and specific charges upon which the disciplinary action is based. The order shall be signed by the appointing authority or by the acting appointing authority. Notice of the time allowed for appeal shall be stated in the order. Any order or other document in which the employee waives his/her right to appeal disciplinary action shall outline the appeal rights provided by Rule 11.2. A copy of the order shall be personally served on the employee or sent by priority mail – USPS Tracking to the employee's last known address. The original order shall be filed with Human Resources and shall be accompanied by information showing that the employee has been served either personally or by priority mail – USPS Tracking. An additional copy shall be provided to a representative who has appeared on behalf of the employee.

#### **10.6 – Amendment or Withdrawal of Order**

After filing with the Director of Human Resources or designee, the disciplinary order may be withdrawn or amended to remove charges and/or reduce the level of discipline by the appointing authority at any time prior to a final decision of the Commission. An order of discipline may be amended by the appointing authority or acting appointing authority to add charges and/or increase the level of discipline at any time prior to the commencement of an appeal hearing. If an amended order presents new causes for discipline, the employee shall be afforded all of the procedural safeguards enumerated in Rule 10.4 prior to the discipline becoming effective. In addition, the employee shall be afforded a reasonable opportunity to prepare the defense thereto. Finally, if the amended order presents new causes for discipline the employee shall be entitled to appeal said new causes pursuant to Rule 10.5.

#### **10.7 – County Counsel**

It shall be the duty of the County Counsel to assist and counsel appointing authorities regarding disciplinary actions if requested.

**RULE 11**  
**DISCIPLINARY APPEALS AND HEARINGS**

**11.1 – Purpose of Appellate Review**

The purpose of appellate review is to determine the accuracy and the sufficiency of the facts attendant to the dismissal, demotion, reduction in salary step, deduction of accrued leave, or suspension. It is not the role of the Commission or hearing officer to substitute its judgment for that of the appointing authority or to evaluate the department and its operations, except as it relates to the matter under consideration. The appointing authority shall have the burden of proof and the standard shall be a preponderance of the evidence. The inquiry of the Commission or hearing officer shall be confined to a consideration of the stipulations, evidence, and reasons upon which the appointing authority based the action and any pertinent information which established the truth or falsity of such evidence. Each party shall have the right to choose a representative. All hearings are closed to the public, unless otherwise required by law.

**11.2 – Appeal and Request for Hearing**

A classified employee with regular status at the time of the disciplinary action may appeal an order of discipline to the Commission and request a hearing. The notice of appeal must be in writing and must be filed within five (5) working days of the receipt of the order. An appeal shall be considered "filed" on the day it is actually received and time stamped by the Commission. Any appeal received by the Commission after 5:00 p.m. on a working day, or received at any time on a non-working day, shall be considered filed on the next working day. The order or amended order of discipline served upon the employee shall specify that any appeal must be actually received by the Commission within the established filing period.

After an appeal is filed with the Commission, the appeal shall be placed on the agenda for the next regular meeting of the Commission. The Commission shall grant the appeal if it is timely filed as stated above.

**11.3 – Determination of Presiding Authority for the Hearing**

The provisions that govern the determination of the presiding authority for the hearing include the following conditions:

a. Appellant Represented by an Exclusive Representative

For purposes of these Personnel Rules, an appellant is represented by an exclusive representative when the appellant receives representation directed by or funded in whole or in part (e.g., Legal Defense Fund) by the appellant's exclusive representative.

1. For Employees in the Professional, Technical and Inspection, Clerical, Crafts Labor and Trades, Supervisory, Supervisory Nurses, Management, Administrative Services, Nurses and Attorney Representation Units

In cases of major discipline (i.e. dismissal, demotion, suspension of thirty (30) or more calendar days or reduction in step equivalent in lost pay to a suspension of thirty (30) or more calendar days, or deduction of accrued leave equivalent to twenty (20) working days) brought against an employee or employees, the disciplinary hearing shall be conducted by a hearing officer provided, however, excluding the Attorney Unit, a case involving major discipline may be heard by the Commission upon mutual agreement of the appellant and the County. Costs for the hearing officer in appeals involving major discipline where the employee is represented in the hearing by the exclusive representative, shall be split between the County Department of the appellant and the exclusive representative of the appellant.

In cases of minor discipline (i.e. suspensions of less than thirty calendar days or reductions in step equivalent to a suspension of less than thirty calendar days, or deduction of accrued leave less than the equivalent of twenty (20) working days), if only the exclusive representative or the County requests the use of a hearing officer, then whoever requests the use of the hearing officer will pay all costs.

2. For Employees in the Specialized Peace Officer, Specialized Peace officer Supervisory, Probation, Safety, Safety Management and Supervisory and Exempt Units

All disciplinary hearings filed by the exclusive representative on behalf of the employee shall be heard by a hearing officer provided, however, that upon mutual agreement, appeals may be heard by the Commission. The cost of such hearing officer shall be split between the County Department of the appellant(s) and the appellant(s) exclusive representative.



b. Appellant Not Represented by an Exclusive Representative

For the purposes of these Personnel Rules, an appellant is not represented by an exclusive representative when the appellant, by choice of either the appellant or the exclusive representative, does not receive or no longer receives representation directed by or funded in whole or in part (e.g., Legal Defense Fund) by the appellant's exclusive representative.

The disciplinary hearing shall be conducted by the Commission upon mutual agreement of the parties. If there is no mutual agreement to have the appeal heard by the Commission, the appeal shall be heard before a hearing officer selected pursuant to Rule 11.5.

The hearing officer fees or Commission fees shall be borne by the Appointing Authority of the appellant.

#### **11.4 – Hearing Officer List**

At its first meeting in March, and at other times as may be necessary, the Commission, the County and each recognized employee organization shall meet and agree to a list of mutually acceptable hearing officers. The County and each recognized employee organization may by mutual agreement, at any time, add names to the Hearing Officer List subject to the approval of the Commission.

#### **11.5 – Selection of a Hearing Officer and Time for Hearing**

If the appeal is to be heard by a hearing officer, the parties shall either mutually agree upon a hearing officer, or select a hearing officer by striking, from a list maintained by the Commission, or, as permitted in any applicable memorandum of understanding or upon mutual agreement by the parties, a list provided by the American Arbitration Association (AAA) or the State or Federal Mediation and Conciliation Services (S/FMCS) or some other reputable service. Any request for a list from an outside service shall be made no later than five (5) working days after the date the Commission granted the appeal. Failure to request a list of hearing officers from an outside service within five (5) working days will result in the use of the Commission list of hearing officers applicable to the bargaining unit. If the parties use a hearing officer from the Commission list, a hearing officer shall be selected as soon as possible, but in no event later than ten (10) working days after the date the Commission approved the appeal. If the parties request a list of hearing officers from an outside entity, the hearing officer shall be selected no later than ten (10) working days from receipt of that list. Any party requesting a list shall copy all parties and the Commission on the request and the resulting list. A coin flip shall determine the party that strikes first. The last remaining hearing officer shall be selected to conduct the hearing. If the last remaining hearing officer on the list is not available, the previously stricken hearing officer(s) shall be contacted in reverse order until one is available.

The Commission shall fix the date and time of the hearing within ten (10) working days after the selection of the hearing officer. The date of the hearing shall not be greater than 180 days from approval of the appeal. Once a hearing officer is selected, all communication with the hearing officer to schedule hearing dates shall be conducted by a representative of the Commission. The hearing officer must be available to conduct the hearing within 180 days of the date the Commission granted the appeal. If at the time of selection a hearing officer is not available within 180 days of the date the Commission granted the appeal or is not available within a reasonable time beyond 180 days following the granting of the appeal, the Commission shall review the matter to consider an extension of the timelines pursuant to Rule 2.26.

#### **11.6 – Appeal Hearing Conducted by the Commission and Time for Hearing**

If the appeal is to be heard by the Commission, within twenty (20) working days following the approval of the appeal a representative of the Commission shall work with the parties to fix the date and time of the hearing of the appeal, which date shall be within 180 days of the approval of the appeal.

#### **11.7 – Mandatory Prehearing Conferences**

Unless otherwise provided in the Personnel Rules, when a hearing is granted by the Commission under these Rules, the parties shall attend, by phone or in person, a mandatory prehearing conference conducted by a representative of the Commission. If the appellant is represented, the appellant shall notify the Commission of the representative's name and contact information prior to the pre-hearing conference. All parties must attend a prehearing conference, and no appeal shall proceed to hearing unless a mandatory prehearing conference has been conducted. At the time and date of the mandatory prehearing conference the parties are required to disclose:

1. The name of each witness the party may call at the hearing. Parties are not required to disclose any witness that will be called for rebuttal or impeachment purposes.
2. A description of documentary exhibits the party may introduce at the hearing and a description of any physical or demonstrative evidence. Parties are not required to disclose exhibits that will be used for rebuttal or

impeachment purposes.

3. A summary of any stipulations between the parties.

A mandatory prehearing conference shall be held at least fourteen (14) calendar days prior to the hearing. A representative of the Commission shall schedule the date and time of the prehearing conference. Prior to the time and date set for the prehearing conference, the conference may be continued upon request of one party, or both parties pursuant to a stipulation; however, such request will only be approved if the Commission makes a finding of good cause after consultation with the parties. Such determination must be made prior to the originally scheduled prehearing conference time and date. If there is not sufficient time to place the request for continuance on the Commission's agenda in advance of the date originally scheduled for the pre-hearing conference, the Commission Chair shall make the decision regarding good cause.

The Commission's secretary shall notify the parties whether a continuance was granted for good cause, and, if granted, shall consult with the parties regarding the rescheduling of a new prehearing conference date. If continuance of the prehearing conference necessitates the rescheduling of the hearing such that hearing officer cancellation fees are incurred, the party requesting or responsible for the continuance shall pay the cancellation fees. If the appellant's request to continue the prehearing conference causes a continuance of the scheduled hearing date(s), there shall be an automatic waiver of back pay from the first hearing date of the originally scheduled hearing to the first hearing date of the actual hearing.

If a party fails to appear at, proceed with, or produce information required by the prehearing conference for good cause due to an emergency or other exigent circumstance, the parties may stipulate to a continuance of the prehearing conference upon approval of the Commission or Commission Chair. If one party requests the rescheduling of a prehearing conference, such request will only be approved if the Commission makes a finding of good cause at a regularly scheduled Commission meeting. If the Commission makes such a finding, the prehearing conference shall be rescheduled for the soonest possible date. If continuance of the prehearing conference necessitates the rescheduling of the hearing such that hearing officer cancellation fees are incurred, the party responsible for the continuance shall pay the cancellation fees. If the employee or the employee's representative's failure to attend, proceed with, or produce information required by the prehearing conference causes a continuance of the scheduled hearing date(s), there shall be an automatic waiver of back pay from the first hearing date of the originally scheduled hearing to the first hearing date of the actual hearing.

If the Commission finds that the employee or employee representative's failure to appear at, proceed with, or produce information required by the prehearing conference was not justified by a sufficient emergency or exigent circumstances, then the Commission shall dismiss the appeal.

#### **11.8 – Notice**

At least ten (10) calendar days prior to the hearing the Commission representative shall mail notice of the time and place of hearing to the parties by certified mail. Notice to counsel or the party's representative of record shall constitute notice to the party. Except as agreed to by the parties, the hearing shall be held during regular working hours on County property.

#### **11.9 – Waiver of Rights**

Either party who proceeds with the hearing knowing that any provision or requirement of these Rules has not been complied with and who fails to object, in writing or on the record, shall be deemed to have waived the right to object.

#### **11.10 – Order of Proceedings**

The hearing shall be opened by the recording of the place, time, and date of hearing, the presence of the parties, counsel, and representatives, if any. The department shall first proceed with its evidence where disciplinary action has been invoked.

#### **11.11 – Waiver of Oral Testimony**

The parties may agree to waive oral testimony with permission of the Commission or hearing officer. Submission may be by affidavits, declarations, depositions, or other documents, mutually exchanged. The Commission or hearing officer will receive and take action on requests to waive oral testimony prior to or at the scheduled hearing date.

#### **11.12 – Evidence**

Unless otherwise provided in the Personnel Rules, when a hearing is granted by the Commission under these Rules, all exhibits shall be marked and numbered, and when offered by either party, may be received in evidence. Oral

evidence shall be taken only upon oath or affirmation. Each party shall have the following rights: to call and examine witnesses; to introduce exhibits; to cross examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered on direct examination; to impeach any witness regardless of which party first called said witness to testify; and to rebut the evidence. The employee may be called and examined as a witness by the appointing authority or the appointing authority's representative. The Commission or hearing officer shall not be bound by the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort 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. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

The names and addresses of all witnesses and exhibits shall be made a part of the record. The Commission or hearing officer shall have the power to exclude witnesses not under examination and to admonish witnesses to refrain from discussing the subject of their testimony with other witnesses or potential witnesses. The parties and their representatives shall be permitted to remain in the hearing room at all times prior to submission of the matter for decision, even though they may be called upon to testify as witnesses. The Commission or hearing officer shall require all witnesses to testify under oath or affirmation. The oath shall read:

"Do you solemnly swear (or affirm) that the testimony you are about to give in this matter shall be the truth, the whole truth, and nothing but the truth."

If any witness cannot be present at the time of the hearing, a deposition may be taken in accordance with the rules applicable to depositions in civil cases. The cost of a deposition shall be borne by the party taking the deposition. Affidavits shall be used only when it is impossible to secure depositions.

Except for rebuttal documents or rebuttal witnesses, all documentary and other evidence and the identity of all witnesses to be presented by either party at the hearing shall be exchanged at the prehearing conference. If a party fails to do this, then the party must provide such evidence or witness identity to the other party as soon as possible prior to the hearing, with a written explanation of why such evidence and witness identity was not disclosed at the time of the pre-hearing conference. Any non-rebuttal evidence not exchanged at the pre-hearing conference shall not be entered into evidence at the hearing, and any non-rebuttal witness who was not identified at the prehearing conference shall not be permitted to testify at the hearing, unless a party provides to the presiding authority of the hearing (i.e. the Commission or assigned hearing officer) good cause for the failure to exchange the evidence or identify the witness at the prehearing conference. . The presiding authority of the hearing shall also have the discretion to continue the hearing to permit the opposing party an opportunity to fully prepare for the hearing. Any costs associated with the delay shall be paid by the party responsible for the delay.

#### **11.13 – Expenses of Witnesses**

The expenses of witnesses for either side shall be paid by the party producing such witnesses. County employees required to testify shall be on call and shall be relieved of regular duties to report when summoned by the Commission or hearing officer. County employees shall receive their regular compensation for time necessary to testify or such compensation as set forth in the applicable Memoranda of Understanding.

#### **11.14 – Inspection of Sites**

The Commission or hearing officer may inspect sites in connection with the hearing. Notice of such an inspection must be given to the parties and the parties or their representatives shall be permitted to accompany the Commission or hearing officer.

#### **11.15 – Confidentiality**

Charges against an employee filed with the Commission shall not be a disclosable public record unless an open public hearing is ordered or otherwise required by law. Hearings and all related documents shall not be open to the public unless requested by the appellant and approved by the Commission or hearing officer.

At a party's request, the Commission or hearing officer may issue a protective order and take any other action necessary to maintain the confidentiality of evidence.

#### **11.16 – Subpoena(s)**

The Commission shall have the authority to issues subpoenas related to disciplinary appeal hearings as provided for in Rule 2.17.

### **11.17 – Appearance at or Continuation of Hearing**

The appellant employee or a representative of such employee and the appointing authority or a representative of the appointing authority shall attend the hearing. Failure of the employee or the employee's representative to appear in person at the time and place set for the hearing shall be deemed a withdrawal of the employee's appeal. The Commission shall dismiss the appeal unless there is a sufficient showing to the Commission or hearing officer of exigent circumstances that caused the failure to appear and an inability to notify the Commission or hearing officer prior to the hearing.

Prior to the time and date set for the hearing, a request for continuance may be presented to the Commission or a hearing officer. The request may be in the form of a joint stipulation by the parties or a request by one party. A request for continuance may only be approved upon a finding a good cause.

If the Commission shall review the request, the request shall be placed on the Commission agenda. If there is insufficient time to do this because of the date of the originally scheduled hearing, then the Commission Chair shall make the determination. The Commission secretary shall notify the parties of the determination. If the request was approved the Commission secretary shall consult with the parties on the rescheduling of the hearing. If it was denied, the hearing shall proceed as originally scheduled. If any continuance results in the incurring of hearing officer cancellation fees, then the party requesting or responsible for the continuance shall pay such fees. If the hearing rescheduled based upon a request of the appellant, there shall be an automatic waiver of back pay from the first hearing date of the originally scheduled hearing to the first hearing date of the actual hearing.

### **11.18 – Adjournment**

The Commission or hearing officer may, for good cause, recess the hearing upon request of a party or upon its own initiative.

### **11.19 – Recording of Hearings**

All hearings shall be audio-recorded only by the Commission or the representative of the Commission. The representative of the Commission will provide a copy of the audio recording at no cost to the representative of the appellant and/or the representative of the County upon their request. Either party may request that the Commission provide a certified shorthand reporter to attend the hearing. Costs for transcripts shall be borne by the party requesting the transcript. If both parties request transcripts, the costs of the transcripts shall be borne equally.

### **11.20 – Briefs and Closing of Hearing**

Before the close of the hearing, the Commission or hearing officer shall inquire if either party has anything further to offer. Upon receiving negative replies, the hearing shall be closed.

Each party has the right to request to file a written post-hearing brief provided notice of the party's intent to file a brief is given to the Commission or hearing officer and the other party prior to the close of the hearing and authorization for written briefs is given by the Commission or hearing officer.

Post-hearing briefs shall be limited to argument and discussion of the evidence and testimony adduced at the hearing. No new evidence shall be included in post-hearing briefs. The County shall file a post-hearing brief with the Commission or hearing officer no later than ten (10) working days after the close of the hearing or, if transcripts are requested, no later than ten (10) working days from the date hearing transcripts are received by the Commission or hearing officer. The County shall, at the time it files its post-hearing brief with the Commission or hearing officer, serve a copy on the opposing party with proof of service. Within ten (10) working days of the County's filing of its brief with the Commission, the opposing party shall file its brief with the Commission or hearing officer and serve a copy on the County with proof of service. The County shall have the right to file a reply brief within ten (10) working days after the opposing party has filed its post-hearing brief. Such brief shall be limited to issues raised in the opposing party's post-hearing brief. If either party fails to submit a brief within the specified time, the Commission or hearing officer shall decide the case without considering that party's brief. The Commission or hearing officer may, for good cause, extend the time period for the filing of briefs. For appeals heard by the Commission, if there is not sufficient time to place the request for extension on the Commission's agenda, the Commission Chair shall make the decision regarding good cause.

For purposes of this section, filed means actual receipt by the Commission as evidenced by its time stamp. Proof of service on the opposing party shall mean by personal delivery, electronic mail or facsimile transmission.

### **11.21 – Decisions**

The Commission or hearing officer will give each party a written decision of its findings within thirty (30) calendar days after closing oral arguments or receipt of the final written post-hearing brief. If the Commission presided at the

hearing, the Commission's decision is final. If a hearing officer presided at the hearing, the hearing officer's decision shall be final only if it is accepted in its entirety by the Commission.

#### **11.22 – Application to Correct Clerical Error in Decision**

Within 15 days after service of the Commission's or hearing officer's findings and recommendations on a party, but not after the Commission adopts a hearing officer's findings and recommendations, the party may apply to the Commission for correction of a clerical error in the findings and recommendations. A clerical error is a typographical or other similar type of error in the decision which makes a finding or findings unclear or ambiguous or obviously not comport with the intent of the hearing officer or Commission. Clerical errors which do not make the findings unclear should not be corrected by this application process.

The application must state the specific ground on which the application is made. Notice of the application shall be given to the other party to the proceeding. The filing of an application with the Commission shall toll the applicable time period set forth in Rule 11.25 for the adoption of hearing officer's recommendation.

If a hearing officer prepared the findings and recommendations, the Commission shall refer the application for correction to the hearing officer. The Commission or the hearing officer may deny the application, grant the application and modify the recommendation or decision, or grant the application and set the matter for further proceedings.

Nothing in this section precludes a hearing officer or the Commission, on its own motion, from modifying the decision to correct a clerical error.

#### **11.23 – Tie Vote**

In the event of a tie vote in any hearing held by the Commission, the party bearing the burden of proof shall not prevail.

#### **11.24 – Modification**

The Commission or hearing officer may modify the degree and the type of disciplinary action to be imposed, but in no event shall it impose more severe disciplinary action than that imposed by the appointing authority.

#### **11.25 - Commission Review of Decision of Hearing Officer**

Findings and recommendation of a hearing officer in a disciplinary matter shall not become effective until approved by the Commission, except as may be otherwise provided for in an applicable current memorandum of understanding. The Commission shall either accept or reject the hearing officer's findings and recommendations in its entirety within thirty (30) days of receipt by the Commission or at its next scheduled meeting, unless continued by the Commission. The only basis the Commission can use to reject the hearing officer's findings and recommendation in its entirety is for one or more of the following reasons:

- a. The findings and recommendation was procured by corruption, fraud, or other undue means;
- b. There was corruption in the hearing officer;
- c. The rights of a party were substantially prejudiced by the misconduct of the hearing officer;
- d. The hearing officer exceeded his or her powers on the matter submitted; or
- e. The rights of a party were substantially prejudiced by the refusal of the hearing officer to postpone the hearing upon sufficient cause being shown therefore, or by the refusal of the hearing officer to hear evidence material to the controversy.

If the Commission rejects the hearing officer's findings and recommendation, the Commission must identify in writing the specific category for the rejection (i.e., a, b, c, d, or e) and the facts and law supporting such reason. Thereafter, the Commission must order that the disciplinary appeal shall be reheard by the Commission within thirty (30) days of rejecting the hearing officer's findings and recommendations, unless the hearing cannot, for good cause, be completed within thirty (30) days.

#### **11.26 – Exceptions**

Unless otherwise provided in the Personnel Rules, the provisions of this Rule apply to a hearing granted by the Commission under these Rules.