

Overview of Skelly Hearings

A. Role of Skelly Reviewer

- The role of the *Skelly* Reviewer is to determine whether there is a reasonable basis to believe the employee engaged in the performance failure or misconduct charged; and whether the proposed disciplinary action appears to be within the range of reasonable penalties.
- It is not the *Skelly* Reviewer's role to determine whether the proposed disciplinary action is what the *Skelly* Reviewer would have chosen – only whether that proposed action is or is not reasonable. California law provides that the choice of disciplinary measure is within the sound discretion of the appointing authority.
- The *Skelly* Reviewer is not providing a full evidentiary hearing, and the *Skelly* Reviewer is not expected to decide all evidentiary disputes.

B. Format of Skelly Meeting:

- The *Skelly* meeting should follow a format similar to the format outlined below:

Step One: Introduction	<p>The <i>Skelly</i> Reviewer first introduces all persons present and explains the purpose of the meeting (to minimize the likelihood of an erroneous decision). In all respects, the demeanor of the <i>Skelly</i> Reviewer should be judicious, conveying objectivity.</p> <p>The <i>Skelly</i> Reviewer explains that, upon completing the meeting, they will consider the information provided and then make a recommendation to uphold, modify, or revoke the proposed disciplinary action.</p> <p>A manager who is privy to the facts underlying the <i>Skelly</i> notice may be present. This enables management to address any factual questions that the employee may raise that were not addressed fully in the <i>Skelly</i> notice. It also enables management to address factual inaccuracies raised in the Review. Sometimes, managers will provide the justification for their action. However, because the <i>Skelly</i> notice should be self-contained and include all facts and points in which management relied, the role of the manager is typically limited.</p> <p>If the employee is accompanied by a representative, the <i>Skelly</i> Reviewer should be sure to define the representative's role during the meeting. The role is to be present to support the employee, provide any opening remarks, clarify any issues, and provide any relevant supportive information for the employee. The Reviewer should state that it is important that factual information come from the employee directly, and also indicate the goal of a smooth and non-adversarial process.</p>
Step Two:	Next, the <i>Skelly</i> Reviewer should ask the employee to respond to the charges. The <i>Skelly</i> Reviewer should allow the employee (or the

Employee's Response to Charges & Role of Employee's Representative	employee's representative) to present all relevant non-cumulative information, including witnesses and documents. The <i>Skelly</i> Reviewer may limit the introduction of evidence to what is material to affect the outcome of the case. ¹ The employee's representative may state a position and participate to a reasonable degree in the meeting.
Step Three: Asking Questions	The <i>Skelly</i> Reviewer may ask questions during the <i>Skelly</i> meeting, either during the employee's presentation or after the employee's presentation.
Step Four: Closing Remarks	At the conclusion of the <i>Skelly</i> meeting, the <i>Skelly</i> Reviewer should indicate that they will consider the information provided, and make a recommendation to uphold, modify, or revoke the proposed disciplinary action. <u>The <i>Skelly</i> Reviewer should not issue any "on-the-spot" recommendations.</u>

C. *Skelly* Meeting: What to do and not do

<i>Skelly</i> Reviewer Do	<i>Skelly</i> Reviewer Do Not
<ul style="list-style-type: none"> ✓ Maintain objectivity during the meeting. ✓ Listen and ensure the employee feels heard. ✓ Ask questions where appropriate. ✓ Allow the employee to present all relevant, non-cumulative, information, including documents and other evidence. ✓ Maintain order during the <i>Skelly</i> meeting. 	<ul style="list-style-type: none"> ☒ Indicate during the meeting what the recommendation is likely to be. ☒ Allow the discussion to wander into generalities unrelated to the charges. ☒ Argue or try to settle disputes about the proposed disciplinary action. ☒ Respond to questions about the proposed disciplinary action or express an opinion about the quality of the disciplinary action. (The <i>Skelly</i> Reviewer may respond to procedural questions). ☒ Allow the employee's representative to disrupt the <i>Skelly</i> meeting.

¹ See *Gilbert v. Superior Court* (1987) 193 Cal.App.3d 161, 174-175.