

Introduction to Appeals,
Process, and Hearings



San Luis Obispo County Civil Service Commission

Steven L. Simas



■ **Outside Counsel to Commission (May 2012)**

- Advise Commission regarding hearing process
- Represent Commission at hearings

■ **Experience**

- Simas & Associates, Ltd. –2002 to present
- Deputy Attorney General, Office of the Attorney General
- Legal Counsel, Public Employment Relations Board
- Chief Consultant, California State Assembly, Committee on Labor and Employment

Purpose of the Program

- To familiarize attendees with the history, purpose, process, and procedures of the San Luis Obispo County Civil Service Commission (“Commission”).

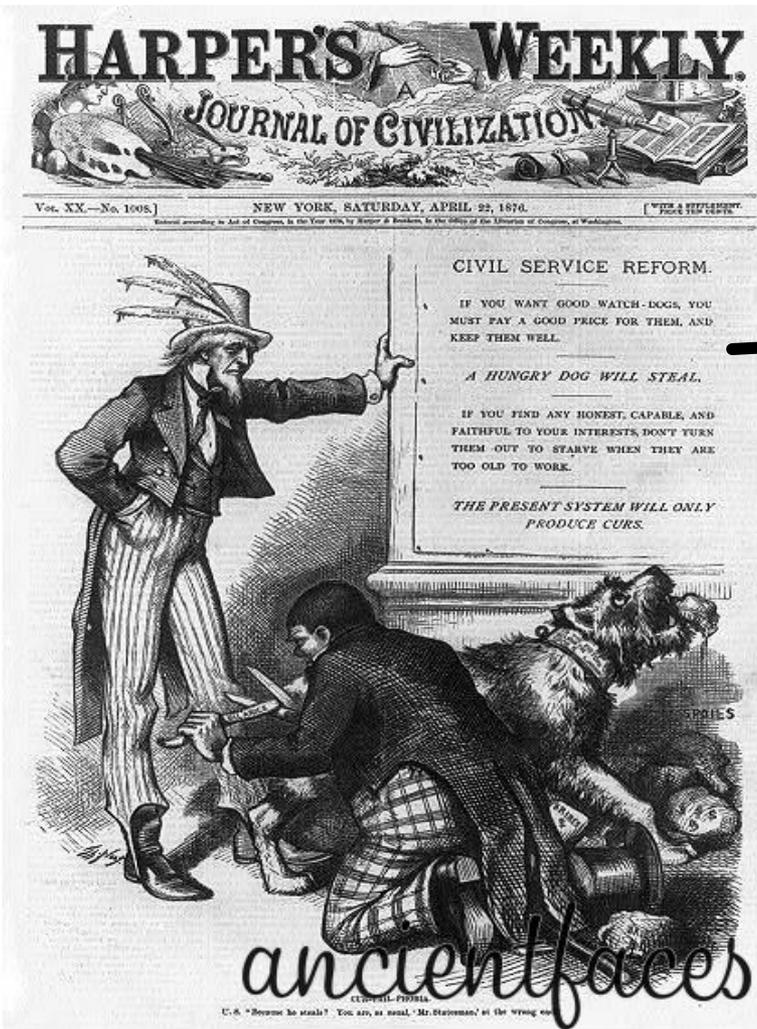
Topic Overview

- The Purpose of Civil Service
- Brief History of the Commission
- Jurisdiction of the Commission
- Administrative Hearings
- Anatomy of a Disciplinary Action
- Commission Decisions
- Judicial Review

The Purpose of Civil Service

To abolish the spoils system...

The Purpose of Civil Service



CIVIL SERVICE REFORM

If you want good watch dogs, you must pay a good price for them, and keep them well.

A HUNGRY DOG WILL STEAL

If you find any honest, capable, and faithful to your interests, don't turn them out to starve when they are too old to work.

THE PRESENT SYSTEM WILL ONLY PRODUCE CURS.

Harper's Weekly, April 22, 1876

The Purpose of Civil Service

- Purpose of a civil service system:
 - To avoid or eliminate political patronage (spoils system)
 - To promote the “merit principle” and create a merit-based system based upon:
 - Examinations
 - Job-related qualifications
 - Classifications of positions
 - Career-focused tenure

(See e.g., Government Code section 18500)

The Purpose of Civil Service (cont.)

- Early California Supreme Court cases-
 - 1941– ***Allen v. McKinley***, 18 Cal.2d 697
 - Eighteen SF tax employees challenged an open-exam for a new position, because the SF County Charter stated that “when practicable,” current employees should be promoted, rather than new employees hired through an open-exam system.

The Purpose of Civil Service (cont.)

- The *Allen* court held that:
 - This provision embodies one of the fundamental concepts of a sound civil service system;
 - All authorities agree that promotions are an essential of a sound civil service system;
 - The purpose of civil service is twofold--to abolish the so-called spoils system, and to increase the efficiency of the service by assuring the employees of continuance in office regardless of what party may then be in power; and
 - Efficiency is secured by the knowledge on the part of the employee that promotion to higher positions when vacancies occur will be the reward of faithful and honest service. (*Allen v. McKinley, supra*, 18 Cal.2d at 705).

The Purpose of Civil Service (cont.)

- 1949--***Almassy v. L.A. County Civil Service System***, 34 Cal.2d 387
 - A probation officer in LA County challenged the validity of two promotional exams, both of which he failed. This was an early test of the authority of county civil service commissions (note that the date is 1949, the year the Enabling Law came into effect).
 - The officer lost the case, and court cited *Allen v. McKinley*.

The Purpose of Civil Service (cont.)

- The *Almassy* court held that:
 - Unquestionably, the ascertainment of fitness and merit for office is the primary objective of the civil service system;
 - A competent procedure for promotion is an essential part thereof;
 - That the *Allen* court was correct that the purpose of the civil service system is:
 - "to abolish the so-called spoils system" in the matter of appointment in the service;
 - "to increase the efficiency" of employees therein "by assuring [them] of continuance in office regardless of what party may then be in power"; and
 - to increase the opportunity "for promotion to higher positions when vacancies occur [as] the reward of faithful and honest" work.

The Purpose of Civil Service (cont.)

- Section Recap:
 - The purpose of civil service is:
 - To eliminate the spoils system
 - To establish a merit-based system
 - To encourage promotion from within
 - To encourage longevity of careers
 - To match those with the skills with the job that needs them

Brief History of the Commission

Established 1949



Brief History of the Commission

- 1947—County Civil Service Enabling Law
 - Government Code sections 31100 -31117
 - Authorized Board of Supervisors to adopt a civil service system (section 31104)
 - Required approval of voters (Section 31105)
 - Required appointment of Commission (Section 31110)
 - Authorized Commission to issue subpoenas, administer oaths to witness before the Commission
 - Provided for election/appointment of Commissioners

Brief History of the Commission (cont.)

- 1949—Voters approved Civil Service Commission Ordinance creating Commission
- SLO County Ordinance 2.40.10 – 2.40.150 establish the Commission
- Commission duties include:
 - Prescribe, amend, repeal and enforce rules for the classified service, which shall have the force and effect of law.
 - Keep minutes of its proceedings and records of its examinations.

Brief History of the Commission (cont.)

- Make investigations concerning the enforcement and effect thereof and of the rules and efficiency of the service.
- Make an annual report to the Board of Supervisors.

(SLO Co. Ord., sec. 2.40.070).

Brief History of the Commission (cont.)

- Duties of the Personnel Director (Human Resources Director):
 - Administer the civil service system “under general supervision of the commission.”
 - Administer the civil service system pursuant to rules adopted by the Commission.
 - Provide a secretary to the Commission (to be approved by the Commission .
 - Prepare a budget for the Commission
 - Advise the Commission upon civil service matters
 - Maintain records of the Commission

SLO Co.Ord. sec. 2.40.70(b).

Brief History of the Commission (cont.)

- The Commission is required to provide rules for:
 - Classification of all positions.
 - Open examinations.
 - Creation of eligible lists from competitive examination.
 - For appointment of 1-10 persons standing highest on list.
 - For noncompetitive examinations for minor positions when competition is not practical.
 - For noncompetitive examination eligible lists.
 - For appointments from both competitive and noncompetitive lists.
 - For public advertisement of examinations. For rejection of candidates who fail to comply with Commission requirements, or otherwise have issues regarding qualifications.

Brief History of the Commission (cont.)

- For probationary periods.
- For provisional appointment of persons when no eligible list exists.
- For temporary appointments to nonpermanent positions.
- For transfer from one position to another.
- For reinstatement of permanent employees to their positions under certain circumstances.
- For promotions.
- For performance review and reporting.
- For grievance and complaint resolution.
- For adoption and amendment of rules after public notice and hearing.

(SLO Co.Ord. sec. 2.40.80).

Jurisdiction of the Commission

Responsibilities and Types of Cases Heard



Jurisdiction of the Commission (cont.)

- Responsibilities of the Commission:
 - **Civil Service Commission Rule 3.01:**
 - Prescribe, amend, repeal and enforce Civil Service Rules
 - Oversee administration of County Civil Service Program
 - Consider legitimacy of grievances and hear appeals and grievances
 - Conduct disciplinary hearings

Jurisdiction of the Commission (cont.)

- **Types of cases before Commission (Rule 4):**
 - **Grievances**
 - *A grievance is a dispute between one or more classified employees and the County involving the interpretation, application or enforcement of a County ordinance, rule, policy, practice or agreement (Rule 4.03(a)).*
 - **Appeals**
 - *An appeal is a request for a review of an action taken by either the Human Resources Director or the Appointing Authority as set forth in Rule 4.04(b) [Types of appeals].*

Jurisdiction of the Commission (cont.)

- Grievances and Appeals-General Conditions (Rule 4.02)
 - Right of Grievant of Appellant to participate, including to be present, prepare for proceedings
 - Right to representation of “any employee or group of employees”
 - Right to be free from retaliation for participating in grievances and appeals

Jurisdiction of the Commission (cont.)

- Scope of Grievances:
 - Not everything is “grievable”
 - The scope of grievance is “limited...to complaints of unfair or improper treatment in County employment and to matters specifically involving the interpretation or applications of ordinances, rules, policies, practices and agreements.” (Rule 4.03(b)).

Jurisdiction of the Commission (cont.)

- What is specifically not grievable (Rule 4.03(b)(1)-(3):
 - Matter which require the amendment or change to the Board of Supervisor's Policies, including:
 - County Code and Resolutions of the Board of Supervisors
 - Commission Rules
 - Matters within the Employee Relations Policy formally adopted by the Board of Supervisors
 - Any action where there is already an appeal procedure to the Commission
 - Workers compensation matters

Jurisdiction of the Commission (cont.)

Grievance Form (available online)

Must include the following information:

Nature of Grievance –including specific facts and events that are the basis of the grievance.

Violation or Infraction – including the specific Civil Service Rule(s), Board of Supervisors regulation(s) or other law(s) you believe have not been followed.

Relief requested – list the specific remedy or solution you are seeking in order to solve this grievance.



COUNTY OF SAN LUIS OBISPO GRIEVANCE FORM

Personnel Department ■ County Government Center, 1055 Monterey St., Ste. D-250 ■ San Luis Obispo, CA 93408 ■ (805) 781-5959

Date _____ Your Job Classification Title _____
Name _____ Or Examination Title _____
Address _____ Department _____
City, State, Zip Code _____ Division _____
Telephone (805) _____ Representative (if applicable) _____

This form is required to be completed to state a **grievance** to the Civil Service Commission in accordance with Rule 4. Rule 4.05 GRIEVANCES states:

"The procedure established herein is limited to application to complaints of unfair or improper treatment in County employment and to matters specifically involving the interpretation or application of ordinances, rules, policies and agreement."

Review Civil Service Rule 4 in its entirety to ensure this form is filed within the time limits set forth in the Rules. If you have questions about the procedure, contact the Personnel Office for information. **DO NOT** contact members of the Civil Service Commission or Board of Supervisors prior to the date that your matter is scheduled for hearing.

*Return the completed form in an envelope marked CONFIDENTIAL - Attention Personnel Director,
County Government Center, 1055 Monterey St., Ste. D-250, San Luis Obispo, CA 93408.*

Instructions: In the following space, continuing on the reverse side of this form, you are required to provide the following information. If necessary, continue on additional sheets of paper.

1. **Nature of grievance.** List the specific facts and events that are the basis of this grievance.
2. **Violation or infraction.** List the specific Civil Service Rule(s), Board of Supervisors regulations(s) or other law(s) you believe have not been followed.
3. **Relief requested.** List the specific remedy or solution you are seeking in order to solve or correct this grievance.

Important: Do not attach additional materials or evidence to this form. Please type or print legibly.

Jurisdiction of the Commission (cont.)

- Brief Overview (Three Steps) of Grievance Process (Rule 4.03(c):
 - **Step 1 – Appointing Authority**
 - Grievant files Grievance form with Human Resources Director within:
 - 20 business days following event that led to dispute;
 - or within 20 business days after it is determined that the dispute cannot be resolved informally.
 - Appointing Authority investigates, confers with Grievant to resolve, prepares written reply, and serves on HR Director and Grievant
 - If grievance not resolved, proceed to Step 2

Jurisdiction of the Commission (cont.)

- Brief Overview (Three Steps) of Grievance Process (Rule 4.03(c):
 - **Step 2 – Human Resources Director**
 - Within 10 business days of service of Step 1 response, the Grievant may request Step 2 review by written notice to the Human Resources Director
 - Within 15 business days of service of Step 2 Notification, the Human Resources Director shall convene a meeting of the Grievant, Appointing Authority or designee, and any other necessary persons; shall document the meeting's outcome; and shall provide a copy to the parties.
 - If grievance not resolved, proceed to Step 3.

Jurisdiction of the Commission (cont.)

- Brief Overview (Three Steps) of Grievance Process (Rule 4.03(c):
 - **Step 3 – Human Resources Director Routing Decision**
 - Within 10 business days of service of the Step 2 response, the Grievant or may request Step 3 review by written notice to the Human Resources Director
 - Within 15 business days of service of Step 3 Notification, the Human Resources Director shall notify the parties of his or her routing decision and notify the parties of pre-hearing date and hearing date before the Civil Service Commission or the Board of Supervisors
 - A Grievant may appeal the Human Resources Director's routing decision to the Commission president within five days and the President's decision is final

Jurisdiction of the Commission (cont.)

- Final Grievance Issues (Rule 4.03(e) and (f))
 - **Rejection of Grievance**
 - The Human Resources Director may reject a grievance for processing “due to insufficiency of information” required by Rule 4.03
 - **Failure to Respond**
 - Should a Grievant fail to proceed with the next step of the grievance process, the grievance will be deemed withdrawn.
 - Should an Appointing Authority or the Human Resources Director fail to proceed, the grievance will be unresolved and the Grievant will proceed to the next level.

Jurisdiction of the Commission (cont.)

- Types of Appeals to Commission (Rule 4.04):
 - ***Grievance routing decision*** – the decision of the Human Resources Director regarding where to send the Step 3 Grievance
 - ***Classification action*** – appeal of the decision of the Human Resources Director regarding the placement of a position into a classification (either party may appeal)
 - ***Applicant disqualification*** – appeal of the decision of the Human Resources Director regarding the disqualification of an applicant for employment (applicant may appeal to Commission)
 - ***Examination administration*** – appeal of the decision of the Human Resources Director following an investigation of an alleged exam administration error, impropriety, or ambiguity in the exam process (exam candidate may appeal)

Jurisdiction of the Commission (cont.)

- Types of Appeals to Commission (cont.):
 - ***Medical or physical standards disqualification*** – appeal of the decision of the Human Resources Director regarding the disqualification of an applicant for employment for failure to meet medical or physical standards (applicant may appeal to Commission) Jurisdiction of the Commission (cont.)
 - ***Eligible list rejection*** – appeal of the decision of the Human Resources Director to withhold, remove, or restore a person to or from an eligible list (candidate or employee can appeal)
 - ***Below satisfactory evaluations*** – appeal of the issuance of a performance evaluation with an overall rating of less than Satisfactory (employee can appeal)
 - ***Disciplinary actions*** – appeal of a Letter of Reprimand or final written order made by an Appointing Authority imposing discipline on an employee (employee can appeal)

Jurisdiction of the Commission (cont.)

- Types of Appeals to Commission (cont.):
 - ***Grievance rejection*** – appeal of the Human Resources Director's rejection of a grievance for insufficient information (employee can appeal)
 - ***Discriminatory probation rejection*** – appeal of the decision of an Appointing Authority to reject an employee during his or her probationary period (appeal based upon discrimination per Rule 16.02) (employee can appeal)
 - ***Discriminatory treatment*** – an allegation of discriminatory treatment as defined in Rule 16.02 (employee or applicant can appeal)

Jurisdiction of the Commission (cont.)

Commission Appeal Form

Must include:

- **Appealable matter**
- **Specific facts**
- **Rule, regulation or law not followed**
- **Relief requested**

COUNTY OF SAN LUIS OBISPO APPEAL FORM

Personnel Department ■ County Government Center, 1055 Monterey St., Ste. D-250 ■ San Luis Obispo, CA 93408 ■ (805) 781-5959

Date _____ Your Job Classification Title _____
Name _____ Or Examination Title _____
Address _____ Department _____
City, State, Zip Code _____ Division _____
Telephone (805) _____ Representative (if applicable) _____

This form is required to be completed to state an **appeal** to the Civil Service Commission in accordance with Rule 4. Rule 4.06 (a) indicates Appealable matters to be as such:

- (1) A classification action made by the Personnel Director, referred to in Rule 5.06;
- (2) A ruling by the Personnel Director, referred to in Rule 6.05;
- (3) A decision by the Personnel Director, made pursuant to Rule 8.05; and
- (4) A final written order made by an appointing authority pursuant to Rule 14.03(b).
- (5) A decision of the Personnel Director pursuant to Rule 4.05(b) Step 3(e) routing decisions.
- (6) A decision of the Personnel Director pursuant to a below satisfactory evaluation appeal under Rule 13.06.
- (7) A decision of the Personnel Director made pursuant to Rule 10.09 denying a rejected employee's name to the eligible list.

Review Civil Service Rule 4 in its entirety to ensure this form is filed within the time limits set forth in the Rules. If you have questions about the procedure, contact the Personnel Office for information. **DO NOT** contact members of the Civil Service Commission or Board of Supervisors prior to the date that your matter is scheduled for hearing.

*Return the completed form in an envelope marked CONFIDENTIAL - Attention Personnel Director,
County Government Center, 1055 Monterey St., Ste. D-250, San Luis Obispo, CA 93408.*

Instructions: In the following space, continuing on the reverse side of this form, you are required to provide the following information. If necessary, continue on additional sheets of paper.

1. **Nature of appeal.** List the specific facts and events that are the basis of this appeal.
2. **Violation or Infraction.** List the specific Civil Service Rule(s), Board of Supervisors regulations(s) or other law(s) you believe have not been followed.
3. **Relief requested.** List the specific remedy or solution you are seeking in order to solve or correct this matter.

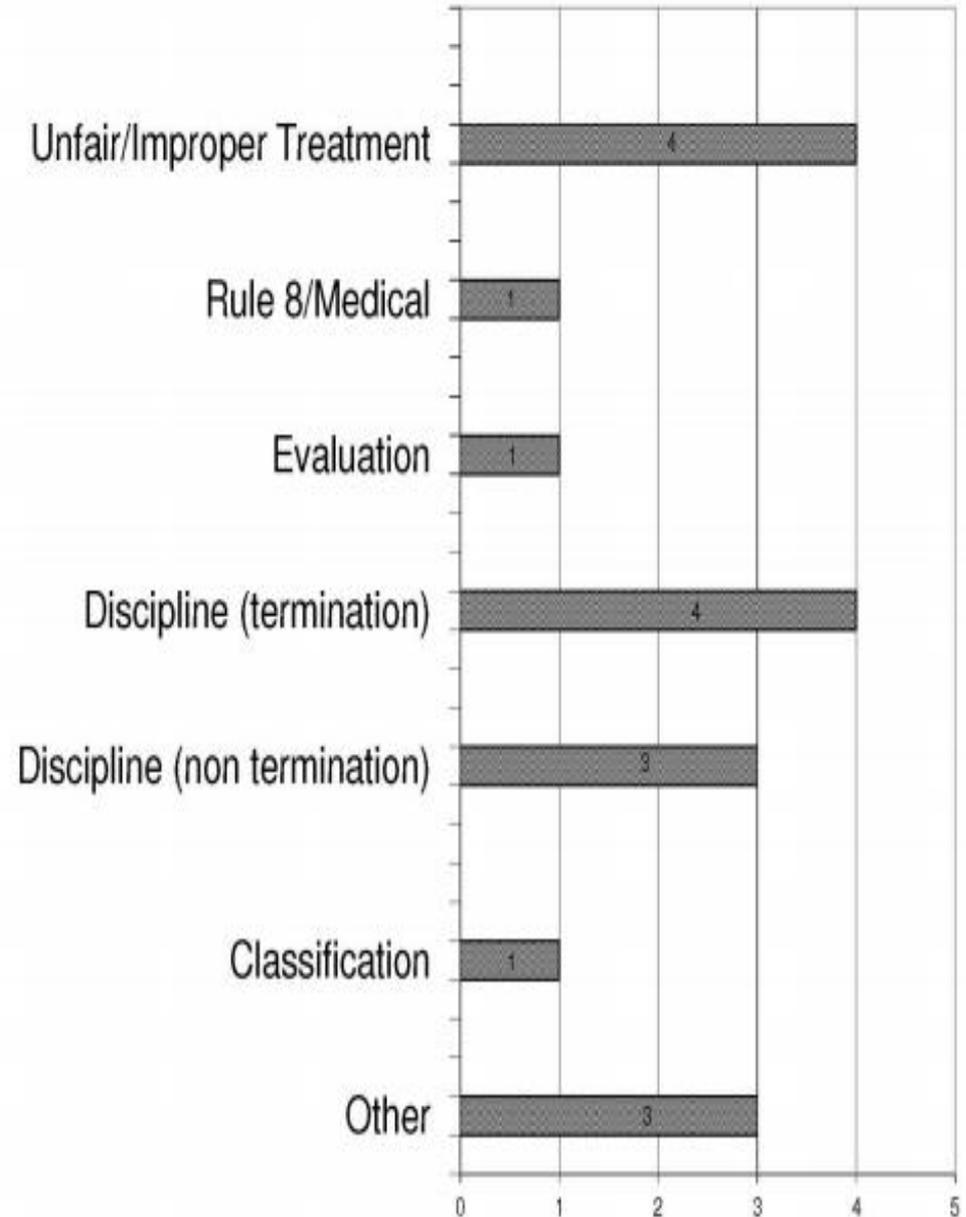
Important: Do not attach additional materials or evidence to this form. Please type or print legibly.

Jurisdiction of the Commission (cont.)

Fiscal Year 2010 – 2011

Grievances and Appeals by Type

(source Commission Annual Report FY 2010/2011)



Fiscal Year
2010 – 2011

Appeals and Grievances

Rejected by Human Resources (Timeliness, non-appealable or non-grievable issues)	3
Resolved prior to Commission (withdrawn, dismissed, resolved per agreement)	6
Pending	5
Findings and Decisions	3
Total Grievances and Appeals filed	17

(source Commission Annual Report
FY 2010/2011)

Administrative Hearings

Rules for Appeals and Commission Hearings



Administrative Hearings (cont.)

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. ***It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.***

Skelly v. State Personnel Board (1975) 15 Cal. 3d 194, 207; emphasis added.

Administrative Hearings (cont.)

- Sources of rules for Commission hearings
 - **Commission Procedural Guidelines, Section VI** – prehearing rules and procedures
 - **Rule 4.05 – Hearings of the Commission** – rules for producing evidence and presenting at hearing
 - Rules of Administrative Law and Procedure
 - Case Law and other persuasive authority

Administrative Hearings (cont.)

- Sources of rules for Commission hearings
 - **Commission Procedural Guidelines, Section VI** – prehearing rules and procedures
 - **Rule 4.05 – Hearings of the Commission** – rules for producing evidence and presenting at hearing
 - Rules of Administrative Law and Procedure
 - Case Law and other persuasive authority

Administrative Hearings (cont.)

- Post Appeal/Prehearing Matters
 - Prehearing Meeting (Comm. Proc. Guid., Sec. VI, A, 1) – parties meet with Commission Secretary to do the following:
 - Stipulations:
 - Enter stipulations regarding legal issues not in dispute
 - Enter stipulations regarding legal issues the Commission is to resolve
 - Enter stipulations regarding facts that are not in dispute
 - Enter stipulations regarding factual issues the Commission is to resolve

Administrative Hearings (cont.)

- Documentary evidence (“discovery”):
 - Parties must make every effort to submit to Commission Secretary 7 business days before hearing
 - Must be legible and able to be reproduced
 - Must provide original and 8 copies if colored text
 - Must redact confidential information
 - Commission Secretary will number and provide hearing packets to Commission no later than 5 business days before hearing and pre-mark exhibits:
 - Appellant’s Exhibits marked as “A”
 - Respondent’s Exhibits marked as “R”
 - Joint Exhibits marked as “J”
 - Commission Exhibits marked as “C”

Administrative Hearings (cont.)

- Witnesses
 - Commission Secretary may assist upon request of a party anticipating difficulty in obtaining a witness who is an officer or employee of the County:
 - The Secretary shall contact the officer and employee and apprise the officer and employee in lieu of issuing a subpoena, the Secretary is requesting the officer or employee's attendance at the hearing for the purpose of providing testimony to the Commission. In the event that the Secretary is unable to secure the attendance of a witness informally, if the party does not desire to utilize the services of the Secretary, or if the proposed witness is not a County officer or employee, the party may have the witness subpoenaed in accordance with Rule 4.07(l).

Administrative Hearings (cont.)

- Subpoenas
 - Commission has legal authority to issue subpoenas for witnesses and production of documents (*subpoena duces tecum*) (Ord. 2.41.010(c) and (d)).



Anatomy of a Disciplinary Action

Causes, Defenses and Penalties



The Commission's Decision

The Process of Rendering a Decision



Judicial Review of the Commission's Decision

Petition for Writ of Administrative Mandate

