

Skelly Rights

SEC. 52.3. RIGHT TO RESPOND TO PROPOSED ACTION.

(a) Prior to any adverse action, rejection during the probationary period or the demotion, termination or transfer between classes of an employee for medical reasons, the appointing power as defined by Government Code Section 18524 or authorized representative of the appointing power shall give the employee written notice of the proposed action. This notice shall be given to the employee at least five working days prior to the effective date of the proposed action. In the case of medical actions, such notice shall precede the 15 day notice required by Government Code Section 19253.5(f). The notice shall include:

- (1) the reasons for such action,
- (2) a copy of the charges for adverse action,
- (3) a copy of all materials upon which the action is based,
- (4) notice of the employee's right to be represented in proceedings under this section, and
- (5) notice of the employee's right to respond to the person specified in subsection (b).

(b) The person whom the employee is to respond to in subsection (a)(5) shall be above the organizational level of the employee's supervisor who initiated the action unless that person is the employee's appointing power in which case the appointing power may respond to the employee or designate another person to respond.**

(c) The procedure specified in this section shall apply only to the final notice of proposed action.

***Three years after the Skelly decision, the California Supreme Court found that the opportunity to review an adverse action with "any one of the persons who have signed the action or who have assisted in making the action 'was not consistent with the constitutional requirement' (of due process)..."*

The union should argue where circumstances indicate a high probability of bias or evidence of actual bias by the Skelly Officer.

The Skelly officer must be a "reasonably impartial and noninvolved reviewer."