PMR 3: PERSONNEL COMMISSION

APPLICABILITY & PURPOSE
This Personnel Management Regulation (PMR) establishes the creation, organization, duties, authority, and meeting rules for the County of Marin Personnel Commission, pursuant to County Code and State law.

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3.1 Creation and Organization of the Personnel Commission

A. Authority. Marin County Personnel Commission has been established pursuant to Part 2, Division 4, of Title 3 of California Government Code (Section 31100 et seq.), Chapter 2.56 of the Marin County Code and other applicable authorities.

B. Composition. The Personnel Commission will consist of five (5) members, to be appointed by a four-fifths vote of the Board of Supervisors, from among the qualified voters of the County. Insofar as possible at least two (2) of the five (5) members of the Personnel Commission will be current practitioners in professional level human resources or labor relations work, and will also include persons experienced in corporate executive management, as well as lay persons dedicated to improvement of the public service.

C. Term. Commission members are appointed for four (4) year terms on a staggered schedule.

D. Alternate Commissioners.

1. The Board of Supervisors, by a four-fifths vote, may appoint a minimum of two alternate commissioners from among the qualified voters of the County who meet any of the composition criteria set forth in PMR 3.1.B. Alternate commissioners shall only participate in Personnel Commission matters to the extent authorized by the Personnel Commission. Alternate Commissioners shall only receive compensation for attendance at commission meetings when assigned pursuant to 3.1.D (2 or 3) or 3.1.E below or when otherwise directed by the Personnel Commission to attend a meeting(s). Alternate commissioner(s) may, as needed, serve a temporary assignment.

2. When by reason of recusal or any other inability of a commissioner(s) to serve for the duration of a specific matter, which is scheduled for a duration of two days or fewer, in order to assure that the commission will be able to take action at the conclusion of the hearing, the chair may assign an Alternate Commissioner to observe all proceedings until the conclusion of the hearing. Under this circumstance, the Alternate Commissioner shall be compensated, but shall not participate in the deliberations unless assigned to be seated in replacement of an absent commissioner pursuant to subsection E below.

3. When a hearing is expected to be longer than two days in order to assure that the commission will be able to take action at the conclusion of the hearing, the chair may assign an Alternate Commissioner to sit and observe all proceedings until the conclusion of the hearing. Under this circumstance, the Alternate Commissioner shall be compensated, but shall not participate in the deliberations unless assigned to be seated in replacement of an absent commissioner pursuant to subsection E below.

E. Temporary Assignment of Commissioner(s). An Alternate Commissioner serves a Temporary Assignment when the Chair of the Personnel Commission seats the Alternate Commissioner for the duration of a hearing on a specific matter. The Commissioner shall participate in the specific matter. Under no circumstances shall more than five (5) commissioners be seated for any one matter.

F. Vacancies. Vacancies on the Commission will be filled by appointment by the Board of Supervisors for the unexpired term. Each member may serve until his/her/their successor is appointed.

G. Removal. A member of the Commission may be removed from office, prior to the expiration of his/her/their term, by a four-fifths vote of the Board of Supervisors. An alternate commissioner may be removed from office by a four-fifths vote of the Board of Supervisors.

H. Chair. Each January, the Personnel Commission will select from their own membership one member to serve as the Chair. The Chair will preside at all meetings of the Commission and act as the spokesperson for the Commission.

I. Vice Chair. The Commission will also elect one of its members as Vice Chair to act in the absence of the Chair and who will have all of the powers of the Chair.

J. Executive Secretary to the Commission. The County Director of Human Resources or designee will act as Executive Secretary to the Commission. Duties will include:

1. Staff services to the Commission.

2. Liaison and communication between the Personnel Commission, County Executive, and County Board of Supervisors.

3. Preparation and safekeeping of the minutes and other pertinent records of the Commission and certification of same when required.

4. The execution of Personnel Commission policy and establishment of such administration controls as may be necessary to effectuate the provisions of these rules.

5. Recommendations relative to matters of Commission policy and necessary amendments to these rules.

6. Reports to the Commission on actions taken to implement Commission decisions and directions at each Personnel Commission meeting.

7. Reports to the Commission on actions taken by the Board of Supervisors relating to actions taken by the Personnel Commission by the next following Commission meeting.

8. Reports to the Commission from time to time concerning the details of the work of the Human Resources Department.

K. Compensation. Members of the Personnel Commission, including alternate commissioners when assigned, will receive such compensation, if any, as may be established by the Board of Supervisors. All such members will be entitled to reimbursement of expenses necessitated by their official duties.

3.2 Duties and Authority of the Personnel Commission

A. General. The Personnel Commission provides planning and policy advice to the Board of Supervisors, the County Executive, and the Director of Human Resources on all phases of the County's personnel program, including the Merit System. The Commission may review appeals of examination, selection, classification, and implementation of layoff pursuant to PMR 3.2.E.1; conduct hearings on grievances and discipline pursuant to PMR 3.2. E. 2.; and render decisions on appeals and hearings pursuant to said sections. Additionally, the Personnel Commission will conduct proceedings whenever requested by the Board of Supervisors regarding any matters of personnel administration. In all matters, the Personnel Commission will expressly confine itself and all parties to the matter(s) before the Commission.

B. Investigations. When approved by a majority of the Commission, the Commission may investigate any aspect of personnel administration in the County service and make recommendations for improving the quality of administration of the Merit System.

C. Grievances. The Personnel Commission will hear grievances pursuant to the process described in 3.2.E.2 below, unless the parties agree to utilize the review process described in 3.2.E.1.

1. General. The Executive Secretary to the Commission shall notify the Personnel Commission that an employee or union has filed a request for a Step 3 grievance proceeding pursuant to PMR 24.3 or the applicable Collective Bargaining Agreement (CBA). At the next Personnel Commission meeting after the Executive Secretary to the Commission has received the request for a Step 3 grievance proceeding (provided that at least five calendar days have elapsed) the Personnel Commission shall determine whether it has jurisdiction over the grievance pursuant

to PMR 3 and the applicable CBA. The Personnel Commission may request additional information, if necessary. Only upon determination of jurisdiction shall the Personnel Commission schedule the grievance proceeding.

2. Method of Proceedings. Hearings must be completed within forty-five (45) days of the filing of the grievance with the Executive Secretary to the Commission at Step 3. Failure on the part of the County or the grievant to appear in any grievance proceeding before the Personnel Commission, without good cause, will result in forfeiture of the case and responsibility for payment of all costs of the Personnel Commission. There will be no amendments of a grievance without the approval of both parties in writing.

D. Appeals. The Personnel Commission will review appeals of examination, selection. classification, and implementation of layoff by the method identified below in section 3.2.E.1.

E. Process for Personnel Commission to consider Grievances and Appeals.

1. General Review Process and Procedure

a. Reviews will only be conducted in the following instances, if no violations of PMR 21 are alleged, and after appeal processes have been followed in the respective PMRs:

i. Examination, Pursuant to PMR 31
ii. Selection, pursuant to PMR 33
iii. Classification, pursuant to PMR 40
iv. Reduction in Force (Layoff), pursuant to PMR 48.2., B.-E.
v. Grievances only upon mutual agreement of the parties

If violations of PMR 21 are alleged, a Review shall not be conducted. Instead, a Hearing, pursuant to PMR 21 shall be conducted. The Personnel Commission will not conduct Reviews for Layoff Appeals pursuant to Rule 48.2. F. or Discipline Appeals, each of which requires a Hearing.

b. The Executive Secretary of the Commission shall notify the Personnel Commission that an employee has filed an Appeal pursuant to PMR 31, 33, 40, or 48.2. B.-F., or a Grievance pursuant to PMR 24 or the applicable CBA. Appeals will be scheduled for the next Personnel Commission meeting, or sooner if the respective Appeal requires otherwise, after the Executive Secretary to the Commission has received an Appeal (provided that at least five calendar days have elapsed). For Grievances under this process, the Personnel Commission may determine whether it has jurisdiction over the grievance, pursuant to the applicable PMR or CBA if jurisdiction is questioned by either party; otherwise, the Grievance will be heard by the Commission within 60 days.

c. In a Review, relevant written materials may be submitted by both parties to the Personnel Commission in advance. Materials must be received by the Executive Secretary at least fourteen (14) calendar days prior to the scheduled proceeding unless the parties agree otherwise. The Executive Secretary will distribute written materials to the Personnel Commission at least seven (7) calendar days prior to the proceeding.

d. The Personnel Commission may request additional information, if necessary, and continue the proceeding.

e. In the case of an Appeal, both parties should attend the proceeding. For a Grievance under this process, both parties must attend the proceeding.

f. Each party shall have up to one hour to make a presentation and answer any questions the Personnel Commission may have, but no testimony under oath shall be taken. The rules of evidence shall not apply.

g. The merits of the review shall be granted or denied after review of written materials submitted by all parties concerned, if applicable, and after the presentations of the parties. The Personnel Commission may deliberate and render a decision upon conclusion of the presentation, or will communicate its decision within seven calendar (7) days from the date of the Review.

h. Open Review Proceeding. The proceedings will be open to the public. To the extent allowed by law, the Personnel Commission retains the right to close appropriate proceedings either upon its own motion or upon application from the employee if the Commission determines the circumstances of the case demand a private and closed proceeding.

i. The burden of proof shall be upon the appellant.

2. Hearing:

a. Hearing Defined: A process whereby the parties may submit evidence, provide witness testimony, and conduct cross examination. This process is considered a full evidentiary proceeding.

   i. Disciplinary actions of severity of more than five days suspension, pursuant to PMR 47. It may conduct Hearings for lesser discipline for employees covered under the Public Safety Officers' Procedural Bill of Rights or the Firefighters' Procedural Bill of Rights.

   ii. Layoffs not based on seniority pursuant to PMR 48.2.F.

   iii. Grievances, pursuant to PMR 24 or an applicable CBA unless the parties agree to the review process described in 3.2.E.1.

b. Authority of Personnel Commission Related to Hearings.

   i. To examine witnesses under oath, compel their attendance, compel production of evidence, and issue subpoenas in the name of the County. The Personnel Commission reserves the right to control all Hearings, including, but not limited to, altering the order of witnesses, limiting redundant or irrelevant testimony, or by the direct questioning of witnesses.

   ii. To deliberate in closed session, pursuant to the Brown Act.

   iii. Where there is a disciplinary Hearing which resulted from alleged criminal activities of the employee, and criminal charges are pending against the employee in a court of competent jurisdiction because of such activities, the Commission may

suspend all proceedings until the termination of such criminal proceedings in the trial court.

iv. When the employee alleges violations of PMR 21, the Commission shall suspend all proceedings and shall refer the allegations for appropriate action to the appropriate person in accordance with PMR 21. Upon conclusion of appropriate action, the Personnel Commission shall resume the proceeding.

v. Once a Hearing has commenced, the Personnel Commission shall not re-hear any portion of the proceeding.

c. General Hearing Procedures

i. Scheduling. The Executive Secretary to the Commission shall notify the Personnel Commission that an employee has filed a petition for a Hearing pursuant to PMR 3.2.E.2 or 48.2.F. For hearings pursuant to PMR 48.2.F, the Commission shall hold the Hearing within twenty-one (21) calendar days after receipt of the appeal. For all other Hearings, only upon determination of jurisdiction, shall the Personnel Commission schedule the hearing. If the matter of jurisdiction is unclear or challenged by the employee, the employee's representative, the County, or the Personnel Commission Chair, at the next Personnel Commission meeting after the Executive Secretary to the Commission has received a petition for a Hearing (provided that at least five calendar days have elapsed) the Personnel Commission shall determine whether it has jurisdiction per applicable PMR. The Personnel Commission may request additional information if necessary.

ii. Preliminary and Pre-hearing Conference. At a meeting prior to the date of the formal Hearing, or immediately prior to opening the record on the date of the Hearing, the Commission will conduct, as it deems appropriate, a preliminary conference and/or a pre-hearing conference. At these times the Commission will rule as necessary on preliminary or jurisdictional motions, on the parties' lists of requested witnesses previously submitted in response to the Commission's notice of Hearing on documents anticipated to be provided at the Hearing, and on any outstanding subpoena issues. The Commission, at its sole discretion may have its own counsel present to assist it as the Commission deems appropriate. The Commission may also hear and rule on requests to include or exclude evidence. The Personnel Commission's notice of Hearing procedures is set forth in its Bylaws.

iii. Open Hearing. On the record sessions of hearings will be open to all members of the public and media unless in a disciplinary appeal the employee requests a closed hearing. To the extent allowed by law, the Personnel Commission retains the right to close appropriate sessions of the hearing either upon its own motion or upon application from the employee if the Commission determines the circumstances of the case demand a private hearing.

iv. Subpoenas. The Personnel Commission is authorized to issue subpoenas for matters within the Commission's lawful jurisdiction and can do so at the request of either party or upon its own motion, prior to the commencement of the hearing. At the direction of the Personnel Commission, the Executive Secretary to the Commission will prepare subpoenas for witnesses. Subpoenas shall be signed by

the Chair or Vice Chair of the Personnel Commission. The Executive Secretary to the Commission will serve subpoenas on individuals who are currently employed by the County. Service of other subpoenas shall be the responsibility of each respective party. Specific requirements for the issuance of subpoenas are set forth in the Personnel Commission Bylaws. The Personnel Commission's subpoena power derives from the Board of Supervisors and the Board of Supervisors may modify the Personnel Commission's subpoena power on a case by case basis. The refusal of a person to attend or to testify in answer to a subpoena will subject the person to prosecution in the same manner as set forth by law for failure to appear before the Board of Supervisors in response to a subpoena issued by the Board of Supervisors and/or be subject to disciplinary action. Employees of the County who are subpoenaed to testify will be released with pay to appear at the hearing.

v. Evidence. Hearings shall be informal and shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant or material evidence shall be admitted. Relevant evidence means evidence that has a tendency to prove or disprove a disputed fact or issue that is of consequence to the decision. Irrelevant and unduly repetitious evidence should be excluded, including evidence on damages before a final decision is made by the Commission. Hearsay evidence is admissible but only to supplement evidence. The rules dealing with privileges (i.e. attorney client privilege) and confidentiality are effective to the same extent that they are in civil actions. Oral evidence shall be taken only under oath or affirmation. The Commission will consider the nature and quality of all admitted evidence and assign due weight in its deliberations.

vi. Objections of Offered Evidence. At the beginning of the hearing, the Personnel Commission Chair, or another commissioner designated by the chair, shall rule on all objections to offered evidence. The chair or his/her/their designee shall rule on admissibility of evidence when evidence is offered. Objections may be ruled upon summarily or argument may be permitted. Any objection to evidence admitted or excluded shall be made at the time the evidence is offered during the hearing or shall be deemed waived.

vii. Representation. At hearing, each party has the right to one participating representative as well as one non-participating representative, at their own expense. Upon stipulation of the parties and the Personnel Commission, additional representatives may be allowed to attend. The Commission, at its sole discretion, may have its own counsel present to assist it as the Commission deems appropriate.

viii. Burden of Proof and Order of Presentation. In a disciplinary hearing pursuant to PMR 47, the department imposing the disciplinary action has the burden of proof by a preponderance of the evidence. In all other hearings, the person initiating the hearing has the burden proof by a preponderance of the evidence. The party with the burden of proof will proceed first with all aspects of its case to be then followed by the opposing party. Upon a proper showing, the chair may allow for rebuttal presentation by either party. Both parties will have an opportunity to make a closing argument.

ix. Witnesses. Only those witnesses who have been approved for testimony by the Commission at the preliminary or pre-hearing conference will testify, unless a party can show that it could not reasonably have anticipated the prior need for such

witness. Witnesses, except parties to the case, will not be present in the hearing room until their turn to testify. Witnesses may then remain in the hearing room after their testimony is completed or be asked to return to work in the case of a County employee during working hours. All witnesses will be sworn in for the record prior to offering testimony at the hearing. Witnesses will take the stand only once at the hearing and will not be subject to recall unless the Commission makes an exception. All questions from both parties will be ~~put~~ addressed while the witness is making that sole appearance. The Commission may, at its sole discretion, examine approved witnesses or call additional witnesses to testify.

x. Record of Proceedings and Costs. All hearings will be tape recorded unless either party requests a court reporter. The requesting party will pay the cost of the court reporter. The cost of the transcript will be borne by the requestor. Despite the above, all disciplinary hearings of dismissal will be recorded by a court reporter at County expense.

xi. Right to Control Proceedings. The hearing will be officially closed upon receipt of the parties' closing arguments, either oral or written.

xii. Requests to Reschedule. The Personnel Commission may grant a continuance of any hearing upon such terms and conditions as it deems proper. Any requests for a continuance made less than 72 hours prior to the time set for the hearing shall be denied unless good cause, as determined by the Chair, is shown for the continuance or the parties to the continuance mutually agree.

xiii. Judicial Review.

a. Petition for Writ of Mandate. Judicial review of any decision of the Personnel Commission may be had pursuant to Section 1094.5 of the California Code of Civil Procedure only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

b. 90 Days from Final Decision. Pursuant to Code of Civil Procedure 1094.6 any such petition will be filed not later than the ninetieth (90th) day following the date on which the Personnel Commission gives proper written notice of the final decision.

F. Determinations and Decisions

1. Classification Appeal Proceedings. For any appeal Review, the Personnel Commission determines whether the classification assigned for the work performed is appropriate or improper. If the classification is deemed to be improper, the Personnel Commission shall determine the reason(s) why and direct Human Resources to remedy the situation, but shall not specify the remedy. No monetary award may be granted by the Commission.

2. Examination Appeal Proceedings. For any appeal Review, if the Personnel Commission determines that the applicant's rating was affected by any condition listed in PMR 31.11. to the extent that the appellant's examination score was negatively affected, the Commission shall determine the appropriate actions to remedy the condition. Typically and depending on the method of examination that was conducted, the corrective actions could include directing: (a) an applicant's written test be recalculated with the corrected item or written test item(s) be

excluded from the written test; and/or (b) having the appellant reconsidered by an impartial process and/or panel; or (c), direct that the entire, or portion of the examination process be invalidated and re-administered. Depending on the actions and subsequent examination results, the appellant and other applicant's examination scores or placement on the eligible list shall be determined and notifications shall be sent, as appropriate. No monetary award may be granted by the Commission.

3. Selection Appeal Proceedings. The Commission may, but is not required to, invalidate an appointment already made for any appeal Review that involves failure to follow uniform, job related selection procedures, or may direct that the individual be placed on an active or future eligible list for the same job classification in the same rank as the eligible list that was the basis for the Selection Appeal..The Commission may direct the Department to provide a report to the Commission on the steps taken to ensure compliance prospectively. No monetary award may be granted by the Commission.

4. Layoff Appeal Proceedings Pursuant to PMRs 48.2. B.-E. The Commission may require the administrative steps to determine seniority be recalculated, e.g. seniority calculations and/or determination of order of seniority "lists", and/or determine a corrected Order of Layoff if the determination is that the administrative steps were incorrect or said PMRs were not appropriately followed. If the determination results in reinstatement of an affected employee(s), the County shall calculate back pay, including all associated fringe, leave accrual, and retirement benefits, measured from the effective date of the layoff. No further monetary award may be granted by the Commission.

5. Layoff Hearings conducted pursuant to PMR 48.2.F. For any hearing, the Personnel Commission determines whether the appointing authority has shown demonstrable superiority of performance and/or qualifications of the employee to be retained. So long as the employee has not lost wages as a result of the layoff, no monetary award may be granted. If the Commission orders reinstatement, the County shall calculate back pay, including all associated fringe, leave accrual, and retirement benefits, measured from the effective date of layoff. The amount and calculations may be verified by the employee or his/her representative. If the parties disagree on the back pay, the dispute shall be resolved through the grievance procedure. In no event will the Personnel Commission award any other type of monetary award, including, but not limited to, attorneys' fees.

6. Disciplinary Hearings conducted pursuant to PMR 3.2.D. The Personnel Commission may sustain or reject any, or all of the charges filed against the employee. The Commission may sustain, reject or modify the disciplinary action invoked against the employee. If the Commission overturns or reduces the discipline, the employee is only entitled to back pay from the effective date of the disciplinary action. While the Commission decides whether to overturn or reduce the discipline the amount of back pay shall be calculated by the County and may be verified by the employee or his/her representative. Back pay shall include, where appropriate, any reasonably anticipated wages, and benefits (e.g. – pension, leave accruals, fringe/medical benefits) which have been withheld from the employee. If the parties disagree on the back pay, the dispute shall be resolved through the grievance procedure. At a maximum this will be pay during the period of absence, minus the sum the employee has earned (including elsewhere), and minus any amounts attributable to delays caused by the employee in the hearing process. In no event will the Personnel Commission award any other type of monetary award, including, but not limited to, attorneys' fees.

7. Grievance proceedings pursuant to PMR 3.2.E. The Personnel Commission may deny or uphold the grievance and may order compliance with any provision as set forth in PMR 24.1.B. If the grievance concerns lost wages, any monetary award in favor of the grievant is limited to back pay measured from the date of the violation forward but shall be limited to a period of two (2) years from the date of the violation. While the Commission shall decide whether to uphold or deny the grievance, the amount of back pay shall be calculated by the County and may be verified by the grievant(s) or his/her representative. Back pay shall include, where appropriate, any reasonably anticipated wages, and benefits (e.g. – pension, leave accruals, fringe/medical benefits) which have been withheld from the grievant. If the parties disagree on the back pay, the dispute shall be resolved through the grievance procedure. In no event will the Personnel Commission award any other type of monetary award, including, but not limited to, attorneys' fees.

8. Written Findings and Decision. The Personnel Commission Chair or a person designated by the Commission Chair may prepare, or direct a party to prepare, a draft of proposed findings and decision. If a party prepares a draft of the proposed findings and decision, the Personnel Commission Chair will accept, reject or modify the draft. For Hearings and Grievances, decision of the Personnel Commission shall be made in writing within fifteen (15) calendar days after concluding the proceeding (seven (7) calendar days for PMR 48.2.F); if the Commission hears a Review and desires to have a written decision, the decision shall be made in writing within fifteen (15) calendar days after the Review proceeding. The Commission shall issue only one decision. A finding must be made on each charge and/or material issue. The Personnel Commission will neither add to, detract from, nor modify the language of a collective bargaining agreement, the County PMRs, or departmental rules and regulations in considering any issue properly before them. The Personnel Commission will expressly confine itself to the precise issues raised and submitted to it and will have no authority to consider any other issue. In the event of fiscal impact of the decision of the Personnel Commission, the findings and recommendations of the Commission shall be forwarded to the Board of Supervisors for any appropriate action the Board of Supervisors' deems appropriate.

3.3. Personnel Commission Meetings

Except as otherwise provided herein, Personnel Commission Bylaws will guide the Commission in its proceedings.

Three members of the Commission will constitute a quorum and the concurrence of three members present at the meeting will be necessary to take any action.

FORMS AND OTHER ATTACHMENTS
Not applicable.

APPROVAL