

# Disciplinary Process Recommendation and Rationale (R&R)



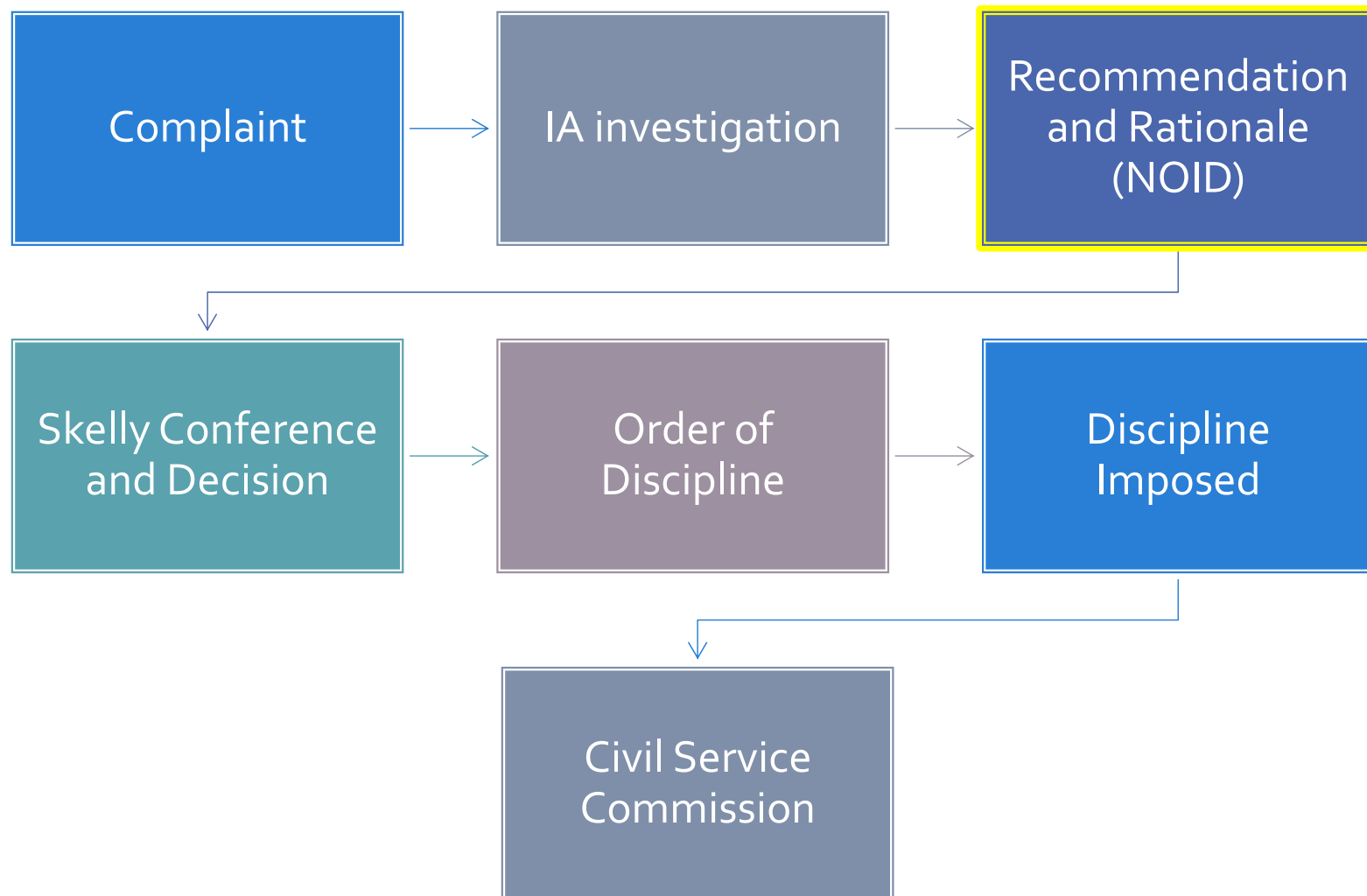
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San Diego County Sheriff's Department

# Recommendation and Rationale (R&R) – Today's Goals

1. Understanding the R&R portion of the discipline process
2. Preparing for the R&R meeting
3. Conducting the R&R meeting
4. Requesting additional investigation
5. Modification of findings
6. Determining the appropriate discipline
7. Writing the Report

# The Disciplinary Process



# Complaint Procedure

## Step 1: Complaint received

- Initial vetting of complaint
  - Correspondence letter
  - Assigned to Command for investigation
  - Retained by Internal Affairs for investigation

# Complaint Procedure

## Step 2: Investigation conducted (1<sup>st</sup> level supervisor)

- Obtain all documents and evidence
- Interview all witnesses involved and accused employee (representative)
  - Accused afforded all rights under the Public Safety Officers Procedural Bill of Rights Act (POBR)
- Investigative report and Synopsis, Analysis, Conclusions and Findings (SACF) prepared
- Findings reached in the SACF → Sustained, Not Sustained, Unfounded, Exonerated, or Resolved.
- For cases = Not Sustained, Unfounded, Exonerated, or Resolved, send to third Level Supervisor for approval.

# Complaint Procedure

## Step 2: Investigation conducted (1<sup>st</sup> level supervisor)

- **SUSTAINED:** A true finding supported by facts
- **NOT SUSTAINED:** Facts revealed do not substantiate the allegation; insufficient evidence available.
- **UNFOUNDED:** Not true. Actions alleged did not occur.
- **EXONERATED:** Allegation is true but actions were lawful or within policy.
- **RESOLVED:** No other method available to close case. (Examples: Unable to locate complainant, employee has separated from employment, etc.)
- Not Sustained, Unfounded, Exonerated, or Resolved dispositions go to third Level Supervisor for approval

# Complaint Procedure

Step 3: Sustained Investigation = Discipline Recommendation (Informal, Formal).

- Forwarded to Command for Recommendation and Rationale
  - Employee's Second Level Supervisor
  - Pre-Disciplinary Discussion with employee (representative).
  - Notice of Proposed Disciplinary Action (Form IA-2) Served by Second Level Supervisor.
  - Approval by Third level supervisor.

# Complaint Procedure

Step 4: Notice of Intent [To Discipline].

- Prepared by Internal Affairs.
- Signed by Command third level supervisor.
- Internal Affairs serves employee.
- Triggers the employee's right to a *Skelly* conference



# Complaint Procedure

## Step 5: *Skelly* Conference (*Skelly v. State Personnel Board*)

- Requested by employee within 5 working days of service of NOI
- Conference held within 10 days unless mutually waived
- Conducted by third level supervisor NOT a party to the discipline/NOT in employee's direct chain of command.
- *Skelly* officer meets with employee (representative) = Due Process (Peace Officer Bill of Rights (POBR)), mitigating circumstances, or level of discipline.
- *Skelly* Officer Report = approve, modify or overturn discipline recommendation, or return for additional investigation.
- Report approved by fourth level supervisor (Commander)

# Complaint Procedure

## Step 6: Order of Discipline.

- Signed by Sheriff.
- Served by Internal Affairs within 30 days.
- Contains appeal rights
- Complainant also notified of the disposition.

## Step 7: Discipline Imposed.

# Complaint Procedure

## Step 8: Civil Service Commission.

- Employee has 10 calendar days to request an appeal of the discipline imposed.
- A single Civil Service Commissioner conducts the hearing.
- Sheriff's Legal represents the Department
- Employee and representative presents employee's defense
- Commissioner issues recommended decision = uphold, overturn, or modify both the charges and the penalty.
- Full Commission votes on recommended decision

## Step 9: Superior Court.

Proposing Discipline

# Disciplinary Recommendation and Rationale (R&R)

# R & R: When?

- **Following an investigation** by the immediate supervisor or Internal Affairs **concluding some form of misconduct** has been committed by the employee, the package will be forwarded to the **second level supervisor** for a disciplinary recommendation.
- If the second level supervisor conducted the investigation, the recommendation should be made by someone else at the second level, or by the third level supervisor.

# R&R (cont.): Basics

- **What is an R&R?**
  - Sheriff's Department process by which permanent employees have an opportunity to review the investigative report and have a pre-disciplinary discussion with 2<sup>nd</sup> level supervisor who will be recommending the discipline.
  - This is an extra process that the Sheriff's Department provides its permanent employees.
  - Opportunity for the employee to present any facts of mitigation.

# R&R: Objectives

- ❑ Meet with employee before recommending discipline.
- ❑ Determine whether the investigation sufficiently supports the findings.
- ❑ Identify any disputed facts and address them with the employee.
- ❑ Consider factors in mitigation offered by the employee.
- ❑ Consider factors in aggravation warranting progressively higher discipline.

# R&R: Objectives (cont.)

- ❑ First chance to send back to investigator if there are any holes in the investigation that need to be shored up.
- ❑ Issue a well-reasoned and appropriately justified recommendation for discipline.
- ❑ Serve the notice of proposed disciplinary action (IA-2), thereby stopping the one-year clock.



# R&R: Preparation

- ✓ Schedule meeting with the accused employee.
- ✓ Review entire IA investigation including all testimony and supporting exhibits before the meeting.
- ✓ Request and review all prior discipline for the employee.
- ✓ Identify the range of discipline usually issued for the charges of misconduct.

# R&R: Dos and Don'ts

## DO

- Review materials
- Listen to the presentation made by emp/rep
- Take good notes and record meeting
- Determine if emp presented persuasive information to mitigate level of discipline
- Consider any factors in aggravation – i.e. prior similar misconduct, potential harm to public
- Identify any holes in the investigation or additional charges that may be appropriate

## DON'T

- Conduct a detailed or independent investigation
- Indicate in the recommendation that the facts are not in dispute if the facts are in dispute
- Bargain with the employee or representative as to the proposed discipline

# Reviewing the IA Investigation

- Allegation/Complaint
  - Apparent Policy/Law violations
- Investigation
  - Unbiased, Factual
  - Properly documented (Relevant info)
  - Complete (Interviews, documents, video, etc.)
  - Grammar and spelling

# Reviewing the IA Investigation

- Synopsis, Analysis, Conclusions and Findings
  - Standard Format
  - Findings supported by the investigation
  - Stacking
  - Preponderance of evidence
  
- Confer with investigator
  
- Background Regarding the Employee
  - Tenure
  - Intent
  - Circumstances surrounding event

# R&R: Meeting Considerations

- Time, place and privacy
- Professional
- Preparation
- Thorough review (Recordings, documents, etc.)

# R&R: Meeting

- Employee given the opportunity to review the report in private
- Recorded
- Purpose of the hearing (Mitigate potential discipline)
- Not there to initiate a new investigation
- Let the employee and representative talk, clarify when necessary

# R&R: Meeting

- Rep Tactics to be watch out for:
  - Requests for continuance
  - Claims of bias or partiality
  - Claims of inad/incomplete investigation packet
  - Demands for information
  - Demands for witness testimony
  - Demands to cross-examine witnesses
  - “Let's make a deal”
    - Holding discipline in abeyance
    - Seeking forfeiture of leave rather than unpaid suspension
    - Last chance agreements



# R&R: Meeting Conclusion

- Ask for final thoughts/comments
- Avoid suggesting a recommended discipline to the accused
- Close the hearing by returning to the script and going off recording



# R&R: After the Meeting

Send Back  
for further  
investigation

- Insufficient evidence to support the charges
- Additional witness interviews (note: if accused is interviewed a 2<sup>nd</sup> time case law says they get a copy of the entire IA investigation)
- Investigate information offered in mitigation



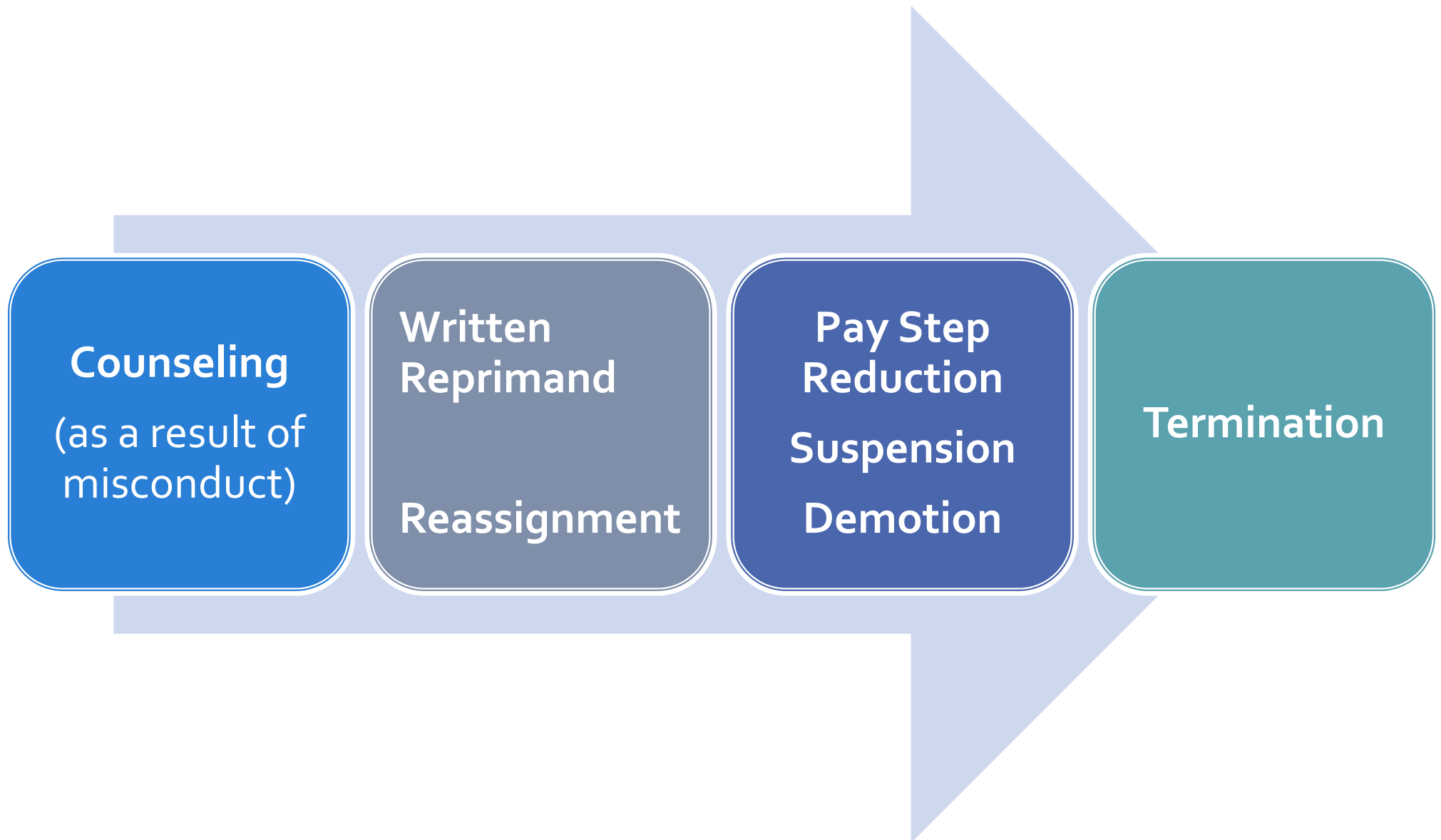
OR

Recommend  
Discipline

- ✓ Prepare written recommendation and rationale for proposed discipline.
- ✓ Have 3<sup>rd</sup> Level supervisor review written recommendation.
- ✓ If > 14 day suspension, send to Legal Affairs for review.
- ✓ Serve IA-2 on employee with proposed discipline.
- ✓ Send written R&R and investigation package to IA for service of notice of intent



# R&R: Types of Discipline



# R&R: How much discipline?

- Consider the following factors when recommending discipline.
  - Gravity of the event
  - Prior misconduct, especially similar misconduct
  - Patterns of misconduct

# R&R: How much discipline?

- Levels of Discipline (P&P 3.3)
  - Counseling
  - Written reprimand
  - Reassignment (as a result of alleged misconduct)
  - Pay-step reduction (one day)
  - Suspension
  - Demotion
  - Termination

# R&R: How much discipline?

- If recommending 15 days or more, Legal **MUST** review prior to issuing the IA-2
- IA-2 / Notice of Proposed Discipline
  - Written and above
  - **STOPS THE CLOCK**

The third level reviews the recommendation and sustains or amends

# R&R: How much discipline?



## San Diego County SHERIFF'S DEPARTMENT

### NOTICE OF PROPOSED DISCIPLINARY ACTION

TO:		DATE:	
It is recommended that the following disciplinary action be administered to the below named employee:			
EMPLOYEE'S NAME:		TITLE:	
DEPARTMENT POLICY AND / OR PROCEDURE SECTION(S) VIOLATED:			
RECOMMENDED DISCIPLINE:			
SECOND LEVEL SUPERVISOR:		DATE:	
LIST PRIOR FORMAL DISCIPLINE WITHIN LAST FIVE YEARS WITH DATE			
I have been advised of the above charges and recommended discipline:			
EMPLOYEE'S SIGNATURE:		DATE:	
2 <sup>nd</sup> LEVEL SUPERVISOR SIGNATURE:		DATE:	
3 <sup>rd</sup> LEVEL SUPERVISOR SIGNATURE:		DATE:	
COMMENTS:			
REVIEWED BY INTERNAL AFFAIRS:		DATE:	
4 <sup>th</sup> LEVEL SUPERVISOR SIGNATURE:		DATE:	
COMMENTS:			
ADDITIONAL REVIEW:		DATE:	
ADDITIONAL REVIEW:		DATE:	
ADDITIONAL REVIEW:		DATE:	
<b>INTERNAL AFFAIRS SECTION</b>			
<input type="checkbox"/> WRITTEN REPRIMAND BY:		DATE:	
<input type="checkbox"/> NOTICE OF INTENT AND CHARGES:		DATE:	
<input type="checkbox"/> ORDER SERVED:		DATE:	
<input type="checkbox"/> CIVIL SERVICE NOTIFIED:		DATE:	
<input type="checkbox"/> PAYROLL NOTIFIED:		DATE:	
FINAL ACTION TAKEN:		DATE:	

# R&R: How much discipline?

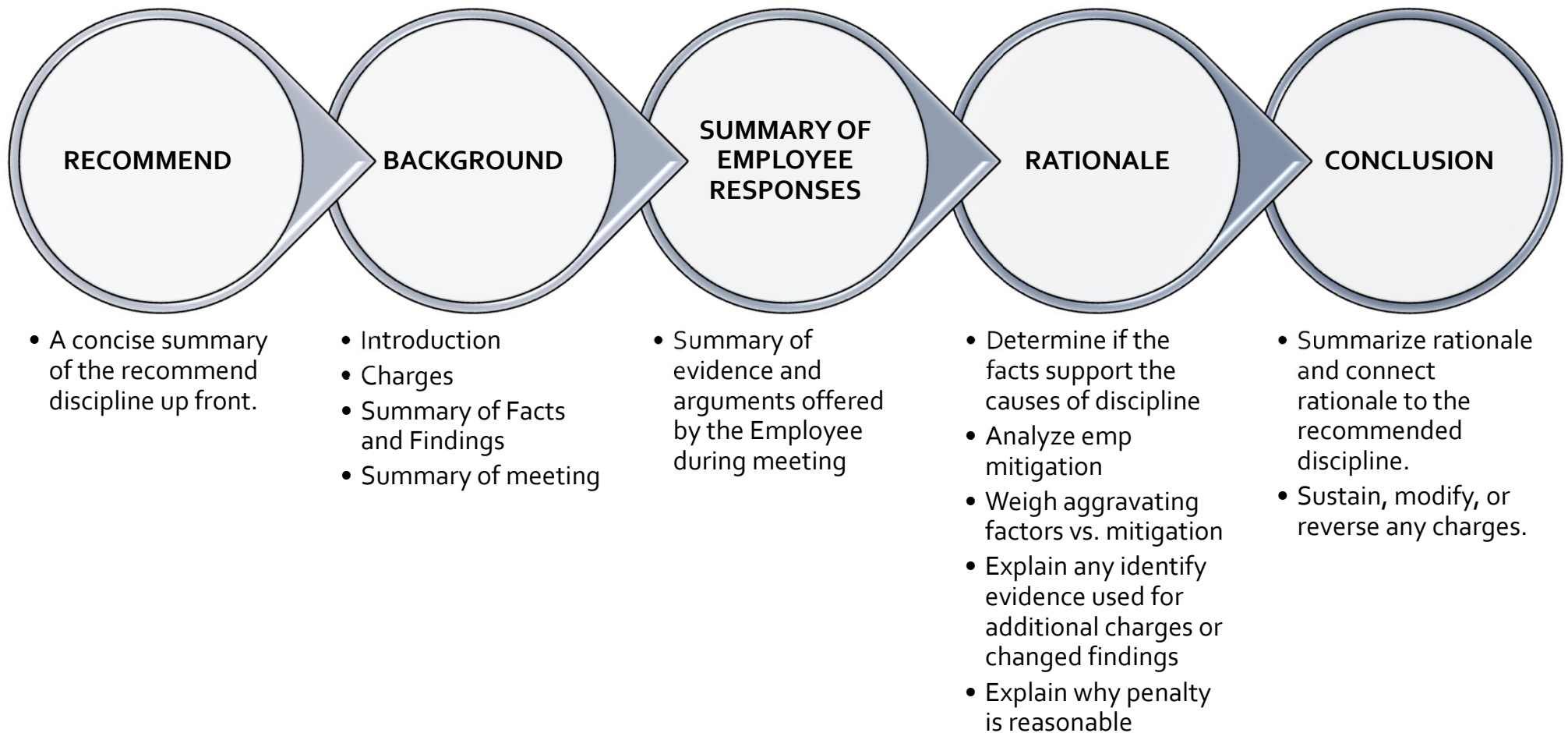


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3 <sup>rd</sup> LEVEL SUPERVISOR SIGNATURE:		DATE:	
COMMENTS:			
REVIEWED BY INTERNAL AFFAIRS:		DATE:	

# R&R: Writing the R&R





# R&R: Writing the Report (cont.)

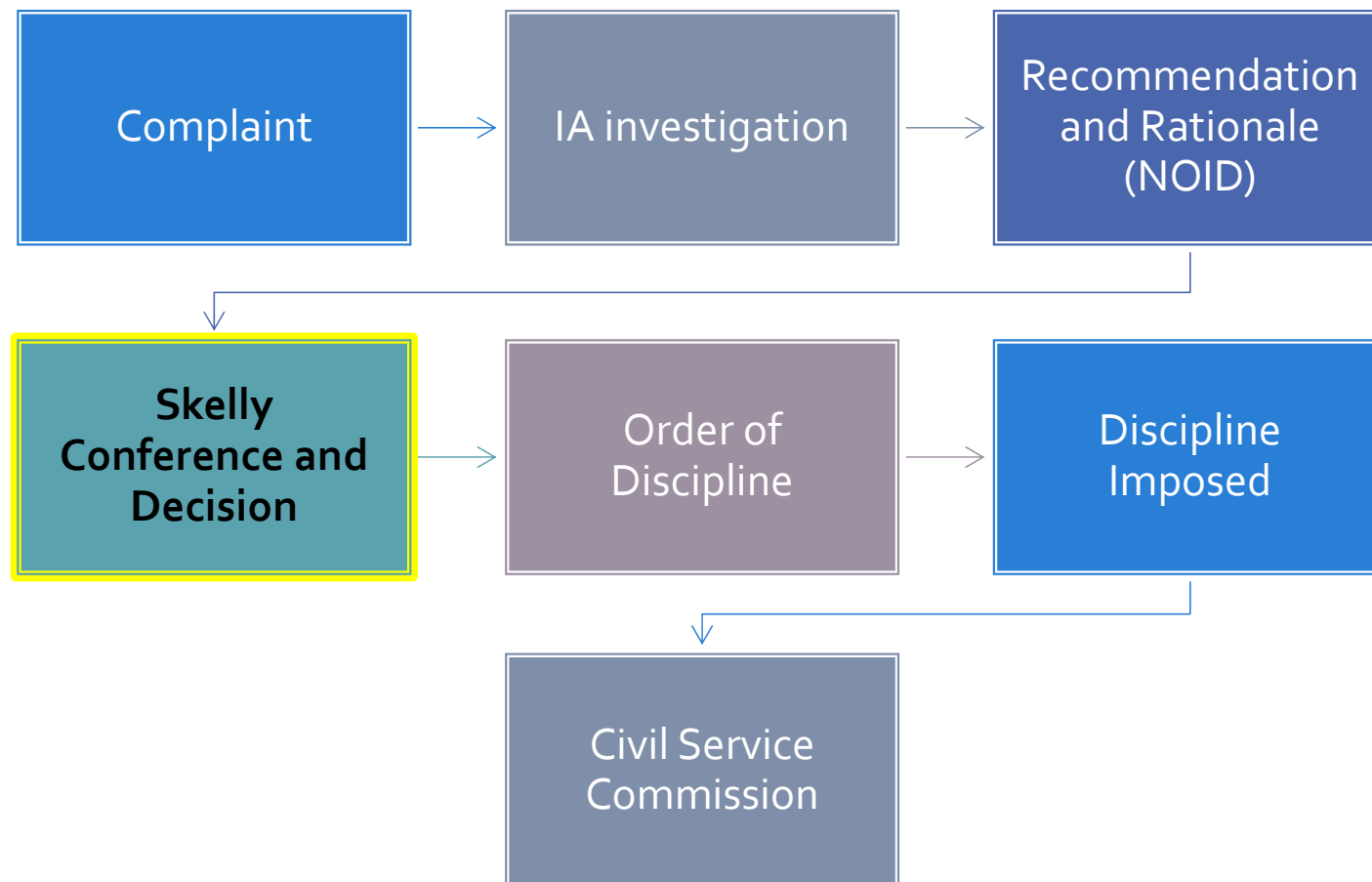
- Standard formatting and verbiage is recommended
- Include your understanding of the allegations, basis for the sustained finding and your concurrence or dissent
- Illustrate the points offered in mitigation and attempt to address each by reference to the investigation
- Addendum/further investigation

# Notice of Intent and *Skelly* Conference

- Internal Affairs drafts and serves the Notice of Intent
- If the employee does not agree with the disciplinary recommendation and/or the sustained findings, the employee they can appeal and request a *Skelly* conference

# Skelly Conferences

# Where does the Skelly conference fit in the Sheriff's Department disciplinary process?



# Skelly: When does Skelly apply?

- When does Skelly apply?
  - Suspensions
  - Demotions
  - Reductions in pay
  - Terminations

- When does Skelly **NOT** apply?
  - At-will employment
  - Probationary employment
  - Written reprimands
  - Transfers and reassignments
  - Negative performance evaluations

# Commencing Skelly

- Triggering the Process
  - ✓ Completed IA investigation.
  - ✓ Completed R&R and served IA-2 Notice of Proposed Discipline
  - ✓ IA served employee with Notice of Intent to Discipline.
  - ✓ Employee timely requests Skelly conference.

# Skelly: Request, deadlines, and waiver

- P &P §3.3:
  - “An employee may request a Skelly Conference for any proposed discipline **other than a written reprimand or counseling.**”
  - Employee has five (5) working days in which to request a Skelly Conference.
  - The Skelly Conference must take place within ten (10) working days of the request for the conference unless modified by mutually agreement.
  - Failure to request a Skelly Conference within the allotted time, or failure to appear at the designated time and place without just cause, shall constitute a waiver.

# Final Thoughts



- Run your analysis and thought process by experienced co-workers and Supervisors
- Seek out examples but don't just copy and paste
- It's not helpful to just recite the facts and then conclude: you must apply the facts to charge and indicate why each fact supports the charge
- Remember that SB 1421 and other legislation could make your work product public



# Public Records

SB 1421:

- Use of force involving death or GBI
- Discharge of a firearm
- Sustained finding involving dishonesty directly related to reporting, investigation, or prosecution of a crime (i.e. lying in a crime report or to an investigator)
- Sustained finding involving dishonestly directly related to reporting, investigation, of misconduct by, another peace officer (i.e. lying to IA about another officer)
- Sustained sexual assault of a member of the public.



# Public Records (cont.)



## SB 16

- Sustained finding involving a complaint that alleges unreasonable or excessive force.
- Sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.
- Sustained finding officer engaged in verbal/written/post/ involving prejudice or discrimination of a protected class (i.e. race, sex, gender, etc.)
- Sustained finding unlawful arrest/search

\* Records relating to incident in which peace officer resigned before agency concluded its investigation into the alleged incident.

Questions?