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### I. PURPOSE

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The purpose of this document is to provide clarification on the various types of files that may exist to retain employee records and what is considered to be appropriate in the contents of each of those files.

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### II. EMPLOYEE'S OFFICIAL PERSONNEL FILES

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Employee files maintained in the County Human Resources Department are the official personnel files. Any written record that may be used to affect an employee's employment status shall be placed in the official personnel file. These files include the application for employment, and records which are used or have been used to determine an employee's qualifications for promotion, compensation, termination or disciplinary action. For a more complete list of items to be included/not included in the official personnel file, see *Supplement to Policy Regarding What Should be Placed in an Employee's Official Personnel File*.

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### III. DEPARTMENTAL PERSONNEL FILES

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Employee files kept at the departmental level are referred to as departmental personnel files. These files shall be maintained by the appropriate department staff. Departmental personnel files typically contain records of informal disciplinary actions, but may also contain copies of documents found in the Human Resources Department official personnel file, such as formal disciplinary documents, evaluations and Personnel Action Forms (PAF's). Departments shall not keep any documents in the departmental personnel file that have not been issued to or discussed with the employee. Departmental documents and/or files that have been submitted to the Human Resources Department for inclusion in the official personnel file may be destroyed to avoid duplication.

*Items that may be contained in departmental personnel files include:*

- Copies of performance reviews or evaluations;
- Records of discussion, work performance memos, and any other informal or formal discipline, or working notes that have been issued to the employee.

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### IV. SUPERVISOR FILES

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Files maintained by supervisors are referred to as supervisor or "drop" files. Managers and supervisors typically maintain notes, memos, or emails containing comments and observations about employees in their line of supervision. Such notes are separate from the departmental personnel file and the Human

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Resources Department official personnel file. Any information kept in the supervisor file that is used to affect an employee's employment status MUST be moved into the employee's departmental and/or official personnel file in the form of a performance evaluation, informal disciplinary memo, record, plan, or formal disciplinary action, and a copy shall be issued to the employee. Information in a supervisor file should be discarded at the end of the employee's evaluation rating period.

*Items that may be contained in supervisor files (also known as "drop" files) include:*

- Confirmation of a counseling or oral reprimand;
- Employee awards and accolades;
- Any other notes to be incorporated in an employee's work performance memo or other informal or formal discipline.

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### V. MEDICAL FILES

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All medical information shall be kept in a file separate and distinct from the file containing all other work related documents and records. These separate files shall be maintained at the department levels.

*Medical information to be maintained separately includes:*

- Medical certifications from healthcare providers in support of leave requests;
- Return to work releases;
- Workers' compensation records;
- Medical information about the employee related to reasonable accommodation under the Americans with Disabilities Act or the Fair Employment and Housing Act;
- Doctors "notes" attesting to the reason for an employee's absence;
- Accommodation memos;
- Any other medical information.

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### VI. DISCIPLINARY MATTERS IN OFFICIAL EMPLOYEE PERSONNEL FILES

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The following information should be used as a guide in determining what documentation will be placed in an employee's official personnel file in the event of a disciplinary action.

- *Notices of Intent to Impose Discipline* – Once a notice of intent has been issued by an appointing authority it becomes an official document that should not be destroyed absent some agreement by the appointing authority to do so. The notice of intent should be maintained in a pending file until final determination of discipline has been made. Once the effective date of discipline passes, without any request by the employee for a Skelly hearing, the notice of intent should become part of the employee's official personnel file.

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- *Discipline determination through Skelly hearing* – If an employee requests a Skelly hearing, the discipline may be affirmed, modified, or revoked by the appointing authority.
  - If the discipline is affirmed or modified, a final order should be issued by the appointing authority documenting the affirmation or modification originally outlined in the notice of intent. In this case, both the notice of intent and final order shall become a part of the employee’s official personnel file.
  - If, after a Skelly hearing, the appointing authority decides to rescind his or her original intent to impose discipline altogether, the original notice of intent would not be made a part of the employee’s official personnel file.
- *Resignation Agreement in Lieu of Termination* – In the event a settlement is negotiated or the employee is permitted to resign in lieu of termination, a resignation or settlement agreement would be issued. While the agreement would not replace the original notice of intent or final order of termination, these documents would be maintained in a separate sealed file with specific negotiated parameters on who, and under what circumstances, the information could be accessed.
  - The confidential sealed file should contain the original notice of intent, final order, and resignation or settlement agreement in lieu of termination.
  - The official personnel file should contain some type of written record reflecting the employee’s resignation, either in the form of a letter from the employee or some other type of official personnel record indicating resignation, and written documentation alerting file reviewers to the existence of the confidential sealed file.
  - In the event a release from a prospective employer signed by the former employee authorizing release of all personnel records is received, the file will be provided to the prospective employer with copies of the contents of the official file, including the documentation indicating that a confidential sealed file exists in addition to the disclosed material. The confidential sealed file will only be released by a court order (e.g., subpoena) or if we are provided with a **specific release** from the former employee permitting us to disclose the contents of the confidential sealed file.
- *Public Safety Officers (Government Code §3300 et seq.)* – Peace Officers (e.g., sheriff’s deputies, probation officers, etc.) are covered under Government Code §3300, otherwise known as the Public Safety Officers Procedural Bill of Rights Act (POBAR). POBAR §3305 states that “no public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.” Please refer to Government Code §3300 for additional information regarding Peace Officers and disciplinary action.

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### SUPPLEMENT TO POLICY REGARDING WHAT SHOULD BE PLACED IN AN EMPLOYEE'S OFFICIAL PERSONNEL FILE

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Recognizing that there may be exceptions, the following is intended to be a guide in determining what items are appropriate to be placed in the employee's official personnel file.

#### **Examples of appropriate items for an employee's official personnel file:**

- Employee application package, including resumes, letters of reference, etc., excluding Equal Employment Opportunity (EEO) documentation;
- Personnel Action Forms;
- Records relating to job offers, promotion, demotion, transfer, layoff, rates of pay and other forms of compensation increases/decreases, and education and training records;
- Records relating to employment practices (including policy acknowledgements and agreements);
- Employee contracts listing Board of Supervisors' meeting date, which is the date the contract was approved, as well as the agenda item number;
- Performance evaluation and goal setting records;
- Required training certificates for promotions or other certifications, including academic and County sponsored training certificates;
- Accolades (letters of appreciation/recognition/commendation, certifications, etc.);
- Termination information including separation report, letter of resignation, rejection from probation, or dismissal paperwork;
- Licensures, if they are a requirement of the minimum qualifications for the position held;
- Student intern ID and schedule;
- Leave of absences, excluding medical information;
- Warnings, counseling, and disciplinary notices (e.g. work performance memos, written reprimands, notice of intents, final disciplinary orders, etc.);
- Return to work forms, memos, or other paperwork not relating to or mentioning medical issues;
- Work schedule agreements.

#### **Items that would NOT be placed in an employee's official personnel file:**

- Reference/background checks;
- Drug test results;
- Employment Eligibility Verification USCIS Form I-9;
- Tax forms;
- Any medical evaluation forms or medical notes from doctors;
- Death designation beneficiary forms;
- Oath forms;
- Authorized County Driver/emergency Information;
- Pension Trust forms;

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- Department personnel agreements/policies;
- Terminations paperwork relating to exit questionnaires or checklists;
- Child support/garnishments;
- Litigation documents;
- Equal employment opportunity (EEO)/invitation to self-identify disability or veteran status records;
- Employee self-performance evaluations;
- List of references attached to the resume;
- Workers' compensation claims;
- Investigation records (although relevant disciplinary action, counseling, or other direct communications are placed in the employee's official personnel file);
- Requests for employment/payroll verification.

**Please refer to relevant Personnel Policies on procedures for handling documents kept separate from the employee's official personnel file.**