

**MEMORANDUM
OF
UNDERSTANDING**

BETWEEN

**FRESNO COUNTY
PROSECUTORS ASSOCIATION
UNIT 30**

AND

THE COUNTY OF FRESNO

JULY 3, 2017 – JUNE 30, 2019

UNIT 30

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INTRODUCTION/PURPOSE

We, the undersigned, duly appointed representative of the County of Fresno, hereinafter referred to as "County", and the Fresno County Prosecutors Association, Unit 30, hereinafter referred to as "Association", having met and conferred in good faith, do hereby jointly prepare and execute the following written Memorandum of Understanding (MOU) for representation Unit 30. It is the purpose of the MOU to promote and provide for harmonious relations, cooperation, and understanding between management and the employees covered herein; and to provide an orderly and equitable means of resolving any misunderstanding or differences which may arise under this MOU.

RECOGNITION

Pursuant to the provisions of the Fresno County Employee Relations Ordinance, the certification of the Fresno County Civil Service Commission, and appropriate State Law, the County hereby recognizes the Association as the exclusive representative of all employees for the classifications of Deputy District Attorney I/II/III/IV/Senior and Child Support Attorney I/II/III/IV/Senior.

Should any classification be certified for inclusion by the Fresno County Civil Service Commission during the term of this MOU, the Employee Relations Ordinance, section 3.12.240 governs.

SALARIES

<u>Classifications</u>	<u>Current Bi-weekly Salary Range</u>	<u>15% Increase Effective 7/03/17</u>	<u>5% Increase Effective 7/02/18</u>
Child Support Attorney I	1965	2260	2373
Deputy District Attorney I	1965	2260	2373

<u>Classifications</u>	<u>Current Bi-weekly Salary Range</u>	<u>5% Increase Effective 7/03/17</u>	<u>5% Increase Effective 7/02/18</u>
Child Support Attorney II	2512	2638	2770
Child Support Attorney III	3015	3166	3324
Child Support Attorney IV	3528	3704	3889
Deputy District Attorney II	2512	2638	2770
Deputy District Attorney III	3015	3166	3324
Deputy District Attorney IV	3528	3704	3889
Senior Child Support Attorney	3797	3987	4186
Senior Deputy District Attorney	3797	3987	4186

NON-DISCRIMINATORY POLICY

It is agreed that neither the Association nor the County shall unlawfully discriminate against any employee for reasons prohibited by law.

ANNUAL LEAVE

All employees covered by this MOU shall accrue Annual Leave as governed by the Fresno County Salary Resolution, Section 600.

SPECIALIZATION INCENTIVE

A three and one-half percent (3.5%) salary increase will be granted to any Deputy District Attorney/Child Support Attorney who completes certification through the California Bar as a Criminal Law Specialist or Domestic Law Specialist.

HEALTH INSURANCE

1. Effective December 19, 2016, the County will contribute, on behalf of each employee, up to the following amounts per pay period based on the employee's plan selection:

<u>Plan Selection</u>	<u>Amount</u>	<u>Add'l Amount</u>	<u>Total Contribution</u>
Employee Only	\$283	N/A	\$283
Employee plus Child(ren)	\$283	\$95	\$378
Employee plus Spouse	\$283	\$95	\$378
Employee plus Family	\$283	\$100	\$383

2. A minimum of one (1) health benefit plan, one (1) dental benefit plan, one (1) vision benefit plan, and one (1) pharmacy benefit plan will be available to employees and their dependents. If, during the term of this agreement, any of the health benefit plan(s), dental benefit plan(s), vision benefit plan, or the pharmacy benefit plan is unable to fulfill its contractual obligation, the County, upon consultation with the Health Benefits Advisory Committee (HBAC), if necessary, will secure a suitable replacement.
3. Any employee participating in the County's Health Benefit program must enroll in one of the Health Insurance Plan(s), unless an employee chooses to opt out of the County's Health Benefit Program.
4. Unless otherwise court ordered, eligible employees may choose to opt out of the County's Health Benefit Program (including any related life insurance program) by completing the "Opt Out" form and by providing written proof that they have medical coverage from another group health insurance plan. In addition, the employee must verify that a discontinuance of the County's Health benefit program does not constitute a violation of any court order or legal obligation that the employee may be subject to. Eligible employees may opt out during the designated open enrollment period for each respective Health Benefit Plan Year as defined by the Department of Human Resources or via a qualifying event (must be turned in within 30 days of the effective date of group health insurance). Group health insurance plan is defined as employer-sponsored medical coverage.

In the event an employee, who has opted out of the County's Health Benefit Program, subsequently loses his/her alternate medical coverage due to a qualifying event as defined by the Consolidated Omnibus Budget Reconciliation Act (COBRA), the employee may re-enroll in the County's Health Benefit Program. It shall be the responsibility of the employee to notify Employee Benefits within 30 days of the qualifying event.

Any employee who opted out of the County's Health Benefit Program and desires to maintain their opt out status must submit a new Opt Out Form during the open enrollment period for each respective Health Plan Year as defined by the Department of Human Resources. If an opt out form is not received in the Employee Benefits Division within the respective open enrollment period for each Plan Year as defined by the Department of Human Resources, said employee shall be enrolled in the HMO Plan and DHMO Dental Plan. Additionally, any employee who has opted out of the County's Health Benefit Program, may re-enroll in the County's Health Benefit Program during the Annual Open Enrollment period.

5. Any newly hired employee eligible to participate in the County's Health Benefit Program must enroll in one of the Health Insurance Plan(s), unless the newly hired employee chooses to opt out (as delineated in No. 4 paragraph 1, dates excepted) of the County's Health Benefit Program no later than the first Monday of the second pay period of employment. Any newly hired employee who does not select one of the Health Insurance Plan(s) and does not opt out of the County's Health Benefit Program by the stated deadline, shall be enrolled in the HMO Plan and DHMO Dental Plan.
6. If during the term of this agreement the State, Federal government, or any other taxing authority imposes a tax or other charges (excluding a tax on or measured by net income) upon any group provider or health/dental plan or upon any activity of any of them, or if any such tax or charges are increased causing agreement between the County and health/dental plans to be opened for renegotiations, either the County or the employee organization may request the other party to meet and confer regarding the terms and conditions set forth herein.
7. If during the term of this agreement the State or Federal government legislates mandatory benefit levels in excess of those covered by agreement between the County and health/dental plan(s) which results in increased premiums, either the County or the employee organization may request the other party to meet and confer regarding the terms and conditions set forth herein.

COMPUTER PROGRAMMING MODIFICATIONS

Notwithstanding any language in this MOU to the contrary, the respective provisions of this MOU which will involve modifications to existing computer programs of the County shall not become effective until the beginning of the payroll period following the completion of such modifications. Furthermore, the provisions of this article shall not be used to extend the effective date of salary changes.

REPRESENTATION IN COURT

Subject to all appropriate provisions of California Government Code Sections, the County will upon request of an employee or former employee defend against any claim or action for an injury arising out of an act or omission occurring within the scope of employment as an employee of the County and will pay any judgment based thereon or any compromise or settlement of the claim or action to which the County has agreed.

EMPLOYEE GRIEVANCE RESOLUTION PROCEDURE

The Employee Grievance Resolution Procedure and Form as presented on the County's Last, Best, and Final Offer on December 1, 2011 shall be available on the Personnel Services website. No changes shall be made to the procedure and/or form without mutual agreement of the Association and County.

BAR DUES

The County of Fresno shall pay directly to the State Bar of California, Bar Dues for each employee covered by this MOU. The County of Fresno shall not pay for any Attorney Specialization Bar Dues nor Section Membership fees. Employees shall submit their fee statements to the District Attorney's Office and Department of Child Support Services no later than thirty (30) days prior to the due date shown on the fee statement to allow for timely processing and payment.

Employees who do not submit their fee statement at least thirty (30) days prior to the due date shall be required to pay their Bar Dues directly to the State Bar of California. The County shall, upon request, reimburse these employees for their payment of Bar Dues providing that the request for reimbursement is made in the current fiscal year (June 30). The employee shall be responsible for any penalties and fees that may be assessed as a result of failure to pay Bar Dues timely.

MANAGEMENT RIGHTS

- A. All County/District Attorney rights, powers, functions, and authorities except as expressly abridged by this MOU shall remain vested in the County/District Attorney whether or not they have been exercised in the past.
- B. No portion of this Management Rights Article shall be construed to obligate the County/District Attorney in any way.
- C. All decisions lawfully made in accordance with Management Rights which are established in this section or are inherently existent shall not be subject to any aspect of the grievance procedure or unfair employee relations practice.
- D. This article is not intended to modify those rights which have been granted to employees in this MOU following procedures specified in Government Code Sections 3500 et seq.
- E. In the exercise of its rights, the County/District Attorney shall not require an employee to perform an act or acts contrary to licensing law.
- F. This article is not intended to restrict consultation with the Association at the request of the latter regarding matters within the right of the County/District Attorney to determine.
- G. The rights, powers, and authorities of the County/District Attorney/Director of Child Support Services include but are not limited to the sole and exclusive right to:

1. determine the mission of the District Attorney's Office/Department of Child Support Services;
 2. set standards of services and evaluate the District Attorney's Office/Department of Child Support Services effectiveness in delivery of these services;
 3. select, train, direct, assign, demote, promote, layoff, dismiss its employees;
 4. communicate fully and openly with its employees on any subject at any time orally, in writing, both at work or through the U.S. mail;
 5. take disciplinary actions;
 6. relieve its employees from duty or reassign employees because of lack of work or for other reasons the County/District Attorney/Director of Child Support Services considers legitimate;
 7. evaluate and maintain the efficiency of District Attorney's/Department of Child Support Services departmental operations;
 8. determine and change the method, means, personnel, and standards by which department operations are to be conducted;
 9. exercise complete control and discretion over its organization and the technology to perform its work;
 10. make rules and regulations pertaining to employees consistent with this MOU;
 11. establish, allocate, schedule, assign, modify, change and discontinue workshifts and working hours and workweeks;
 12. order overtime.
- H. The rights, powers, and authorities of the County/District Attorney include but are not limited to the sole and exclusive right to:
1. determine the mission of its constituent departments, commissions, boards, and committees;
 2. determine the procedures and standards for employee selection, promotion, demotion, transfer, reassignment and/or layoff;
 3. communicate fully and openly with its employees on any subject at any time orally, in writing, both at work or through the U.S. mail;
 4. determine the content of job classifications;

5. take all necessary actions to carry out its mission in emergencies as specified in County Ordinance Code Chapter 2.44 including the suspension of portions or all of this MOU for the period of emergency as determined by the County;
6. make all financial and budgetary decisions;
7. contract, subcontract, establish, merge, continue or discontinue any function or operation of the County;
8. engage consultants for any future or existing function or operation of the County.

BILINGUAL SKILL PAY

Bilingual Skill Pay shall be governed by the Fresno County Salary Resolution, Section 533 with the exception of 533.1.

Pay Provisions:

1. Bilingual Skill Pay shall be paid in the amount of \$23.08 per pay period (approximately \$50 per month).
2. Employees shall be paid in the amount of \$23.08 per pay period regardless of the number of languages they are certified for.
3. Employees shall not receive bilingual skill pay during pay periods that do not include regular work hours.

PERFORMANCE ALLOWANCE **DEPUTY DISTRICT ATTORNEY IVs/CHILD SUPPORT ATTORNEY IVs**

Deputy District Attorney IVs/Child Support Attorney IVs who are demonstrating exemplary performance in a “specialized” assignment may receive an allowance of twenty-three and 08/100 dollars (\$23.08) per pay period, as determined by the District Attorney/Director of Child Support Services. Deputy District Attorneys/Child Support Attorneys authorized to receive this allowance do so at the pleasure of the District Attorney/Director of Child Support Services and decisions designating or removing designation for the performance allowance are not grievable, appealable or subject to challenge in a court of law. Furthermore, no more than twenty-five (25) employees may receive this allowance per pay period.

Deputy District Attorneys/Child Support Attorneys may make nominations to the District Attorney/Director of Child Support Services of employees they feel are deserving of the performance allowance. All nominations will be confidential.

The District Attorney/Department of Child Support Services shall budget funds to pay this performance allowance from year to year and shall only expend these funds for the purpose stated herein.

TIER II RETIREMENT – MANDATORY [One (1) year average]

Any employee newly hired between July 2, 2007 and December 30, 2007, into a permanent General/Miscellaneous position represented by the Fresno County Prosecutors Association shall be enrolled pursuant to the following sections of the County Employees Retirement Law of 1937 (Tier II):

- GC Section 31676.16
- GC Section 31621.4
- GC Section 31462.1

The vested "health benefit" (currently \$3.00 per year of service) resulting from the Settlement Agreement (Fresno County Superior Court Cases 605588-3, 608028-7 and 634171-3) [see Section 9] entered into judgment on December 15, 2000 shall be extended to employees enrolled in Tier II.

Any employee occupying a permanent position that is represented or unrepresented, who promotes, demotes or transfers into a permanent position represented by the Fresno County Prosecutors Association, shall continue under the retirement tier which they were enrolled in immediately prior to their promotion, demotion or transfer.

Any employee represented by the Fresno County Prosecutors Association, who promotes, demotes or transfers into a permanent position that is represented or unrepresented, shall continue under the retirement tier which they were enrolled in immediately prior to their promotion, demotion or transfer.

Any employee who promotes, demotes or transfers from a Safety classification to a General/Miscellaneous classification, or vice versa, shall be enrolled in the corresponding retirement tier (e.g., Tier I Safety membership shall end and Tier I General/Miscellaneous membership shall begin, Tier II Safety membership shall end and Tier II General/Miscellaneous membership shall begin).

CORRESPONDING TIERS

GENERAL/MISC.		SAFETY	
Tier I	←	→	Tier I
Tier II	←	→	Tier II
Tier III			

NOTE: Employees initially enrolled in Tier III General/Miscellaneous who become enrolled in Tier II Safety and subsequently return to a permanent position in a General/Miscellaneous classification shall be re-enrolled into Tier III General/Miscellaneous.

Any employee who deferred retirement prior to the December 15, 2000 Ventura II settlement agreement who subsequently rejoins the retirement association shall be enrolled in Tier I. Any other employee who defers retirement and subsequently rejoins the retirement association shall continue under the retirement tier he or she was enrolled in prior to deferral provided that

tier is available. If that tier is no longer available, the employee shall be enrolled in the retirement tier offered to newly hired employees.

Any employee, who is enrolled in Tier II retirement plan, whether voluntarily or mandatorily, shall not be eligible for the Tier III retirement plan.

TIER III RETIREMENT – MANDATORY

Effective December 31, 2007, any employee newly hired into a permanent General/Miscellaneous position represented by the Fresno County Prosecutors Association shall be enrolled pursuant to the following sections of the County Employees Retirement Law of 1937 (Tier III):

General/Miscellaneous Employees – GC Section 31676.15

- 2.6186% @ age 60; 3.1336% @ age 65
- 3 year average for final compensation

The vested “health benefit” (currently \$3.00 per year of service) resulting from the Settlement Agreement (Fresno County Superior Court Cases 605588-3, 608028-7 and 634171-3) [see Section 9] entered into judgment on December 15, 2000 shall be extended to employees enrolled in Tier III.

Any employee occupying a permanent position that is represented or unrepresented, who promotes, demotes or transfers into a permanent position represented by the Fresno County Prosecutors Association, shall continue under the retirement tier which they were enrolled in immediately prior to their promotion, demotion or transfer.

Any employee represented by the Fresno County Prosecutors Association, who promotes, demotes or transfers into a permanent position that is represented or unrepresented, shall continue under the retirement tier which they were enrolled in immediately prior to their promotion, demotion or transfer.

Any employee who promotes, demotes or transfers from a Safety classification to a General/Miscellaneous classification, or vice versa, shall be enrolled in the corresponding retirement tier (e.g., Tier I Safety membership shall end and Tier I General/Miscellaneous membership shall begin, Tier II Safety membership shall end and Tier II General/Miscellaneous membership shall begin).

CORRESPONDING TIERS

GENERAL/MISC.		SAFETY	
Tier I	←————→	Tier I	
Tier II	←————→	Tier II	
Tier III	————→		

NOTE: Employees initially enrolled in Tier III General/Miscellaneous who become enrolled in Tier II Safety and subsequently return to a permanent position in a General/Miscellaneous classification shall be re-enrolled into Tier III General/Miscellaneous.

Any employee who deferred retirement prior to the December 15, 2000 Ventura II settlement agreement who subsequently rejoins the retirement association shall be enrolled in Tier I. Any other employee who defers retirement and subsequently rejoins the retirement association shall continue under the retirement tier he or she was enrolled in prior to deferral provided that tier is available. If that tier is no longer available, the employee shall be enrolled in the retirement tier offered to newly hired employees.

The foregoing summary of Tier III General/Miscellaneous Retirement Plan - Mandatory is for the parties' general reference, and does not modify the County Board resolutions or County ordinances which established the tiers.

TIER IV RETIREMENT – MANDATORY – [THREE (3) YEAR AVERAGE]

Effective June 11, 2012, any employee newly hired into a permanent position in a General/Miscellaneous classification represented by the Fresno County Prosecutors Association shall be enrolled pursuant to the following sections of the County Employees Retirement Law of 1937 (Tier IV):

- GC 31676.1 – 1.67% @ 57½; 2% @ 61; 2.43% @ 65
- GC 31621 – Default Member Contribution Code
- GC 31462 – 3 year average for final compensation
- 0 (zero) Cost of Living

The "Settlement Health Benefit" (currently \$3.00 per year of service) resulting from the Settlement Agreement (Fresno County Superior Court Cases 605588-3, 608028-7 and 634171-3) [see Section 9] entered into judgment on December 15, 2000 shall not be extended to employees enrolled in General Tier IV.

Any employee occupying a permanent position who promotes, demotes or transfers from a Safety classification to a General/Miscellaneous classification, or vice versa, shall be enrolled in the corresponding retirement tier (e.g., Tier I Safety membership shall end and Tier I General/Miscellaneous membership shall begin; Tier II Safety membership shall end and Tier II General/Miscellaneous membership shall begin).

CORRESPONDING TIERS

GENERAL/MISC.		SAFETY
Tier I	←————→	Tier I
Tier II	←————→	Tier II
Tier III	↗	
Tier IV	←————→	Tier IV

NOTE: Employees initially enrolled in Tier III General/Miscellaneous who become enrolled in Tier II Safety and subsequently return to a permanent position in a General/Miscellaneous classification shall be re-enrolled into Tier III General/Miscellaneous.

Any employee who deferred retirement prior to the December 15, 2000, Ventura II settlement agreement who subsequently rejoins the retirement association shall be enrolled in Tier I General/Miscellaneous or Tier I Safety. Any other employee who defers retirement and subsequently rejoins the retirement association shall continue under the retirement tier he or she was enrolled in prior to deferral.

The foregoing summary of Tier IV Safety Retirement Plan – Mandatory is for the parties' general reference and does not create any retirement benefits. The tier will be established by resolution, or other enactment, as applicable, to be adopted or approved by the County Board of Supervisors prior to June 11, 2012.

TIER V GENERAL RETIREMENT PLAN (PEPRA) – MANDATORY

Pursuant to the California Public Employees' Pension Reform Act of 2013 ("PEPRA;" AB 340, GC §§7522 et seq), any employee newly hired into a permanent position on or after December 24, 2012, who will become a new member of FCERA on or after January 1, 2013, shall be enrolled in the State mandated defined benefit retirement formula specified in Government Code § 7522.20 and will be subject to all other retirement plan provisions as mandated by PEPRA. This state mandated retirement tier shall be known as the Tier V General Retirement Plan.

Consistent with PEPRA, the exception to being enrolled into General Tier V for any employee newly hired on or after December 24, 2012, who will become a new member of FCERA on or after January 1, 2013, is an individual who was previously employed by another public employer and was able to establish reciprocity with FCERA as specified in § 7522.02(c). In the case of reciprocity being established, the new employee would be enrolled into General Tier IV.

The foregoing information is only for the parties' general reference.

STATE DISABILITY INSURANCE PROGRAM

Employees of this Unit shall participate in the State Disability Insurance Program. Participation shall be mandatory for all employees and shall be paid for by the employees subject to provisions established by the County of Fresno and the State of California.

SAVINGS CLAUSE

The provisions of this MOU are declared to be severable and if any section, subsection, sentence, clause, or phrase of this MOU shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this MOU, but they shall remain in effect, it being the intent of the parties that this MOU shall stand notwithstanding the invalidity of any part.

Should any portion of this MOU be found invalid or unconstitutional, the parties will meet and confer to arrive at a mutually satisfactory replacement for the portion found to be invalid or unconstitutional.

EMPLOYMENT PROTECTION SYSTEM

The Fresno County (hereinafter "County") Employment Protection System (hereinafter "EPS") shall govern all formal disciplinary actions for cause imposed by the District Attorney or Director of Child Support Services on any Deputy District Attorney I/II/III/IV/Senior or Child Support Attorney I/II/III/IV/Senior, respectively. Other than as provided herein, the County shall not impose any disciplinary action that adversely affects the pay of any Deputy District Attorney or Child Support Attorney. Nothing in EPS shall be construed to provide, either explicitly or implicitly, a civil cause of action for breach of contract either express or implied arising out of a termination of employment.

Disciplinary actions shall only be imposed for cause. Consistent with this policy, certain levels of discipline shall be deemed informal and shall be exempt from review by any outside hearing officer(s) and certain levels of discipline shall be deemed formal and shall be subject to the review provided in this policy. Employee Performance Evaluations, Counseling Memos, and Oral and Written Reprimands shall not be considered formal disciplinary actions. Employees receiving one of these documents shall have the right to submit a written response to the County, which shall be included in the employee's personnel file, but shall have no other rights or remedies under this policy.

Formal disciplinary action is defined as disciplinary suspensions, administrative salary reductions, disciplinary demotions and disciplinary dismissals.

Grounds for disciplinary action include, but are not limited to:

- incompetency;
- inefficiency;
- insubordination;
- neglect of duty;
- absence without leave;
- dishonesty;
- fraud in securing employment;
- discourteous treatment of the public or other employees;
- drinking alcoholic beverages on the job, or reporting to work while under the influence of alcohol or intoxicants;
- addiction to narcotics or other habit forming drugs;
- conviction of a felony or misdemeanor involving moral turpitude;
- failure to pay just debts as reflected by multiple or repeated salary executions, court judgements, and/or repeated contacts by creditors during working hours;
- willful violation of any County code or lawful departmental or County regulation or order;
- improper political activity as specified in the County Ordinance Code;
- any conduct which bears some rational relationship to the employment and is of a character that can reasonably result in the impairment or disruption of County service,
- abuse of sick leave; and
- suspension or loss of license to practice law in the State of California.

Should an individual lose their license to practice law in the State of California, they shall be suspended immediately without pay pending termination or reinstatement of license to practice law.

Notwithstanding any other provision of EPS, if there is good cause to believe that a County employee may have engaged in such conduct which if true would warrant formal disciplinary actions, and which the Department Head has determined imminently threatens to disrupt County service either because of the nature of the alleged conduct itself or because of its anticipated effect(s) on others in the County or on County service, the Department Head may immediately place the employee on administrative leave with pay pending further investigation. In such event the Department Head shall comply with the Notice and Order provisions of EPS as soon as practicable. During such time from the commencement of administrative leave with pay pending investigation until actual service of an Order for Disciplinary Action, the employee shall receive the full salary and employment benefits to which they may be entitled. In the event no formal disciplinary action is ultimately imposed, any documents pertaining to the incident that lead to administrative leave shall be removed from the employee's personnel file.

Prior to the effective date of any formal disciplinary action as provided herein, a written Notice of Intended Order for Disciplinary Action shall be served on the employee. Such Notice shall include an unsigned copy of the proposed Order for Disciplinary Action and copies of applicable documents, materials or other evidence supporting the allegations pertaining to the employee. The Notice shall inform the employee of the specific type of disciplinary action proposed. The Notice shall inform the employee of the right to deny the allegations or provide a written or oral response to the allegations to the Department Head within ten (10) working days from the date of service of the Notice upon the employee. The Notice shall advise the employee that if he/she fails to reply to the Department Head within the ten (10)-day period, or that if the denial is deemed by the Department Head to be insufficient reason for the misconduct alleged in the proposed order, that formal disciplinary action shall be imposed. Unless the Department Head has placed the employee on administrative leave with pay pending further investigation, the employee shall continue on duty with pay during such time between the service of the Notice for Intended Disciplinary Action and until such time as the final Order for Disciplinary Action is signed and served upon the employee, at which time the disciplinary action shall become effective.

Any employee facing formal disciplinary action shall have the right to be represented, at his/her own cost, by attorney, labor representative or other person selected by the employee.

Any employee who contests a formal disciplinary action as defined in EPS shall have the right to a lawful evidentiary due process review hearing before an impartial hearing officer. Within ten (10) working days of the service of the final Order for Disciplinary Action, the employee may submit a written request to the Fresno County Department of Personnel Services, attn: Labor Relations Division for a review hearing. If the employee does not request a review hearing or file an answer, the employee shall be deemed to have consented to the disciplinary action and the disciplinary order shall become final.

The employee, or their representative, and the County shall mutually agree on a hearing officer. The selection of the hearing officer shall be made within five (5) working days of the receipt of a list of seven (7) candidates referred by the California State Mediation and Conciliation Service, unless extended by mutual agreement. Each party shall have the right to alternately strike names from the recommended list until only one name is remaining.

The employee's formal written answer to the charges, denying the allegations the employee does not believe to be true and stating the basis for the denial or explanation of the employee's alleged conduct, shall be presented to the County and hearing officer no later than ten (10) working days after selection of the hearing officer. Reasonable efforts shall be made so that the hearing can be conducted within thirty (30) working days of selection of the hearing officer, unless the parties otherwise mutually agree to a later date. Once a date for the hearing has been determined, the hearing date may only be continued upon a determination of good reason by the hearing officer.

The hearing shall result in an appropriate record with a written report issued by the hearing officer containing findings of fact and conclusions that reference the evidence presented at the hearing. The employee shall have the right to be represented by legal counsel or any other person selected by the employee, at the employee's own expense. The County shall arrange for the services of a court reporter for the hearing. The hearing officer shall have the authority to issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents and other evidence as provided in California Code of Civil Procedure 1282.6.

At any hearing conducted pursuant to EPS, the County and the employee shall have the right to present, examine and rebut evidence, to call and cross-examine any witness on any matter relevant to the issues even though that matter was not covered in the direct examination and to impeach any witness regardless of which party first called that witness. The hearing need not be conducted according to technical or legal rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the kind of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized. The failure of an employee to appear 1) in person, 2) through counsel, or 3) other representative at the hearing shall be deemed withdrawal of the employee's appeal of the disciplinary action and consent to the disciplinary action, unless good cause for not appearing has been presented to and approved by the hearing officer. All expenses associated with the failure to appear at the review hearing, including the fees of the hearing officer, court reporter, and related expenses, shall be borne fully by the party that failed to appear.

The hearing officer shall issue a report and recommendation within thirty (30) calendar days after the conclusion of the hearing and submission of any supplemental evidence, briefs, arguments or other materials the hearing officer may request from the parties. The report shall be limited to the issue of whether or not cause exists for the discipline imposed. The report and recommendation shall either affirm, modify or reject the order of the Department Head.

If the hearing officer affirms the County's disciplinary decision, the County shall furnish a certified copy of the record of the proceedings before the hearing officer to the employee at the employee's request and expense.

If the hearing officer modifies the discipline imposed by the Department Head, the hearing officer may recommend:

The restoration of salary and benefits to the employee in such amount and to such extent as is necessary to return to the employee the amount of lost salary and benefits due for such period of time that are inconsistent with the discipline recommended by the hearing officer.

If the hearing officer affirms or modifies the discipline imposed by the Department Head, all costs of the hearing, including the fees of the hearing officer, court reporter, and related expenses, shall be borne equally between the employee, or their representative, and the County.

If the hearing officer rejects the discipline imposed by the Department Head, the hearing officer may recommend:

The restoration of salary and benefits to the employee in such amount and to such extent as is necessary to return to the employee all salary and benefits due for such period of time as the disciplinary action was in effect;

The restoration by the employee of any termination benefits conferred during such time as the disciplinary action was in effect.

If the hearing officer rejects the discipline imposed by the Department Head, all costs of the hearing, including the fees of the hearing officer, court reporter, and related expenses, shall be borne fully by the County.

If either party disagrees with the hearing officer's final decision, as provided by Government Code Section 71655, either party may file a writ of administrative mandamus pursuant to Code of Civil Procedure Section 1094.5 in the appropriate court within ninety (90) calendar days of the final decision. Such review by that court shall be based on the entire record. In reviewing the decision of the hearing officer, the reviewing court shall be bound by the hearing officer's material factual findings that are supported by substantial evidence. The party filing the writ of administrative mandamus shall be responsible for any associated costs.

In cases of salary and benefit restoration, the amount shall be reduced by any amount that the employee has earned from any other employment and/or collected from unemployment insurance, or with reasonable diligence might have earned from other comparable or substantially similar employment.

Employees hired on or after September 30, 2013, shall not be subject to the provisions of EPS until they have been employed a minimum of eighteen (18) months of continuous, uninterrupted County service in a Deputy District Attorney I/II/III/IV/Senior and Child Support Attorney I/II/III/IV/Senior classification. Incumbents with less than eighteen (18) months of employment with the District Attorney's Office or Department of Child Support Services shall serve at the discretion of the Department Head.

Effective September 30, 2013, employees who transfer, promote or demote from classifications outside of Representation Unit 30 into the Deputy District Attorney I/II/III/IV/Senior or Child Support Attorney I/II/III/IV/Senior series, shall serve a one (1) year

assessment period during which time EPS shall not apply. Said employees shall serve at the discretion of the Department Head.

Effective September 30, 2013, incumbents promoting to a higher level within the Deputy District Attorney I/II/III/IV/Senior or Child Support Attorney I/II/III/IV/Senior series, shall serve a one (1) year assessment period during which time EPS shall not apply and the Department Head determines whether performance standards are being satisfied for the new classification (i.e. incumbents shall serve a one (1) year assessment period when promoted to each of the III, IV, and Senior levels). Should the Department Head determine during the assessment period that performance is below standard, the incumbent shall be demoted to their previous classification/level.

There shall be no other appeal or remedy available to employees. This article is not subject to the Employee Grievance Resolution Procedure.

OFFICER INVOLVED SHOOTINGS/IN-CUSTODY DEATHS

The County of Fresno and the Fresno County Prosecutors Association agree to an Officer Involved Shooting / In-Custody Death pay provision for Deputy District Attorney IV/Senior when assigned to the Officer Involved Shooting Team as follows:

1. Officer Involved Shooting assignments shall be at the discretion of the District Attorney-Public Administrator;
2. When a Deputy District Attorney IV/Senior (one per week/assignment) is assigned to the Officer Involved Shooting Team, the employee shall receive additional compensation at the rate of \$1,000 per assignment for that week regardless of the number of calls/incidents received during that time frame;
3. The Deputy District Attorney IV/Senior on assignment shall be available 24/7, reachable by telephone and/or other communication device, be fit to respond to incident locations immediately (i.e. refrain from activities which may impair their ability to perform assigned duties), and must be willing to respond to "no hostage" facilities.

REPRESENTATION RIGHTS

The Association shall have the right to meet and confer in good faith with the County regarding wages, hours, and other terms and conditions of employment for representation Unit 30, within the scope of representation.

The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including but not limited to wages, hours and other terms and conditions of employment.

RELEASE TIME

The Association may request that a reasonable number of employees, who serve as official representatives of the Association, be released from work, with prior department head approval, without loss of compensation when meeting and conferring with the County where matters within the scope of representation are being considered.

The Association shall submit a written request for release time to the department head, or designee, at least seventy-two (72) hours in advance of the meeting. The use of County time for this purpose shall not be excessive, nor shall it interfere with the performance of County services as determined by the department head.

MEETING PLACE

The County, at the Association's request, shall reasonably make available conference rooms and other meeting areas for the purpose of holding Association meetings during off-duty time periods provided space can be made available without interfering with County needs. The Association shall provide timely advance notice (48 hours) of such meetings. The Association also agrees to pay any additional cost of security, supervision, damage, and cleanup and shall comply with County regulations for assignment and use of such facilities.

FULL UNDERSTANDING

It is intended that this MOU sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any other previous understanding or agreements by the parties (with the exception of sideletter agreements), whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety. With respect to sideletter agreements, all previously existing sideletter agreements and sideletter agreements entered into during the term of this MOU shall continue in force subject to the terms and conditions set forth within each sideletter.

This MOU shall govern in case of conflict with provisions of existing County ordinances, rules, and regulations pertaining to wages, hours, and other terms and conditions of employment but otherwise such ordinances, rules, and regulations shall be effective and the Board of Supervisors and other County boards and commissions retain the power to legislate pertaining to such matters subject to compliance with the Meyers-Milias-Brown Act and other applicable provisions of law provided such actions are not in conflict with the provisions of this MOU.

EXTENSION OF PAID MILITARY LEAVE

Eligible Bargaining Unit Members shall be subject to paid military leave in accordance with the current Resolution as approved by the Board of Supervisors until such time that the Board of Supervisors terminates said Resolution.

TERM OF MEMORANDUM OF UNDERSTANDING AND RENEGOTIATION

This MOU shall be in effect from July 3, 2017, through June 30, 2019. The parties agree to begin negotiations for a successor MOU on or about March 1, 2019.

COUNTY OF FRESNO

By

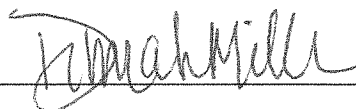


Date

6-22-17

FRESNO COUNTY
PROSECUTORS ASSOCIATION

By



Date

6/22/17