

02. PERSONNEL

2.17. Grievance Procedure

BOS Adopted – Jul 1, 2014

2.17.1. Policy. It is the policy of the Board of Supervisors to provide fair, equitable and satisfactory working arrangements for its employees. Every effort will be made to resolve employee grievances informally with the least amount of worry and delay. However, in some cases it becomes necessary to proceed through a formal appeal and panel review to handle a given grievance. Accordingly, the following procedure and regulations are established. It is the intent that this policy fully comply with the applicable state statutes on grievance procedures. For employees in the Department of Social Services, all references in this section to “Department Head” shall be interpreted to mean the “Director of Social Services.” Constitutional Officers shall prepare grievance procedures for their respective employees. These procedures shall be made available upon request to the County Administrator. In the event of any conflict between this policy and state statutes, state statutes shall control and be part of this policy as if set out herein.

2.17.2. Coverage of Personnel

A. Included. All permanent non-probationary employees under the County personnel system whose position status is full-time or part-time.

B. Excluded

1. Probationary employees;
2. An employee who has resigned voluntarily may not have access to the grievance procedure after the effective date of the resignation;
3. Appointees of elected groups or individuals;
4. Deputies and Assistants to the County Administrator: (5) Agency Heads;
5. Employees of judicial and legislative departments;
6. Any other employee electing to proceed pursuant to any other existing procedure in the resolution of his or her grievance.

C. Employees Removed from Duty. An employee who has been removed shall not have access to the grievance procedure, except to grieve a removal resulting from formal discipline, or unsatisfactory job performance, or an involuntary resignation. Such grievance must be filed within thirty calendar days of the dismissal date. Any grievance initiated by a permanent, classified County employee prior to separation from County service may, at the employee’s option, continue to be processed through the County grievance procedure.

2.17.3. Definition of Grievance. As defined in Section 15.2-1507 of the Virginia State Code, a grievance shall be defined as:

“a complaint or dispute by an employee relating to his employment, including but not necessarily limited to (i) disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules and regulations, including the application of policies involving the contents of ordinances, statutes or established personnel policies, rules and regulations; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and (iv) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. For the purposes of clause (iv) there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.”

2.17.4. Matters Deemed Not Grievable. Employees are advised that conditions of employment and the content of laws, ordinances and policies established by the Board of Supervisors are not grievable. By state law, wages, salaries, and fringe benefits are likewise not grievable. In addition, it is to be understood that the establishment of this procedure shall in no way remove the right of the county to do the following, provided however, that none of these rights may be exercised in an arbitrary or capricious manner:

- A. Direct the work of its employees;
- B. Hire, promote, transfer and assign employees, except where the employee can show established promotional policies or procedures were not followed or applied fairly;
- C. Maintain the efficiency of governmental operations;
- D. Reduce the work force or abolish jobs except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance. In any grievance brought under this exception, the action shall be upheld upon a showing that (i) there was a valid business reason for the action and (ii) the employee was notified of the reason in writing prior to the effective date of the action;
- E. Take actions necessary to carry out duties of an agency in emergencies;
- F. Determine the methods, means and personnel necessary to carry out operations.
- G. Control and manage the county's property and maintain the county's function and operations.

2.17.5. Determination of Grievability. In the event that a question regarding grievability arises at any Step of the Grievance procedure after a written grievance has been filed, the employee may make a request for a ruling of grievability from the County Administrator, who shall respond in writing within five (5) days. The County Administrator may consult with the County Attorney, provided that the County Attorney does not decide the question of grievability. In any case, no complaint may be addressed beyond the top management level before grievability has been determined. Only after grievability has been determined shall a grievance be processed through the grievance panel stage. The decision of the County Administrator may be appealed by the grievant to the Circuit Court for a hearing de novo on the issue of grievability, as provided for in Virginia Code, Section 15.2-1507. The grievant may initiate proceedings for review of the decision of the County Administrator by filing a notice of appeal with the County Administrator within ten (10) working days after the date of the decision and giving a copy thereof to all other parties. Within ten (10) days thereafter, the County Administrator shall transmit to the Clerk of the Circuit Court a copy of the decision of the County Administrator, a copy of the notice of appeal and the exhibits. A list of evidence furnished to the Circuit Court shall also be furnished to the grievant, although failure to do so shall not prejudice the rights of the grievant. The grievant may move the Circuit Court to issue a writ of certiorari requiring the County Administrator to transmit the record on or before a certain date. The decision of the Circuit Court with regard to grievability is final and is not appealable.

2.17.6. Grievance Procedure. An employee wishing to file a grievance shall have the right to follow all the steps of this procedure as listed below with complete freedom from reprisal. This does not, however, confer the right upon anyone to make slanderous or libelous statements. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause will result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the non-compliance within five (5) work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the County Administrator. The County Administrator shall make all determinations on compliance issues. Compliance determinations made by the County Administrator shall be subject to judicial review by filing a petition with the Circuit Court within thirty days of the compliance determination. Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party. Grievance Procedure Forms can be found in Appendix A of the Personnel Policy Manual.

A. Step I

1. An employee who has a grievance, as defined herein, shall within thirty (30) work days of the occurrence of the action or event causing the grievance or of the date when the employee could have reasonably been expected to have learned of the act or event, contact his immediate supervisor for an informal face to face meeting to discuss the grievance. (The immediate supervisor here is defined as the person responsible for hiring, evaluating performance, and/or taking disciplinary action under the Standards of Conduct policy.)

2. The supervisor shall immediately discuss the grievance with the employee and make a careful inquiry into the facts and circumstances of the complaint. The supervisor shall give the employee an oral reply within five (5) work days following receipt of the complaint.

3. In any case where the employee claims sexual harassment by or involving an immediate supervisor, the employee may instead file the grievance with another supervisor within the same department or with the department head as outlined below.

4. If the grievance is not resolved at this point the employee may, within five (5) work days following the date of the oral response, file a written grievance with his department head on Grievance Procedure Form A (hereinafter referred to as Form A). The employee must be sure that the written grievance is complete in all detail at this stage of the procedure and must specify the relief he expects to obtain through the use of the grievance procedure. No addition, deletions or adjustments to the original grievance will be allowed or accepted at a late point within the procedure.

5. In any case where the employee claims sexual harassment by or involving the department head, the employee may bypass filing a grievance with the department head and instead proceed to Step II below.

6. The department head shall inform the employee in writing on Form A of his decision and the reasons within five (5) calendar days of receipt of Form A.

B. Step II

1. If the department head's response does not resolve the grievance, and the issue of grievability has not been raised, the employee may within five (5) work days after receipt of the supervisor's reply submit Form A to the next direct level of management indicating the desire to have the grievance advanced to the next step. For employees of the Department of Social Services, the "next direct level of management" shall be interpreted as the Social Services Board.

2. Upon receipt of Form A, the second step administrator shall meet with the employee within five (5) work days. The only persons present at this meeting are the employee, the second step administrator, and appropriate witnesses. Witnesses shall be present only while actually providing testimony. The second step administrator shall give the employee a written response on Form A within five workdays following the date of the meeting.

C. Step III

1. If the second step written response does not resolve the grievance, and the issue of grievability has not been raised, the employee may within five (5) work days after receipt of the second step administrator's reply submit Form A to the County Administrator indicating the desire to have the grievance advanced to the next step.

2. Upon receipt of Form A, the County Administrator shall meet with the employee within five workdays. The persons present at this meeting are the employee, County Administrator, appropriate witnesses, and at the employee's option, a representative of his or her choice. If the employee is represented by legal counsel, the County likewise has the option of being represented by counsel.

3. The County Administrator shall give the employee a third-step response in writing on Form A within five workdays following the meeting.

D. Advancement to a Panel Hearing

1. If the employee wishes to advance the grievance to a panel hearing, the employee must so note on Form A and forward Form A to the County Administrator within five (5) work days of receipt of the third-step reply. The County Administrator shall, if he has not already done so, make a ruling of grievability and shall respond in writing within five (5) workdays. The County Administrator may consult with the County Attorney, provided that the County Attorney does not decide the question of grievability. In submitting this request, it is not necessary that the employee again provide a written explanation of what has occurred as this was contained in his written request submitted at Steps II and III and as part of the record will be made available to the grievance panel.

2. If the County Administrator rules that an issue does not qualify for a panel hearing, the grievant may appeal the ruling using the procedures set forth in Section R.4 of this personnel policy.

E. Role of the Grievance Review Panel. A copy of any grievance, qualified or disqualified for a panel hearing by the County Administrator, shall be forwarded to the Grievance Review Panel at the same time of notification to the employee. The Grievance Review Panel will attempt to monitor grievances, and will attempt to provide assistance to the parties and the panel on procedural matters as needed.

F. Panel Selection

1. The final step of the grievance procedure shall be the actual panel hearing. One member shall be chosen by the grievant, one member shall be chosen by the County Administrator and one member shall be chosen by the first two appointees. Members may be chosen from among county employees. If no agreement on a third member can be made, the selection shall be made by the Chief Judge of the Circuit Court. The decision of the panel shall be final and binding and shall be consistent with provisions of law and written policies. In cases of termination, the third panel member shall be appointed by the Grievance Review Board, from a list of lawyers who have been approved to serve as administrative hearing officers by the Supreme Court of Virginia. The appointments shall be made on a rotating and geographic basis. In all cases, the third panel member shall be the chairperson of the panel.

2. To insure an impartial panel, the panel shall not be composed of any persons having direct involvement with the grievance being heard, or with the problem giving rise to the

grievance. Also, managers who are in a direct line of supervision of a grievant are excluded from serving as panel members. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of such an attorney may serve as a panel member. In addition, the following relatives of a participant in the grievance process or a participant's spouse shall not serve as panel members; spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin.

3. The employee and the County shall select their respective panel members within five workdays. In termination cases requiring the appointment of an administrative hearing officer as the third panel member, the County shall at the time of notice of qualification send Form B to the Grievance Review Panel requesting such an appointment.

4. The full panel selection should be completed by the tenth (10) workday following receipt of qualification. However, this time limit may be extended in instances where the agreement on a third panel member has not been reached. In such instances, this County shall, within the ensuing five work days, request the chief Judge of the Circuit Court in the locality where the grievant is employed to select a third panel member.

G. Panel Hearing Date. The full panel shall set the time, the date and place for the hearing, which should be held within ten (10) work days following the selection of the full panel. The panel chairperson shall notify the grievant and the county of the hearing date. The panel shall conduct the hearing in the county where the grievant is employed, unless the panel unanimously decides that another location is appropriate.

H. Rules for Panel Hearing

1. The rules for panel hearings shall be those set forth below "Conduct of Panel Hearing" and those set forth in Section 15.2-1507 of the Code of Virginia. The following procedures are to assist grievance panels in preparing for and conduction of panel hearings. A panel's responsibility is to insure the proper application of state and county policies and procedures. Panels do not have the authority to formulate or to change policies or procedure of the county; however the panel may consider mitigating circumstances and modify county action concerning discipline. A panel by a majority vote may uphold or reverse the action of the county or may choose a modified remedy. Decision of the panel must be consistent with provision of law and written policy. A panel might determine that a grievant is entitled to reinstatement with back pay and restoration of benefits, but in no case does a panel have the authority to award damages or attorney fees. The panel hearing is the concluding step to an administrative process designed for the resolution of sensitive personnel matters. Therefore, it is recommended that the persons present at the panel hearing be limited to the grievant, the panel members, the legal counsel and/or representative of the grievant and the county, appropriate witnesses and official recorders. At the request of either party, the hearing shall be private.

2. The parties should not discuss the substance of any grievance or the problem giving rise to the grievance with any panel members prior to the hearing. Any matters requiring the attention of the panel should be communicated in writing with copies to all parties.

I. Conduct of Panel Hearing

1. The county shall provide each panel member copies of all grievance forms and the county grievance procedure prior to the convening of the panel in order that each member may review the documents. The County shall provide the grievant with a list of the documents furnished to the panel. The grievant and his attorney shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding at least ten (10) days prior to the scheduled panel hearing. Other information shall be submitted at the hearing in the presence of the parties.

2. All documents, exhibits and lists of witnesses shall be exchanged between the parties in advance of the hearing.

3. All evidence taken by the panel shall be under oath.

4. Opening statements may be made at the beginning of the hearing and the panel may ask for such statements in order to clarify the issue of the grievance.

5. The county and thereafter the grievant, or their representatives, shall then present claims, proofs and witnesses who shall submit to questions or other examination. Each party has the right of cross-examination. All evidence shall be presented in the presence of the panel and the parties, except by mutual consent of the parties. Equal opportunity shall be given to all parties for presentation of any material or relevant evidence.

6. The panel, by majority vote, may decide procedural questions and rule upon objections raised during the hearing.

7. Witnesses, other than the parties, shall remain in the hearing room only while giving their testimony.

8. Members of the panel may question anyone giving testimony in order to clarify points being made.

9. Exhibits may be received in evidence by the panel, by the grievant or the county and shall be marked and made a part of the record.

10. The parties shall produce additional evidence as the panel may deem necessary to better understand and make determination of the dispute. The panel shall be judge of the relevancy and materiality of the evidence offered. All evidence is to be taken in the presence of the panel and both parties.

11. After both parties have presented their evidence, the panel chairperson shall ask of all parties whether they have any further evidence to offer or witnesses to be heard. Upon receiving negative replies, both parties will be given an opportunity for a closing statement. After both sides have made a closing statement, the hearing shall be declared closed.

J. Panel Decision

1. The panel, in rendering its decision, shall be guided, but not necessarily bound, by the relief specified by the grievant on Form A. The panel shall render its decision on Form B within ten (10) work days of the conclusion of the hearing. The reasons for the panel's decision must be set forth in writing. Copies shall be distributed to the employee, County Administrator, and the Grievance Review Board. The majority decision of the panel shall be final and binding, and shall be consistent with provisions of law and written policy. The County Administrator is responsible for assuring that panel decisions are implemented. Either party may petition the Circuit Court having jurisdiction in this locality where the grievant is employed for an order requiring implementation of the decision of the panel.

2. If a written request to reconsider the panel decision is submitted by either party, within five (5) work days of receipt of the decision, the panel, by majority vote, may elect to review its decision and/or reopen the hearing for good cause shown.