



CHESTERFIELD COUNTY ADMINISTRATIVE POLICIES AND PROCEDURES

Department: Human Resources
Subject: Employee Grievance Procedure

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I. INTRODUCTION

The Chesterfield County grievance procedure is established to provide eligible county employees an efficient and effective means by which to objectively resolve disputes or problems.

All full-time non-probationary county employees are eligible to file grievances, except county executives, department directors, and employees who work for constitutional officers and the Registrar's Office. The department of Human Resources maintains a list of positions that are excluded from use of the grievance procedure.

II. DEFINITION OF GRIEVABLE MATTERS

A grievance is a complaint or dispute relative to an employee's employment including:

- A. Disciplinary actions that shall include the following: letters of reprimand, reduced salary, reduction in accumulated annual leave balance, demotions, suspensions, placement in disciplinary probation status, and dismissals, that result from formal discipline or unsatisfactory job performance.
- B. Concerns regarding the application of personnel policies and procedures.
- C. Acts of retaliation as the result of utilization of the grievance procedure or of participation in the grievance of another county employee.
- D. Complaints of discrimination on the basis of race, color, religion, political affiliation, age, disability, national origin, or sex.
- E. Acts of retaliation 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 government authority; has reported an incidence of fraud, abuse or gross mismanagement; or has sought any change in law before the Congress of the United States or the General Assembly.

III. NON-GRIEVABLE MATTERS

Chesterfield County shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are not grievable:

- A. Establishment and revision of wages or salaries, position classifications, or benefits
- B. Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job
- C. The contents of ordinances, statutes or established personnel policies, procedures, rules, and regulations
- D. The methods, means, and personnel by which such work activities are to be carried out
- E. Termination, layoff, or suspension from duties because of lack of work, reduction in work force, or job abolition (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)
- F. The hiring, promotion, transfer, assignment, and retention of employees within the county
- G. The relief of employees from duties of the county in emergencies
- H. Performance evaluations (including EDP Performance Reports)

IV. FORMS

- A. Request for Grievance Hearing- This form will be initiated by the grievant upon completion of Step 1 of the grievance procedure. This form will establish the official record of grievance by an employee. The form will be appended to at each subsequent step of the grievance.
- B. Request for Determination of Grievability - This form will be initiated by either the grievant or the department director when the grievability of an issue is at question. A determination of grievability can be requested by either party at any time prior to the Personnel Appeals Board hearing.

V. MANAGEMENT RIGHTS

Nothing in the grievance procedure set forth herein is intended to circumscribe or modify the existing management right of Chesterfield County to do any of the following:

- A. Direct the work of its employees as well as establish and revise wages, salaries, position classifications, and employee benefits
- B. Hire, promote, transfer, assign, and retain employees within the county
- C. Maintain the efficiency of governmental operations
- D. Relieve employees from duties of the county in emergencies
- E. Determine the methods, means, and personnel by which operations are to be carried out
- F. Discharge, layoff, or suspension from duties because of lack of work, reduction in work force, or job abolition. However, in any grievance brought under the exception to section III above, the action shall be upheld upon a showing by the county that:
 - 1. There was a valid business reason for the action
 - 2. The employee was notified in writing prior to the effective date of the action

VI. PROCEDURES

If a time period ends on Saturday, Sunday or a designated county holiday, the time period will be extended to the next regular business day. Time frames may be extended by mutual consent of the county and the grievant.

- A. **Step 1: Supervisor Level** - An employee who has a grievance shall initially discuss the complaint or dispute directly with his immediate supervisor. At this time the supervisor shall determine that the employee is formally registering a grievance by initiating Step 1 of the grievance procedure.

The supervisor will ask the employee if he or she is, in fact, initiating Step 1 of the grievance procedure at this time. If the employee answers in the affirmative, this date will be the date entered on the Request for Grievance Hearing Form, Step 2, question 2. The supervisor shall be responsible to ensure that the importance of this date is explained to the employee and that it is recorded on the Request for Grievance Hearing Form. This date will be the date from which all other procedural requirements shall be determined.

The meeting at this step takes place between supervisor and employee. The employee may not have witnesses and/or representatives present during Step 1 of this process.

The grievance need not be reduced to writing at this time, however, the grievance must be reported to the employee's immediate supervisor within twenty (20) calendar days of the event giving rise to the grievance. The supervisor shall give the employee an oral reply or answer within five (5) calendar days after the employee reports the grievance to the supervisor.

- B. **Step 2: Department Director** - If the reply or answer of the supervisor does not resolve the grievance, the grievant may file a written grievance statement with the department director by completing the Step 2 section of the Request for Grievance Hearing Form, with copies to the County Administrator, County Attorney, and Director of Human Resources within five (5)

calendar days after the supervisor's oral reply. By filing such statement, the grievant expressly foregoes any relief offered to the grievant in Step 1.

1. A description of the complaint or dispute which constitutes the grievance as defined herein
2. A description of the attempts which have been made to resolve the complaint or dispute
3. The specific relief which the grievant expects to obtain

The employee's department director shall meet with the grievant within five (5) calendar days after receipt of the written statement. The grievant may also have one representative of his choice who is not an attorney present at this meeting. Appropriate witnesses for each side may be present, but only while providing information. A written reply by the department director shall be sent or delivered to the grievant within five (5) calendar days following such meeting.

A copy of the department director's response shall be sent to the County Administrator, County Attorney, and Director of Human Resources.

If the employee's supervisor is the department director, the department director hears Step 1 and Step 2 of the grievance. Step 1 and Step 2 meetings can be combined if agreed upon by the department director and the grievant.

- C. **Step 3: County Administrator Level** - If the reply of the department director does not resolve the grievance, the grievant shall send or deliver a request, within five (5) calendar days after receipt of the department director's written response, for a review of the grievance by the County Administrator or his authorized designee and a resolution of the grievance. Such request shall be made in writing to the County Administrator by completing the Step 3 section of the Request for Grievance Hearing Form with copies to the County Attorney, Director of Human Resources and the department director. By making such request, the grievant expressly foregoes any relief offered to the grievant in Step 2. The County Administrator or his designee shall meet with the grievant within fifteen (15) calendar days.

The grievant may, at his expense, have present a representative or legal counsel who may advise the grievant. The representative or legal counsel shall not speak on behalf of the grievant but may confer directly with the grievant. If the grievant is represented by legal counsel, the county may likewise be represented by counsel. The department director shall provide the County Administrator with a written statement of the facts and the departmental actions taken to resolve the complaint or dispute. The County Administrator, or his designee, shall meet with the grievant and, within ten (10) calendar days, exclusive of the time required to determine any grievability issues, deliver to the grievant a written response containing the County Administrator's decision whether the grievant is entitled to receive the specific relief sought.

- D. **Step 4: Personnel Appeals Board Level** - If Step 3 fails to resolve the grievance, the grievant may request a panel hearing of the Personnel Appeals Board. This request shall be made, in writing, within ten (10) calendar days after receipt of the County Administrator's decision by completing the Step 4 section of the Request for Grievance Hearing Form, addressed to the Director of Human Resources with copies to the County Administrator, County Attorney and department director. By making such request, the grievant expressly foregoes any relief offered to the grievant during Step 3.

The Director of Human Resources shall notify the Personnel Appeals Board of the request for a hearing and shall set a date and time for the hearing as soon as possible thereafter. The Director of Human Resources shall notify the grievant or his or her legal counsel, by certified mail return receipt requested, or other express delivery service that provides a tracking option, of the date, time, and location of the Personnel Appeals Board hearing.

The grievant may, at his own expense, be represented at the hearing by either a representative or legal counsel. Both the grievant and the county may call appropriate witnesses at the hearing. Each party may present evidence, examine, cross-examine and question witnesses. Only evidence relevant to the grievance, as defined herein, shall be presented by the grievant and the county at the hearing.

The Board shall conduct hearings in accordance with written procedural rules (see attached Procedural Rules for the Personnel Appeals Board). The procedural rules will be read prior to the commencement of the Board hearing.

The Board does not have the authority to formulate or change any county policies or procedures or to decide whether a complaint or dispute is grievable. The Board may interpret the application of policies and procedures as they relate to the specific grievance at issue.

The Department of Human Resources shall provide the Board with copies of the grievance record prior to the hearing, and will provide the grievant with a list of documents furnished to the Board. The grievant or his attorney, at least ten (10) days prior to the Board hearing, shall, upon request, be allowed access to and copies of all relevant files intended to be used by the county in the grievance proceeding. Documents, exhibits and lists of witnesses shall be exchanged between the parties at least three (3) working days in advance of the hearing. Nothing in this paragraph shall be construed to (1) affect any legal privilege which protects a document or exhibit from disclosure, (2) require a party to disclose rebuttal evidence prior to the hearing or (3) require the disclosure of either party's strategy.

Within fifteen (15) workdays following the hearing, the Personnel Appeals Board shall render a written decision and the Chairperson of the Board shall send copies of the decision to the grievant or his or her representative, the grievant's department director, the County Administrator, the County Attorney, and the Director of Human Resources.

The majority decision of the Board, acting within the scope of its authority, shall be final and binding upon the county and the grievant; and the decision shall be consistent with the provisions of law and written policy, provided, however, that the Sheriff, upon petition of the county, may appeal to the Chesterfield County Circuit Court any decision by the Board to reinstate an employee of the Sheriff's office who was terminated for cause.

Either party may petition the Circuit Court for implementation of the Board decision. The question of whether the relief granted by the Board is consistent with written policy shall be determined by the County Administrator or his designee, unless such person has direct personal, as opposed to professional, involvement with the event or events giving rise to the grievance, in which case the determination will be made by the Commonwealth's Attorney.

VII. PROCEDURAL COMPLIANCE

After the 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 issues, provided the party not in compliance fails to correct the non-compliance within five (5) calendar days of receipt of written notification by the other party of the compliance violation. The grievant is never required to proceed to the next step of the process. If the grievant does not proceed to the next step within the time period provided in this procedure, the grievance will terminate.

VIII. DETERMINATION OF GRIEVABILITY

Determinations regarding whether or not a matter is grievable shall be made by the County Administrator at the request of either the department director or the grievant, by completing the Request for Determination of Grievability Form at any time prior to the Personnel Appeals Board hearing. The County Administrator's determination shall be made within ten (10) calendar days after receipt of the Request for Determination of Grievability Form. The County Administrator will notify

the grievant, department director, the County Attorney, and the Director of Human Resources of the determination.

The determination of grievability may be made only after the grievance is reduced to writing, but before the Board hearing, or it shall be deemed to have been waived. However, once raised, the issue of grievability must be resolved before further processing of the grievance. If the issue is determined to be non-grievable, the grievance process is concluded unless a timely appeal is filed.

The grievability determination of the County Administrator may be appealed by the grievant to the Chesterfield County Circuit Court for a hearing de novo on the issue of grievability.

Proceedings for review of the grievability determination of the County Administrator shall be instituted by filing a notice of appeal with the County Administrator's office within ten (10) calendar days after the date of the County Administrator's decision and delivering a copy of the notice to the County Attorney and to the Director of Human Resources. Within ten (10) calendar days thereafter, the County Administrator shall transmit to the Clerk of the Chesterfield County Circuit Court a record consisting of the following documents:

- A. A copy of the County Administrator's grievability determination
- B. A copy of the notice of appeal
- C. The exhibits

The failure of the County Administrator to transmit the above-described record to the Clerk within the time allowed shall not prejudice the rights of the grievant. The Court, on motion of the grievant, may issue a writ of certiorari requiring the County Administrator to transmit the record on or before a certain date.

Within thirty (30) calendar days of receipt by the Clerk of such records, the Court, sitting without a jury, shall hear the appeal on the record transmitted by the County Administrator and such additional evidence as the Court may deem necessary to resolve any controversy as to the correctness of the record. The Court may affirm the determination of the County Administrator or may reverse or modify the determination. The decision of the court shall be rendered no later than the fifteenth (15th) day from the date of the conclusion of the hearing. The decision of the Court is final and not appealable.

IX. PERSONNEL APPEALS BOARD COMPOSITION

The Personnel Appeals Board will be composed of three members, each appointed by the Board of Supervisors for three-year terms. One member shall serve as the chairperson.

To ensure an impartial Board hearing, no member of the Board shall (1) have direct involvement with the grievance or with the complaint or dispute giving rise to the grievance, (2) be a direct supervisor of a grievant or be the spouse, parent, child, descendants of a child, sibling, niece, nephew, or first cousin of a participant in the grievance.

No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee, or co-employee of such an attorney shall serve as a Board member.

Upon the disqualification of a member or members of the Personnel Appeals Board, the remaining members or member shall be authorized to hear and decide the grievance.

X. LAW ENFORCEMENT OFFICERS

A law enforcement officer may file a grievance under either this Employee Grievance Procedure or the Law-Enforcement Officer's Procedural Guarantee, but not both.

The law enforcement officer shall be given written notification of his or her right to initiate a grievance under the Employee Grievance Procedure or the Law-Enforcement Officer's Procedural Guarantee. A copy of the Employee Grievance Procedure shall be provided to the law enforcement officer upon request.

PROCEDURAL RULES FOR THE CHESTERFIELD COUNTY PERSONNEL APPEALS BOARD

1. This is the hearing of the grievance of _____.
2. This will be an informal, non-judicial hearing. The decision by the Chesterfield County Personnel Appeals Board (“the Board”) will be based upon the facts presented by both parties. The purpose of the hearing is for the presentation of facts and not for the presentation of arguments of counsel. The decision of the Board is final and binding upon all parties to this grievance.
3. The parties or their counsel may make opening and closing statements; however, such statements must be confined to explaining or clarifying the grievant’s case, rather than attempting to introduce evidence outside the record.
4. Chesterfield County (“the County”) will proceed first and present its case with an opportunity for cross examination by the grievant and the Board. Witnesses for the County will testify at this time and are subject to cross-examination by the grievant and the Board.
5. Following presentation of case by the County, the grievant will present his/her case supporting the remedial action requested by the grievant. Witnesses for the grievant will testify at this time and are subject to cross-examination by the County and the Board.
6. The Board shall afford full and equal opportunity to all parties to present any material and relevant evidence. All material and relevant evidence is admissible including hearsay. The Board shall be the judge of materiality and relevancy of the evidence offered. Evidence shall be taken in the presence of the Board, the parties, and their counsel.
7. Either party, upon its motion, has the absolute right to segregate witnesses during the hearing. If witnesses are segregated, witnesses other than the parties will be permitted in the hearing room only while giving their testimony.
8. Exhibits offered by the grievant or the County may be received in evidence by the Board and, when so received, shall be marked and made a part of the record.
9. The Board shall decide procedural questions and rule upon objections raised during the course of the hearing.
10. After each side has had the opportunity to present its evidence, the Board chairperson shall specifically inquire of all parties whether they have any further evidence to offer or witnesses to be heard. Upon receiving negative replies, both parties shall be given the opportunity to make closing statements summarizing their positions, following which the hearing should be declared closed.
11. In a closed session the Board will consider information presented and, following a majority determination by the Board, the chairperson of the Board will notify all parties to the grievance of the Board’s decision. The Board shall render its decision within fifteen workdays of the conclusion of the hearing.
12. The hearing shall be reopened at any time before the actual implementation of the Board’s decision:
 - a. Upon a majority vote of the Board on its own motion.
 - b. Upon a majority vote of the Board on the application of a party for good cause shown.
13. No recording or reporting equipment will be permitted.
14. The Board does not have the authority to formulate or change any County policies or procedures.