

# **MADISON COUNTY, VIRGINIA PERSONNEL POLICIES MANUAL**

## **GRIEVANCE PROCEDURES**

<b>POLICY NO.</b>	14.1	<b>EFFECTIVE:</b>	01/02/2024
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### **A. Purpose**

The purpose of Madison County Grievance Procedure is to afford an immediate and impartial method for the resolution of disputes which may arise between the County government and County employees.

### **B. Coverage**

Except as noted below, all non-probationary full-time and part-time employees are eligible to file grievances under this procedure. The following are the exceptions:

1. Key officials of the County. For purposes of this procedure, a key official is defined as the head of any separate County department such as:

- a. Building Official
- b. Director of Planning, Zoning and Permitting
- c. Director of Economic Development and Tourism
- d. Director of Emergency Communications
- e. Director of Emergency Medical Services
- f. Chief Animal Control Officer & Shelter Manager
- g. Finance Director
- h. Assistant County Administrator
- i. Facilities Manager

2. Members of boards and commissions.

3. Employees whose terms of employment are limited by law.

4. Officials and employees who serve at the will or pleasure of an appointing authority.

5. Appointees of elected individuals or elected groups.

6. Probationary employees in matters concerning their dismissal.

Probationary employees may, however, use this procedure for complaints or disputes other than dismissals that are determined to be grievable.

7. County Administrator

8. County Attorney
9. Department heads
10. Employees of Department of Social Services
11. Constitutional Officers
12. Temporary, limited term or Seasonal positions
13. Grant funded positions

The County Administrator shall, to the extent required by law, ensure that any required certifications shall be executed and filed with the appropriate person(s).

#### C. Definition of Grievance

A grievance shall be a complaint or dispute by a covered employee relating to his/her employment, including but not necessarily limited to:

1. Disciplinary actions, including disciplinary demotions, suspensions, and dismissals provided that such dismissals result from formal discipline or unsatisfactory job performance.
2. The application of personnel policies, procedures, rules, and regulations, and the application of ordinances and statutes.
3. Acts of retaliation as the result of the use of or the participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth of Virginia, has reported any violation of such law to a governmental authority, has sought any change in law before the United States Congress or the General Assembly of Virginia, or has reported an incident of fraud, abuse, or gross mismanagement.
4. Discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, or sex.

#### D. Management Responsibilities

The County reserves to itself the exclusive right to manage the affairs and operations of County government. Accordingly, complaints involving the following management rights and prerogatives are not grievable:

1. Establishment and revision of wages or salaries, position classification, or general benefits.

2. 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 content.
3. The contents of ordinances, statutes, or established personnel policies, procedures, rules, and regulations.
4. The methods, means, and personnel by which work activities are to be carried on, including but not necessarily limited to:
  - a. The provision of equipment, tools, and facilities necessary to accomplish tasks.
  - b. The scheduling and distribution of manpower/personnel resources.
  - c. Training and career development.
5. The hiring, promotion, transfer, assignment, and retention of employees in positions within the County's service.
6. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly.
7. The relief of employees from duties or taking action as may be necessary to carry out the duties, of the County in emergencies.
8. Direction and evaluation of the work of County employees, including periodic performance appraisals and pay adjustments.
9. Termination, layoff, demotion, or suspension from duties because of unsatisfactory job performance, lack of work, reduction in 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. In any grievance brought under the exception to this paragraph, the action shall be upheld upon a showing by the County that:
  - a. There was a valid business reason for the action, and
  - b. The employee was notified of the reason in writing prior to the effective date of the action.

#### E. Standing to Pursue a Grievance

A grievant must be personally and directly affected by an occurrence or condition before s/he shall be permitted to pursue a grievance. No employee may grieve another employee's job performance unless such job performance directly or

adversely affects the grievant's own employment. Disputes as to an employee's standing to file a grievance shall be determined as shall any other disputes as to grievability as set forth in Section F.

#### F. Grievability

1. Grievability and access are determined by the County Administrator generally after the grievance reaches Step 3. Only after the County Administrator has determined that a complaint is grievable and/or the grievant has access to the procedure may a grievance be advanced through Steps 3 and 4. Should the question of grievability or access arise at Step 2, the grievant or the Department head may request a ruling on grievability and/or on access by the County Administrator. The County Administrator shall render a decision within ten calendar days of receipt of the ruling request and shall send a copy of the decision to the grievant and the Department head.
2. The County Administrator's decision on grievability and/or access may be appealed to the Circuit Court of the County. Such appeals shall be instituted by the grievant by filing a notice of appeal with the County Administrator within ten calendar days from the date the grievant received the decision. Within ten calendar days after the filing of the notice of appeal, the County Administrator or his designee shall transmit to the Clerk of the Circuit Court a copy of the County Administrator's decision on grievability or access to the procedure, a copy of the notice of appeal, a copy of the grievance record, and copies of all exhibits. A list of the evidence furnished to the Court shall also be furnished to the grievant. The appeal will be heard by the Court as provided by law. The decision of the Court is final and is not appealable.

#### G. General Policy

Except as otherwise noted, the following rules apply to all levels of grievance hearings.

1. Hearings may be by a panel composed of three persons appointed as indicated herein.
2. Appointment of Panel.
  - a. The panel shall consist of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member.
  - b. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the

complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel member.

- c. The third member of the panel shall serve as the Chair of the panel.
- 3. Time intervals specified in Steps 1 through 4 may be extended by mutual consent of the parties.
- 4. When a deadline falls on a Saturday, Sunday, or County holiday, the next calendar day that is not a Saturday, Sunday, or County holiday shall be considered the last calendar day.
- 5. All grievance meetings and hearings shall be held during normal County working hours unless both the grievant and the County Administrator should mutually agree otherwise.
- 6. County employees who are necessary participants at grievance hearings shall not lose pay for time necessarily lost from their jobs and will not be charged leave because of their attendance at the grievance proceedings.
- 7. At the Step 3 meeting, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, the County likewise has the option of being represented by counsel.
- 8. The use of recording devices or a court reporter is not permitted at Step 1, 2, and 3 meetings. Only Step 4 hearings may be recorded.
- 9. Hearings are not intended to be conducted like proceedings in court and the rules of evidence do not necessarily apply.
- 10. At Step 4, the panel shall have the discretion to limit the attendance at the hearing of persons not having a direct interest in the hearing.
- 11. At the request of either party, Step 4 hearings shall be private.
- 12. Except in grievances involving discipline or in cases where the panel determines otherwise, the grievant shall present his evidence first.
- 13. The panel shall determine the propriety of and the weight to be given the evidence submitted.

14. Both the grievant and the County may call appropriate witnesses. All witnesses, including the grievant, shall be subject to examination and cross-examination.
15. Witnesses shall be present only while actually giving testimony and shall otherwise be excluded from the room.
16. The grievant shall not be entitled to financially recover more than that which he has lost; the grievant's costs are not to be assessed against the County.
17. Where a grievant has obtained partial relief at one level of this grievance procedure but decides to appeal to the next higher level, the filing of a request form to the next higher level shall constitute rejection of, and relinquishment of any claim to, any and all relief granted at the previous level.
18. Each party shall bear the costs and expenses, if any, of his legal counsel or representative.

#### H. Consolidation of Grievances

In the event that an employee files more than one grievance, the County Administrator may, at any time prior to the final hearing, consolidate those grievances for joint processing. If the grievances are consolidated, the processing of the first grievance shall be suspended until such time as the last filed grievance proceeds to the same point in this procedure. Once consolidated, the grievances shall be processed at the same time.

#### I. First Step - Immediate Supervisor Level

An employee who believes he has a grievance and wishes to utilize this procedure shall discuss the grievance informally with his immediate supervisor within twenty calendar days of the occurrence of the incident giving rise to the grievance or within twenty calendar days following the time when the employee reasonably should have gained knowledge of its occurrence. A response to the grievance shall be communicated, either orally or in writing, to the grievant within ten calendar days.

**Note:** If the complaint is alleging discrimination or retaliation by the immediate supervisor, the grievance may be presented at Step 1 to the Department head or, if there is no Department head above the immediate supervisor to the County Administrator. If Step 1 is with the County Administrator, Step 2 is omitted and the written grievance is presented to the County Administrator. The grievance proceeds immediately to Step 3.

#### J. Second Step - Department head Level

If the grievant is not satisfied with and does not accept the Step 1 response, or if a response is not provided within the required time frame, the grievant may proceed by putting the grievance in writing on the Grievance Form. The Grievance Form shall be delivered, by mail or in person, to the Department head within ten calendar days of receipt of the supervisor's response or the deadline for that response, whichever occurs first. If the immediate supervisor is the Department head, the written grievance should be presented to the County Administrator and it will proceed as if it were at Step 3.

The grievant shall specify the relief that he expects to gain through the use of this procedure. The Department head shall promptly meet with the grievant. Normally, the only persons who may be present at the meeting or hearing shall be the agency head, the grievant, and the appropriate witnesses. The Department head shall render a written response to the grievance within ten calendar days following receipt of the completed request form with a copy of the response being sent to the Administrator.

By mutual consent of the grievant and the Department head, the grievant may skip Step 2 and proceed directly to Step 3.

#### K. Third Step - County Administrator Level

If the grievant does not accept the response at Step 2, or if the Department head fails to respond within the required time frame, the grievant shall indicate his desire to advance the grievance to Step 3 on the Grievance Form. The Grievance Form shall be delivered by mail or in person, directly to the County Administrator within ten calendar days following receipt of the Step 2 response or immediately after the deadline for that response, whichever occurs first. If the County Administrator determines (or has previously determined) that the complaint is grievable, a meeting with the grievant, the grievant's representative if there is one, a representative of the affected department and the County Administrator will be held within five days. Appropriate witnesses for each side, and such other persons as the County Administrator or the grievant may want to call, may be present to offer testimony only. The County Administrator shall render a written response to the grievance within ten calendar days following receipt of the completed request form.

In the event that the County Administrator determines that the complaint, or a portion of the complaint, is not grievable, the grievant may appeal that decision to the Circuit Court as set out in Section F.2 of this procedure.

#### L. Fourth Step -Impartial Panel

If the grievant does not accept the Step 3 written response, or if the County Administrator fails to respond within the required time frame, and the grievant wishes to advance to a hearing, the grievant shall complete step 4 of the Grievance Form and submit it to the County Administrator.

The Grievance Form shall be delivered, by mail or in person, directly to the County Administrator within ten calendar days following receipt of the Step 3 response or the deadline for that response, whichever occurs first. Upon receipt of the form, the County Administrator shall proceed to confirm the availability of a qualified administrative panel as noted above.

## M. The Hearing

### 1. General

Within 5 workdays of the qualification of the grievance, both parties must submit the names of their panelist to the other party. For hearing scheduling purposes, the County and grievant will both provide the contact information of their panel appointee and legal representative (if any). Following appointment of the two panelists, the County shall provide each with the contact information for the other and the parties shall have an additional 5 days to select a third-party panel. When the chair is determined and has agreed to serve, the panel will notify the County Administrator, who will, at least 10 days prior to the hearing, send the panelists a copy of the Grievance Record, which will consist of all records involved in the matter being grieved, as well as all documents created or added to the record of the matter during the initial steps of the grievance process. The Administrator will also send a copy of the County's grievance policy, along with the adopted rules on conducting the grievance hearing.

### 2. Rules for Conducting Grievance

The hearing will be conducted under the rules set forth in Appendix A, hereafter, which sets for the panel's duties and authority under the grievance procedure. The panel, advocates, and parties must comply with the Rules for Conducting Grievance Hearings, as well as the provisions of this Manual.

### 3. Scheduling the Hearing

It is the responsibility of the Chair to notify the parties, either in writing or at a prehearing conference, of the date, time, and place of the hearing. The hearing must be held in the locality where the employee is or has been employed unless the party's and panel mutually agree to another site. The County must arrange a place for the hearing unless the panel chooses to make the arrangements.

### 4. Prehearing Conference

A prehearing conference is required to be held. This conference must be conducted by telephone or other equivalent means. This conference provides an opportunity to improve the management of the hearing by addressing procedural and evidentiary issues. If a party desires to have a particular

individual testify at hearing, or to have a particular document produced prior to hearing, the party may request the panel to order the appearance of the individual, or the production of the document. The agency shall make available for hearing any employee ordered by the panel to appear as a witness.

#### 5. Length of Hearing

A hearing is to last no more than one day, unless the panel determines that the time is insufficient for a full and fair presentation of the evidence by both sides.

#### 6. Absence from the Hearing

The parties must appear at the hearing or request a postponement. The panel has the discretion to grant or deny a request for a postponement. At the panel's discretion, a hearing may proceed in the absence of one of the parties; a hearing so conducted will be decided on the record and the evidence presented at the hearing.

#### 7. Recording the Hearing

The hearing must be recorded verbatim to create a record should there be an administrative or judicial review of the hearing decision. The County shall provide recording equipment. It is the panel's responsibility to record the hearing. Either party may receive a copy of the recording, if requested, for the cost of reproduction. A court reporter is not required. If a party requests a court reporter, that party is responsible for the costs.

### N. Authority of the Panel

A panel's authority derives from Va. Code §§ 15.2-1507 et seq., this Manual, and the attached Rules for Conducting Grievance Hearings. Panels have the authority to:

1. Hold a prehearing conference;
2. Require the parties to exchange a list of witnesses and documents;
3. Issue orders for the appearance of witnesses at hearing and the production of documents;
4. Decide whether non-parties may attend the hearing;
5. Record the hearing verbatim;
6. Administer oaths;

7. Admit evidence and exclude evidence, including but not limited to evidence in mitigation or aggravation of any offense charged by agency;
8. Accept offers of proof of excluded evidence;
9. Rule on procedural requests;
10. Render written decisions on qualified grievances and provide appropriate relief; and
11. Take other actions as necessary or specified in the grievance statutes, this Manual, or the Rules for Conducting Grievance Hearings.

#### O. Rules for the Hearing

**Panels are bound by the provisions of Va. Code §§ 15.2-1507 et seq., the Rules for Conducting Grievance Hearings, and this Manual.**

Hearings are to proceed as follows:

1. Parties may represent themselves or may be represented by an individual of choice; this advocate does not have to be an attorney;
2. In disciplinary actions and dismissals for unsatisfactory performance, the County must present its evidence first and must show by a preponderance of the evidence that the action was warranted and appropriate under the circumstances. The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline;
3. In all other actions, the employee must present his/her evidence first and must prove his/her claim by a preponderance of the evidence;
4. Each party may make opening and closing statements;
5. Formal rules of evidence do not apply;
6. Testimony and exhibits may be admitted into evidence and made part of the record;
7. Non-party witnesses are not to be present at the hearing except to give testimony and be cross-examined; and
8. The hearing is closed to the public.

## P. Panel's Decision

A panel's decision must be in writing. The decision must contain findings of fact on the material issues and the grounds in the record for those findings. A copy of the decision must be provided to the grievant, the parties' advocates, and the County Administrator. The panel should send the decision by e-mail or fax, if accessible by the parties and advocates so long as proof of receipt is established. If a party or advocate does not have access to e-mail or fax, the hearing decision must be sent by certified mail, return receipt requested, and regular mail. Panels may order appropriate remedies but may not grant relief that is inconsistent with law, policy, or the grievance procedure. In granting relief, the panel should consider the relief requested in the written grievance. In hearings contesting formal discipline, if the panel finds that (i) the employee engaged in the behavior described in the Written Notice, (ii) the behavior constituted misconduct, and (iii) the agency's discipline was consistent with law and policy, the agency's discipline must be upheld and may not be mitigated, unless under the record evidence, the agency's discipline exceeds the limits of reasonableness (see also Rules for Conducting Grievance Hearings).

## Compliance

1. Except as noted in paragraph 2 below, after the initial submission of the grievance to the immediate supervisor, the failure of either party to comply with all substantial procedural requirements of this procedure without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five work days of receipt of written notification by the other party of the noncompliance. Such written notification by the grievant shall be made directly to the County Administrator.
2. If one of the management respondents in Steps 1, 2, or 3 does not respond to the grievance, the grievant at his option may move the grievance to the next level by submitting it without the response to the next Step or the grievant can provide the County Administrator notice of the non-compliance as set forth in paragraph 1 above.
3. The County Administrator shall determine compliance issues. Compliance determinations made by the County Administrator or his designee shall be subject to judicial review, which shall be initiated by the grievant filing a petition with the Circuit Court of the County within thirty calendar days of the compliance determination.