



# City of Albuquerque

P.O. Box 1293 Albuquerque, New Mexico 87103

## **CITY OF ALBUQUERQUE PERSONNEL BOARD** **RULES OF PROCEDURE FOR APPEALS OF DISCIPLINARY ACTIONS**

### 1. Purpose

A. The purpose of these rules is to provide uniform procedures for the conduct of grievance hearings by Personnel Hearing Officers and the recommendation of Hearing Officers to the Personnel Board.

B. These rules are made pursuant to specific authority granted to the Personnel Board by the Merit System Ordinance and the Personnel Rules and Regulations and shall not be interpreted to amend or supersede that authority. In the event of any conflict or inconsistency, the language of those provisions shall control.

C. These rules shall apply only to the conduct of grievance hearings wherein the management action questioned by the classified employee resulted in the dismissal, demotion, or suspension of the classified employee for more than five (5) working days.

D. A current version of these rules shall be maintained at the offices of the Clerk of the City of Albuquerque.

### 2. Notice of Hearing

A. An employee aggrieved by his or her dismissal, demotion or suspension for more than five working days shall make a formal written complaint to the Chief Administrative Officer. The written complaint shall be sent via Certified Mail-Return Receipt Requested, faxed, emailed, or hand-delivered and date stamped within ten (10) calendar days of the occurrence of the disciplinary decision. Such complaint shall identify the action taken and the reasons why the action should not have been taken.

Adopted by Personnel Board 9/8/93

Revised 1/10/95

Revised 5/23/95

Revised 7/14/10

B. Within ten (10) calendar days after the receipt of the employee's written grievance, the Chief Administrative Officer shall render his decision and provide written notice of his decision to the aggrieved employee. Said decision shall be sent via Certified Mail-Return Receipt Requested.

C. Within ten (10) calendar days of the date of delivery of the decision of the Chief Administrative Officer, the employee may request that the Personnel Board provide a hearing by filing a written request.

D. Within ten (10) calendar days after receipt of a written request for a hearing, the Personnel Hearing Officer shall schedule the matter for hearing.

If the Chief Administrative Officer denied the complaint on the basis that it did not constitute a grievance, the hearing shall be limited to the issue of grievability.

E. In the event the City fails to respond within the listed time limits, the Employee may request a hearing before a Hearing Officer by filing a written request to the Personnel Board within 20 days after the CAO's deadline to respond.

### 3. Filing of Pleadings

A. Pleadings shall be considered filed with the Hearing Officer on the date of delivery to the Clerk of the Personnel Board at the Office of Administrative Hearings.

B. Copies of pleadings shall be served by 1st Class Mail, e-mail, fax, or hand-delivered by the filing party to all parties to the matter.

### 4. Consolidation and Joinder

The Hearing Officer may consolidate or join cases for any reason if it would expedite final resolution of the cases and would not adversely affect the interests of any of the parties.

### 5. Pre-Hearing Conference and Order

A. The Hearing Officer may conduct a prehearing conference in order to obtain information necessary to the issuance of a prehearing order. The Hearing Officer may conduct the conference by telephone or direct the parties to submit a stipulated prehearing order rather than appearing for a conference.

B. At the request of either party and at the discretion of the Hearing Officer, a prehearing order may be issued. The prehearing order shall address any matter deemed appropriate by the Hearing Officer and as described in (C) below.

C. At a minimum, the prehearing order shall:

- (1) Identify any contested facts and issues;
- (2) Secure stipulation of those matters not in dispute;
- (3) Review any requests for discovery and set a deadline for any discovery allowed;
- (4) Set a deadline for disclosure of witnesses to be called and exhibits to be introduced.
- (5) Discuss any prehearing motions and determine the manner in which they will be heard or acted upon; and
- (6) Determine the approximate length of the hearing and schedule the hearing date(s).

## 6. Discovery

A. Upon written request by any party, and after entertaining any objections to discovery requests, the Hearing Officer may order either party to produce for inspection and copying any records, papers, documents, or other tangible evidence in the possession of or available to that party.

B. No additional discovery shall be allowed except by order of the Hearing Officer.

## 7. Motions

A. Unless pre-hearing Order directs otherwise, any defense, objection, or request that can be determined prior to the hearing on the merits may be raised by filing a written motion at least fifteen (15) calendar days prior to the hearing on the merits

B. Any response to a motion shall be filed within ten (10) calendar days after the filing of the motion.

C. The Hearing Officer shall rule on all non-dispositive motions as soon as practicable. At the option of the Hearing Officer, dispositive motions may be reported to

the Personnel Board for decision prior to the full hearing on the merits or taken under advisement to be reported as part of the final Hearing Officer's recommendation.

D. Any motion or response shall not exceed seven (7) pages.

## 8. Witnesses

A. Witnesses shall be identified in accordance with the prehearing order or other order of the Hearing Officer. If no prehearing order has been entered, all witnesses must be identified in writing at least five (5) calendar days prior to the hearing. Witnesses not designated in accordance herewith shall not be permitted to testify except at the discretion of the Hearing Officer for good cause shown.

B. City employees designated by either party as witnesses shall be relieved from their normal duties for a period of time necessary to testify if employee is on duty at the time employee is required to be at the hearing. A party designating a witness who is not a City employee is responsible for the appearance of that witness.

C. The Hearing Officer shall issue subpoenas for witnesses and evidence and shall swear in all witnesses.

## 9. Hearings

A. All reasonable efforts shall be made to conclude the hearing within two (2) consecutive days.

B. A party may appear at the hearing through a representative, provided such representative has given written notice of appearance at least three (3) calendar days prior to the hearing date.

C. The Hearing Officer shall clear the room of witnesses not under examination except that parties and their representatives are entitled to remain in the hearing room during the course of the hearing, even if such persons may testify in the hearing.

D. The Hearing Officer is responsible for the control and decorum of the hearing room. The Hearing Officer may take any action he deems necessary to effectuate a full, fair, impartial and expeditious hearing. Upon written request by the Hearing Officer and for good cause shown, the Board may prohibit any person from appearing before a Hearing Officer for a period of time set by the Board after a full hearing before the Personnel Board.

E. The City shall present its case first and shall have the burden of proving by a preponderance of the evidence that discipline was imposed on the grievant for justifiable cause.

F. Prior to presenting its evidence, the Department may present a brief opening statement. The grievant may make an opening statement after the employing department or before the presentation of grievant's case in chief.

G. Oral evidence shall be taken only under oath or appropriate affirmation.

H. Each party shall have the right to:

(1) call and examine witnesses;

(2) cross-examine witnesses;

(3) introduce exhibits;

(4) impeach any witness;

(5) introduce evidence relevant to the choice of discipline;

(6) present any rebuttal evidence.

I. It is the policy of the Board that hearings operate in accordance with the common law evidentiary standards applicable to administrative hearings. The hearing shall be conducted in an orderly and informal manner without adherence to the technical rules of evidence required in judicial proceedings.

J. The Hearing Officer may admit and give probative effect to any evidence, including affidavits, as the Hearing Officer deems appropriate. The Hearing Officer shall exclude incompetent, immaterial, irrelevant, or unduly cumulative testimony. Documentary evidence may be received in the form of copies or excerpts unless the source of the information or other circumstances indicates lack of trustworthiness.

K. The Hearing Officer may take judicial notice of matters and shall apply the rules of privilege in the same manner as the court of this state.

L. The Hearing Officer shall only admit evidence relevant to the grievance and discipline imposed.

M. The hearing shall be open to the public. However, upon motion by either party, and for good cause shown, the Hearing Officer may order that a hearing be closed to the public.

N. The Hearing Officer shall not participate in any adjudicatory proceeding if, for any reason, the Hearing Officer cannot provide a fair and impartial hearing to either party.

O. No person shall discuss the merits of any pending adjudicatory proceeding with the designated Hearing Officer or a member of the Personnel Board unless either parties or their representatives are present.

10. Post-Hearing Briefs

The Hearing Officer may require or permit written closing arguments, post-hearing briefs and proposed findings of fact and conclusions of law. If post-hearing pleadings are allowed, the record of the hearing shall remain open until the pleadings are filed. Unless otherwise agreed to by the Hearing Officer, such pleadings must be filed within fifteen (15) calendar days of the close of the hearing.

11. Recommended Decision

The Hearing Officer shall normally submit the Hearing Officer's findings of fact, proposed conclusions of law and a recommended decision to the Board within thirty (30) calendar days after the record of the hearing is closed. The Hearing Officer shall serve a copy of the recommended decision on the parties.

12. Decision of the Board

A. A quorum of the Board shall normally act within thirty (30) calendar days of receiving the recommendations of the Hearing Officer by meeting to deliberate in executive session. When deliberating, the Board may only consider the hearing record and the Hearing Officer's findings of fact, proposed conclusions of law, and recommended decision. The Board shall not consider any evidence, pleadings or affidavits not in the record before the Hearing Officer. The Board may request the Hearing Officer's presence to discuss the Officer's recommendation when the Board meets in open session.

B. A final decision shall not be issued until a majority of a quorum of the Board decides to: accept or reverse the discipline imposed; or, remand the matter to the Hearing Officer for further proceedings or a more detailed report.

C. Decision by the Board is the final step in the grievance process and appeal of an adverse decision shall be taken to the State District Court within thirty (30) calendar days of the decision.

D. A copy of the Board's final decision shall be maintained at the offices of the Clerk of the City of Albuquerque.

E. Copies of the Board's decision shall be sent via 1<sup>st</sup> Class mail to the parties.

### 13. Implementation of Decision

A. The Board order shall be implemented as follows:

1. In the event that there is no appeal of the Board's decision to reinstate an employee, the effective date of reinstatement shall be the date of the Board's vote for reinstatement, unless otherwise directed by the Board.

2. Back-Pay: The City shall tender any back pay awarded to a grievant within seven (7) calendar days of its receipt of the grievant's sworn statement in "B" hereunder.

B. In the event the Board's order includes any back pay, the grievant shall provide the City with a sworn statement of gross earnings and unemployment compensation received since the effective date of the disciplinary action. The City shall be entitled to offset earnings and unemployment compensation received during the period covered by the back pay award against the back pay due.

C. The Hearing Officer shall retain jurisdiction of the case for the purpose of resolving any disputes regarding back pay. It is the City's position that benefits to be reinstated reasonably ought to include those benefits accrued to an employee as a function of his/her employment with the City in a particular classification and pay grade. These include:

1. Base Pay
2. Vacation Accrual
3. Sick Leave Accrual
4. PERA Co-payments made by the City
5. Health/Life Insurance Payments made by the City
6. Contractual Based Seniority (if applicable)
7. Longevity pay (if applicable)
8. Differential Pay for Shift Assignment
9. Temporary Upgrade Pay

Other remuneration may be distinguished from the previous listing in that it is not guaranteed to employee members of a classification and pay grade, but granted to a limited number of some employees, based upon management's perception of the City's need at a specific time and place. These benefits include:

1. Overtime
2. Standby Time

14. Hearing Record

The official record of any hearing before the Hearing Officer shall be taken either by stenographic transcript or audio tape, digital or other reliable means of recording at the discretion of the Hearing Officer, by a certified court reporter or certified tape monitor. In the event that a party elects to appeal an adverse final decision of the Board, the cost and responsibility for submission of the record on appeal to the appropriate court shall be borne by the party bringing the appeal.