

## WASHINGTON COUNTY CIVIL SERVICE COMMISSION RULES OF PROCEDURE FOR APPEALS

### A. DISCIPLINARY, CANDIDATE, DISCRIMINATION, AND LAYOFF APPEALS

**Authority:** The Washington County Civil Service Act, codified as County Code Chapter 2.32, and the Washington County Personnel Rules and Regulations, Appendix A, adopted pursuant to the Act, provides the Civil Service Commission (“Commission”) with the authority and responsibility to consider appeals of employees who have been disciplined by termination, demotion or suspension without pay, adversely affected by a candidacy process, discriminated against based on protected class status, or laid off from County employment contrary to established procedures.

#### **Types of Appeals:**

1. **Disciplinary Appeals.** A career employee may not be disciplined except for cause. Following a decision on a disciplinary appeal by the County Administrator, an employee who believes that they have been disciplined without cause may file an appeal to the Commission. The Commission shall conduct a hearing, open to the public, to determine whether the discipline was imposed for cause.
2. **Candidate for Appointment Appeals.** Either an Appointing Authority or an employee who believes an injustice has been done during a candidacy process for a Washington County position may file an appeal to the Commission. The Commission shall conduct a hearing, open to the public, to determine whether the decision was made in compliance with the requirements of Title 2, Chapter 2.32 of the Washington County Code and Article 4 of the Washington County Revised Personnel Rules and Regulations.
3. **Discrimination Appeals.** If an employee or a Candidate for Appointment believes that the County has engaged in discriminatory conduct or actions based on protected class status, the employee may file an appeal to the Commission. The Commission shall conduct a hearing, open to the public, to determine whether or not the County has engaged in discriminatory conduct or actions against a member of a protected class.
4. **Layoff Appeals.** An employee affected by a decision made under Article 14.2 (excepting Sections 14.2.8 and 14.2.10) of the Washington County Revised Personnel Rules and Regulations may file an appeal to the Commission. The Commission shall conduct a hearing, open to the public, to determine if the layoff decision was made in accordance with the provisions of Article 14.2 of the Washington County Revised Personnel Rules and Regulations governing layoffs.

#### **Representation:**

1. An employee may be represented during a hearing before the Commission by an attorney or other representative of their choosing.

2. If a hearing date has been set, attorneys may not withdraw from representing an employee without first obtaining permission from the Commission. Permission may be granted upon a showing of good cause.

## **Rules of Procedure:**

### **I. PRE-HEARING PROCEDURES**

- a. **Submission of Appeals:** Any Notice of Appeal to the Commission shall be submitted to the Chief Examiner for the Commission within ten (10) working days from the date of the action being appealed. Unless otherwise designated by the Commission, the Human Resources Manager, or their designee, shall serve as the Chief Examiner. The Chief Examiner shall promptly provide the Appointing Authority with a copy of the Notice of Appeal.
- b. **Notice of Appeal:** A Notice of Appeal to the Commission shall be made in writing, addressed to the Commission, dated, signed by the Appellant and include the following information:
  1. Name, address and telephone number of Appellant;
  2. Decision which is being appealed and the date of the decision;
  3. Name and title of the decision maker;
  4. Basis for the appeal: (A) For disciplinary appeals, an explanation of why the employee believes the action taken for cause; (B) For candidate appeals or layoff appeals, an explanation of what law, rule or policy the candidate believes has been violated; (C) for discrimination appeals, the dates upon which the alleged discriminatory conduct or actions based upon protected class status occurred and a description of the specific conduct or actions.

Failure to comply with the requirements of this subsection will result in dismissal of the appeal by the Chief Examiner.

- c. **Processing of Appeals:** Upon receipt of an appeal, the Chief Examiner shall:
  1. Determine compliance with the requirements of section A.I.b. Upon a finding that the Appellant has failed to comply with section A.I.b, the Chief Examiner shall dismiss the appeal. The Appellant may appeal this dismissal by submitting a written appeal to the Chief Examiner within ten (10) working days of receiving the decision. The County Counsel shall then review the decision of the Chief Examiner and issue a decision on the dismissal within ten (10) working days of receiving the appeal. The County Counsel's decision shall be final and may not be appealed;
  2. Within five (5) working days, notify the Appellant, Counsel for the County, Department Human Resources Analyst, and members of the Commission of the date, time and place of the hearing unless good cause exists for a delay in setting the hearing.

d. **Notice of Hearing:** A Hearing Notice shall be forwarded to all parties within five (5) working days after the Notice of Appeal is filed unless good cause exists for a delay in setting the hearing. Such notice shall contain the following information:

1. The name of the case;
2. The date, time and location of the appeal hearing;
3. The names, addresses, phone numbers, fax numbers and e-mail addresses of the parties and their representatives.

A notice of hearing shall be posted with the name of the case, date, time and location of the hearing pursuant to the rules of the Public Meetings Law.

e. **Scheduling Hearing, Extensions, Failure to Appear and Consolidation**

1. The Commission shall hear the appeal within thirty (30) working days after receipt of the Notice of Appeal unless an extension is granted.
2. The Commission Chair, or in their absence, the Vice Chair or other designee may grant an extension of the thirty (30) working day period when requested by any party for good reason but in no event shall the hearing take place more than ninety (90) working days following the receipt of a Notice of Appeal unless mutually agreed upon by all parties.
3. An Appellant's failure or refusal to appear for a scheduled hearing may result in the dismissal of the appeal. If the appeal is dismissed for failure or refusal to appear, an Appellant may not re-file an appeal on that issue.
4. The Commission, in its sole discretion, may consolidate appeals arising out of the same or similar circumstances into one proceeding when requested to do so by a party or upon its own determination.
5. Commission hearings of appeals shall be open to the public and informal.

f. **Hearings Administration**

1. Hearings shall be presided over by the Chair of the Commission, or in his or her absence, the Vice Chair or other designee.
2. Hearings will be conducted in an impartial manner. Any member of the Commission will withdraw if unable to impartially or fairly consider an appeal.
  - a. Any member of the Commission will disclose for the record any relationship that might give an appearance of impropriety.
  - b. An affidavit of bias may be filed by any party that believes that a hearing with a Commissioner will result in actual bias. The Commission will consider the affidavit of bias prior to hearing the appeal and its determination shall be included as part of the record of the case. Upon a finding by the Commission that a party will suffer actual bias from consideration by a Commission member, the Commission member shall withdraw and not participate in the hearing.

g. **Presiding Powers:** The Commission Chair, or in his or her absence, the Vice Chair or other designee presiding over a hearing has authority to:

1. Administer oaths and affirmations;
  2. Issue subpoenas and compel the production of documents on the Commission's own motion or upon a party's written request showing the general relevance and scope of the evidence sought;
  3. Rule on objections to evidence and receive offers of proof;
  4. Regulate the course of the hearing;
  5. Hold conferences for the settlement or clarification of issues;
  6. Rule on procedural matters;
  7. Call and examine witnesses and introduce documentary evidence into the record;
  8. Permit or require the parties to submit oral or written arguments and to submit proposed findings of fact and conclusions of law;
  9. Take any other action authorized by the Commission consistent with Washington County Code chapter 2.32 and other applicable laws.
- h. **Documents, Witness List and Other Information:** No later than ten (10) working days prior to the scheduled day of the hearing, both parties shall submit the following information to the Commission in writing:
1. A list containing a brief description of all documents and other evidence that they intend to introduce into evidence at the hearing;
  2. A list of all witnesses and a brief description of the subject of their testimony;
  3. The name, address, phone number, fax number and e-mail address of their legal representative, if any;
  4. The estimated time for presenting their case.

Copies of the information submitted to the Commission shall be provided to all other parties simultaneously. The Commission shall have discretion to exclude documents or testimony of witnesses not timely provided or disclosed in accordance with these rules unless good cause is shown for any delay.

Neither the formal rules of evidence set forth in the Oregon Evidence Code nor the formal rules for discovery provided for in the Oregon Rules of Civil Procedure shall apply to proceedings before the Commission.

- i. **Pre-hearing Brief:** No later than five (5) working days prior to the hearing, the parties may submit a pre-hearing brief. Copies shall be provided to all other parties simultaneously.
- j. **Stipulation of Facts and Documents:** A stipulated statement of agreed facts, disputed facts and stipulated documents shall be submitted by the parties no later than five (5) working days prior to the hearing.
- k. **Witness Fees:** Every person served with a subpoena requiring attendance before the Commission shall be entitled to the same fees and mileage as are allowed by law to witnesses in civil suits and actions, except that no person shall be entitled to any fees or mileage who is employed by Washington County when called as a witness. The fees and

mileage allowed by this Section need not be prepaid, but the County shall provide payment thereof when certified by the Commission.

## II. HEARING PROCEDURES

a. **Time for Hearing and Recesses:** The time set for the hearing and the recesses called for therein shall be adhered to as set by the Commission. At the discretion of the Commission, unless good cause is shown, the Commission may, upon its own motion or the motion of a party, enter an order of default and render a decision in favor of a party who is present if the other party fails to appear in a timely fashion. The order shall issue no earlier than 30 minutes from the time set for the hearing or recommencement of the hearing.

b. **Taking of Testimony:** At the commencement of the hearing, the Commission may establish a reasonable time for the presentation of each party's case and require reasonable adherence to the set schedule. The Commission has broad discretion as to admissible evidence and the formal rules of evidence shall not apply. However, evidence that is redundant, immaterial or irrelevant to the issues identified may be excluded at the discretion of the Commission.

c. **Hearing Decorum:** The Commission may impose any rules necessary to keep order and impose any reasonable restrictions necessary for the efficient and orderly conduct of the hearing. Any person who fails to comply with reasonable rules of conduct or who causes a disturbance may be asked or required to leave and, upon failure to do so, becomes a trespasser. *State v. Market* and Attorney General Model Rule 137-04-010.

d. **Right of Representation:** The employee/candidate may be represented by a person who will be making all statements (such as opening statements, direct examination and cross examination of witnesses, objections and closing statement) on behalf of the employee/candidate at the hearing on the record. Such representative of the employee shall not be a witness in the case (except where employee/candidate is representing him/herself).

### e. **Standard of Review**

1. **Disciplinary Appeals.** The standard of review by the Commission for disciplinary appeals shall be whether the County actions were taken for cause.
2. **Candidate for Appointment Appeals.** The standard of review by the Commission for appeals initiated by a candidate for appointment shall be whether the decision was made in compliance with the requirements of Title 2, Chapter 2.32 of the Washington County Code and Article 4 of the Washington County Revised Personnel Rules and Regulations. The standard of review for candidate appeals is in recognition that the pre-employment selection process is primarily an administrative function.
3. **Discrimination Appeals.** The standard of review by the Commission for discrimination appeals shall be whether the County's conduct or actions discriminated against a member of a protected class.

4. **Layoff Appeals.** The standard of review by the Commission for layoff appeals shall be whether the decision was made in compliance with the requirements of Article 14.2 (excepting Sections 14.2.8 and 14.2.10) of the Washington County Revised Personnel Rules and Regulations.

f. **Presentation of Case**

1. **Opening Statements.** The Department representative and the employee (or his/her representative) may make an opening statement. The Department has the burden of proof and, therefore, will make its opening statement first. The employee may then make his/her opening statement or may reserve opening statement to when the Department rests its case in chief and before the employee presents his/her case in chief.
2. **Rulings on Evidence.** The formal rules of evidence shall not apply to the hearing. The Department and employee may present hearsay evidence; however, the Commission may give hearsay evidence less weight than direct evidence. Although the parties are not limited to presentation of relevant testimony and evidence, the Commission requires that both parties attempt to present relevant testimony and evidence and not be redundant in their presentations. The Commission reserves the right to disallow repetitious or redundant testimony or evidence. The Commission may ask questions of the Department, the employee and witnesses, during the course of the hearing and/or during deliberations of the Commission.
3. **Taking of Evidence.** All witnesses shall be sworn prior to their presentation of testimony. The Department will present its case in support of the standards of review applicable to the appeal. The Department may call witnesses and present evidence. The employee will be provided the opportunity to cross examine witnesses presented by the Department. The Department may have re-direct examination of its witnesses, if requested.

Upon completion of the Department's case in chief, the employee may present his/her case. (If the employee reserved his/her opening statement he/she may make it at this time, prior to the presentation of witnesses or evidence.) The employee may present evidence and call witnesses who will testify on the employee's behalf and the employee may testify on his/her own behalf. The Department will be given the opportunity to cross-examine witnesses for the employee (including the employee if he/she offers testimony) and the employee may have re-direct examination of the witnesses, if requested.

Upon completion of the employee's case, the Department may provide rebuttal witness testimony and/or evidence. The employee will have the right to cross-examine any rebuttal witnesses presented by the Department.

4. **Closing Statements.** The Department and employee may present closing statements. The Department will provide an initial closing statement; followed by the employee's closing statement; and then the Department's final closing statement (if it desires).

- g. **Deliberation, Decision and Remedy:** Upon the conclusion of the cases for each party, the Commission will deliberate and reach a decision. Any decision of the Commission requires at least three (3) affirmative votes.

**Disciplinary Appeals:** If the Commission finds that the disciplinary action was not taken for cause, it may order immediate reinstatement without loss of pay or modify the disciplinary sanctions as warranted. If the Commission finds that the disciplinary action was taken for cause, it shall affirm the action and deny the appeal.

**Candidate Appeals:** If the Commission finds that the County has violated the provisions of Title 2, Chapter 2.32 of the Washington County Code and Article 4 of the Washington County Revised Personnel Rules and Regulations, it shall fashion an appropriate remedy. The Commission shall give due consideration to the remedial suggestions made by either or both parties. If the Commission finds that there has been no rule violation by the County, the appeal shall be denied

**Discrimination Appeals:** If the Commission finds that the County's decision or action constituted discrimination against a member of a protected class, it shall fashion an appropriate remedy. The Commission shall give due consideration to the remedial suggestions of either or both parties. If the Commission finds that there has been no discrimination against a member of a protected class, the appeal shall be denied.

**Layoff Appeals:** If the Commission finds that the County has violated the provisions of Article 14 (exception Sections 14.2.8 and 14.2.10) of the Washington County Revised Personnel Rules and Regulations, it shall fashion an appropriate remedy. The Commission shall give due consideration to the remedial suggestions made by either or both parties. If the Commission finds that there has been no rule violation by the County, the appeal shall be denied.

*In fashioning any of the above remedies, the Commission shall have no authority to award monetary damages of any type, excepting an award of reinstatement with back pay in the case of a disciplinary appeal contesting termination, demotion, pay reduction or a suspension without pay that has actually been imposed against the employee.*

The Commission's decision shall include Findings of Fact and Conclusions of Law and shall be final and binding on all parties unless it is a non-unanimous decision. A non-unanimous decision may be appealed to the Washington County Circuit Court within thirty (30) calendar days of the date on which the decision is issued by the Commission.

- h. **Attorney fees, costs and disbursements not allowed**

Neither party to an appeal before the Commission shall be entitled to recover any attorney fees, costs, or disbursements incurred directly or indirectly as a result of an appeal to the Commission.

### **III. POST-HEARING PROCEDURES**

- a. Findings of Fact, Conclusions of Law and Order: The prevailing party shall prepare Findings of Fact, Conclusions of Law (“FFCL”) and an Order for the Commission’s consideration within a reasonable time after an oral decision is rendered by the Commission. The FFCL and Order shall be submitted via US mail to the Commission and the non-prevailing party for their consideration. If timely objection is not made by the non-prevailing party within seven (7) working days from the date of mailing, the Commission shall enter its FFCL and Order.
- b. Certification to Circuit Court: Upon receipt of a notice of appeal of a non-unanimous decision of the Commission, the Commission shall promptly certify the case to the appropriate Circuit Court and submit a notice of certification to all parties. “Certification” means that the Human Resources Division shall state in writing that the evidence and the transcript of the hearing forwarded to the Circuit Court and the filed therein are true and correct.

### **B. CLASSIFICATION ALLOCATION APPEALS**

**Authority:** The Washington County Personnel Rules and Regulations, Section 2.4, allows for appeals of classification allocation decisions to be presented to the Commission. Either the Appointing Authority or the employee directly affected by the classification allocation may appeal.

#### **I. PRE-HEARING PROCEDURES**

- a. Notice of Classification Allocation: Upon completion of a classification allocation review, the Human Resource Manager shall provide notification of the determination to the Appointing Authority and the employee(s) directly affected by the allocation of a Classified Position. Upon request, the Human Resources Manager shall provide a copy of the classification study and any documents used in making its classification allocation determination to the Appointing Authority or the affected employee(s). In addition, the Human Resource Manager shall provide information about the opportunity for appeal and the rules and procedures for such appeal.
- b. Timeline for Appeal: An Appointing Authority or an employee directly affected by a classification allocation decision may file a written appeal to the Commission with the Human Resources Manger not later than ten (10) working days following receipt of a Notice of Classification Allocation.
- c. Standard of Review: In a Classification Allocation Appeal, the Commission shall determine whether or not the classification allocation decision was made in conformance

with the requirements of Article 2 of the Revised Washington County Personnel Rules and Regulations.

- d. Consolidation: The Commission, in its sole discretion, may consolidate appeals of decisions arising out of the same classification allocation decision processes into one proceeding when requested to do so by a party or upon its own determination.
- e. Initial Review: Appeals shall be filed with the Human Resources Manager who shall make an initial review of the appeal and prepare written findings. His or her findings shall be provided to the Commission not later than ten (10) working days prior to the hearing.
- f. Setting of Hearing: The Human Resources Manager shall set the hearing date for a classification allocation appeal before the Commission. The appeal shall be scheduled for hearing within thirty (30) working days after receipt of a written appeal. The Chair of the Commission, or their designee, may grant an extension of the thirty (30) working day period when requested for good reason by any party, but in no event shall the hearing take place more than ninety (90) working days after receipt of the appeal without the consent of all parties. Once the date is set, the Human Resources Manager shall provide written notice to the appellant and the Appointing Authority.
- g. Pre-Hearing Submissions: No later than ten (10) working days prior to the hearing, the appellant may submit written materials for consideration by the Commission.

## **II. HEARING PROCEDURES**

The Commission's consideration of appeals will be conducted as follows:

- 1. Opening of meeting and statement by Commission Chairman as to process to be followed in considering the classification appeals.
- 2. Opening statement by Human Resources Manager regarding the Classification Study and its implementation.
- 3. Presentation of individual appeals:
  - a. Brief staff report by Human Resources staff reviewing the Classification Study and presenting findings of the initial review.
  - b. Oral presentation by appealing employee (limited to 20 minutes). The Commission will allow employees to have representatives present the employee's position subject to the same time limitation.
  - c. Opportunity for the Commission to question Human Resources staff and or the appealing employee or their representative.
  - d. Deliberation and decision by the Commission.

## **III. DELIBERATION & DECISION**

After having fully considered the oral and written statements of the County and the appellant, the Commission may deliberate and decide whether or not the classification allocation decision was made in compliance with the requirements of Article 2 of the

Washington County Revised Personnel Rules and Regulations. Upon making its determination, the Commission may uphold the classification allocation decision, reject the classification allocation decision, request further inquiry by the Human Resources Manager or provide any other just and fair remedy within its authority. The Commission shall not have authority to effect any changes to compensation for a specific classification or group of classifications.

#### **IV. POST-HEARING PROCEDURES**

- a. Certification to the Circuit Court: Upon notice of appeal made in conformance with ORS 241.460, the Commission shall within ten (10) calendar days after receipt of the written notice of appeal certify and file the transcript of the proceedings and all papers on file with the Commission to the appropriate Circuit Court and submit a notice of certification to all parties. “Certification” means that the Human Resources Division shall state in writing that the evidence forwarded to the Circuit Court, the transcript of the hearing and the files therein are true and correct.

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