

**INITIAL INSTRUCTIONS TO PARTIES**

This cause came before the Personnel Board of Jefferson County pursuant to a Notice of Appeal filed herein by the employee and received by the office of the Personnel Board. The Notice of Appeal is received as timely filed, pursuant to Rule 12.4, and shall be heard by a Hearing Officer to be appointed by the Personnel Board. You will be notified of the name of the Hearing Officer and the date of hearing in a Scheduling Order that will be sent to you within 15 calendar days of the date the Notice of Appeal was received.

The following instructions are provided in order for you to understand the manner in which your appeal will be processed. Rule 12 of the *Rules and Regulations* of the Personnel Board of Jefferson County specifically addresses disciplinary actions and appeals. These instructions contain deadlines that must be met. If you have any questions regarding the instructions, you should contact:

**Employee Relations Department  
Personnel Board of Jefferson County  
2121 Reverend Abraham Woods, Jr. Boulevard, Suite 100  
Birmingham, Alabama 35203  
er@pbjcal.org  
205-279-3474**

### **Time Calculations**

In computing any period of time for deadlines under Rule 12, the day of the act or event from which the designated period of time begins shall not be included. The last day shall be included unless it ends on a Saturday, Sunday, or holiday observed by the Personnel Board. In this event, the deadline is the next business day. Personnel Board closures can be found online at [www.pbjcal.org](http://www.pbjcal.org).

### **Representation by Counsel**

Each party to the appeal may be represented by counsel. Counsel must file with the Personnel Board a written Notice of Appearance containing the name, mailing address, phone number, email address, and party represented, for each attorney participating in the appeal. The Notice of Appearance must bear an attestation that the attorney is licensed to practice in the State of Alabama. After an appearance has been filed, all communications regarding the appeal will be directed to the attorney of record.

### **Filing and Service of Documents, Correspondence, and other Materials**

All communications regarding the disciplinary appeal shall be directed to the Employee Relations Department of the Personnel Board and/or the appropriate attorney, not to the Hearing Officer. All submissions filed with the Personnel Board must be signed by the party or its attorney and must reference the assigned case number. The communications should be filed with the Personnel Board by emailing [er@pbjcal.org](mailto:er@pbjcal.org). If U.S. Mail must be utilized, the postmark must be on or before any required deadline.

The Employee Relations staff shall make a notation of the filing date on all pleadings and other documents. Each party to the appeal is responsible for serving copies of all pleadings and other documents to the other party or its attorney. All pleadings must contain a certification executed by the serving party identifying the parties served, the method or manner of service, and the date of service.

### **Scope of Hearing/Issues to be Decided**

The scope of the Hearing is limited to the disciplinary charge(s) that serve as the basis of the appeal. Matters outside the discipline at issue shall not be heard. When multiple pending appeals are related, the Director may determine that the appeals be consolidated and presented at the same Hearing.

### **Hearing Date and Length of Hearing**

The Hearing Officer shall determine the length of the hearing, giving due consideration to the complexity of the matter to be heard. Rarely should hearings exceed more than one (1) business day.

The parties will be advised of the hearing date. If either party has a conflict with the hearing date, the party must, within three (3) business days after receiving notice of the hearing date notify the Employee Relations staff of the conflict. If a party subsequently seeks to have the

hearing date rescheduled, absent extraordinary circumstances, the party must file in writing no later than three (3) business days prior to the commencement of the hearing, a Motion to Continue specifying the grounds upon which the request is based. Continuances will not be routinely granted.

### **Scheduling Order**

The Personnel Board will issue, within fifteen (15) calendar days of receipt of the Notice of Appeal, a Scheduling Order providing instructions and deadlines for the parties. Among the information contained within the Scheduling Order will be a statement of the issues to be heard and a statement of the relief requested by the employee, as stated in the Notice of Appeal.

### **Discovery**

The hearing process provides for limited discovery between the parties. The scope of discovery is limited to the narrow issues to be addressed upon appeal. Each party may submit to the other a Request for the Production of Documents. The Request for Production of Documents must be submitted no later than twenty (20) calendar days from the date the Notice of Appeal was received by the Personnel Board. No more than ten (10) document requests should be propounded on any one party. The Request for Production of Documents should be served directly upon the opposing party without a subpoena. A copy of the Request for Production of Documents should be provided to the Employee Relations Department of the Personnel Board on the same date that the request is served on the opposing party.

Responses to a Request for the Production of Documents should be submitted to the propounding party no later than thirty-five (35) calendar days from the date the Notice of Appeal was received by the Personnel Board (or no later than fifteen (15) calendar days after the discovery request was submitted). A copy of the response (i.e., pleading), not the underlying responsive documents, should be provided to the Personnel Board on the same date that the response is served on the opposing party. The Hearing Officer may preclude the introduction of evidence if a party refuses, without a legitimate basis, to respond to a discovery request. If a party believes that the discovery request seeks information that is neither relevant nor material to the limited scope of the hearing, the party may file an Objection or Motion to Quash the Request for the Production of Documents. Such motion must be filed within the fifteen (15) calendar day period in which to respond to the discovery request. The decision of the Hearing Officer on the Objection or Motion to Quash is final. If a party fails to produce documents within the fifteen (15) calendar day period, the propounding party may file a Motion to Compel Production. Such motion must be filed within three (3) business days after the deadline for the discovery response. The decision of the Hearing Officer on the Motion to Compel is final.

### **Witness and Exhibit Lists**

No later than forty (45) calendar days from the date the Notice of Appeal was received by the Personnel Board, each party shall submit to the Personnel Board a list of exhibits and witnesses to be called to testify at the hearing. The list of witnesses shall contain the following for each

witness: 1) Name; 2) Employer; 3) Job Title; and 4) a brief description of the nature of testimony anticipated from said witness.

Witnesses should be limited to those that are essential to the case. It is critical each witness is available and ready at the time they are called to testify. Stipulations as to all undisputed facts are encouraged and should be emailed to the Board ([er@pbjcal.org](mailto:er@pbjcal.org)) no later than three (3) business days prior to the hearing. The Hearing Officer has the authority to recommend stipulations and to disallow testimony regarding matters that should have been the subject of stipulation.

Any exhibit that a party anticipates using at the hearing must be exchanged with the other party no later than sixty (60) calendar days from the date the Notice of Appeal was received by the Personnel Board, and emailed as separate files to the Employee Relations Department ([er@pbjcal.org](mailto:er@pbjcal.org)). The Complainant must name their exhibit files using the following naming scheme: Exhibit C1, Exhibit C2, Exhibit C3, etc., where “C” identifies the party offering the exhibit as the Complainant. The Respondent must name their exhibit files using the following naming scheme: Exhibit R1, Exhibit R2, Exhibit R3, etc., where “R” identifies the party offering the exhibit as the Respondent. All documents shall be legible. A full set of exhibits will be available digitally during the hearing.

The Personnel Board will digitally share exhibits on your behalf and will be able to highlight and point to sections of a document or the section or sections of a video or audio that should be played. Should rebuttal exhibits be necessary, the party should email the exhibit electronically to [er@pbjcal.org](mailto:er@pbjcal.org) so that the exhibit may be shared with the Hearing Officer and all parties and admitted as deemed appropriate by the Hearing Officer. The exhibit should be numbered according to the naming scheme described above. The Employee Relations staff will add Bates’s number, as appropriate. If email of the exhibit is not possible, the party should inform the Employee Relations Department, who will work with the party to determine the manner of securing the exhibit for the Hearing Officer.

The Hearing Officer may exclude exhibits and witnesses not identified in accordance with this paragraph. The Hearing Officer may, in his or her discretion, subpoena witnesses or documentation she deems essential to the consideration of the disciplinary charge(s) being heard.

### **Subpoena Requests**

If the party seeks to have the Personnel Board prepare a subpoena for the production of witnesses or documents, the party must file a “Subpoena Request” with the Employee Relations Department no less than fifty (50) calendar days from the date the Notice of Appeal was received by the Personnel Board, as indicated on the Appeal Form. The party must provide the complete name and street address of each person or entity to be subpoenaed. If any of the preceding information is not provided to the Personnel Board, the subpoena will not be

prepared. The attorney requesting the witness's presence shall be responsible for the service of the subpoena.

Absent good cause shown, as ordered by the Hearing Officer, each party is limited to no more than 10 subpoenas. (See Personnel Board Rule 12.8(b)). Should a party request more than 10 subpoenas without an order from the Hearing Officer permitting same, only the first 10 subpoenas will be issued. Unless otherwise approved in advance by the Hearing Officer, all witnesses are expected to be present at the date and time appearing on the subpoena. In case of the failure of any person to comply with any subpoena issued by the Director, the Director may invoke the aid of the Circuit Court of Jefferson County. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to obey the order of the court may be punished by the court as a contempt thereof.

### **Motions**

All pre-hearing motions should be filed in writing with the Employee Relations Department of the Personnel Board. All motions must state the grounds for the motion and the relief requested. The non-moving party will be given three (3) business days in which to submit a written response or opposition to such motion. Motions shall be acted on in the manner outlined below:

**Motion for Voluntary Withdrawal of the Appeal** – Shall be acted on by the Director of the Personnel Board, whose decision shall be final.

**Motion to Continue** – Shall be acted on by the Hearing Officer, whose decision is final.

**Motion to Dismiss** – Motions to dismiss may be filed for the limited purpose of determining whether the appeal was properly filed (e.g. within the appropriate time frame) or whether the matter has been adequately pursued by the parties (e.g. failure to participate or a joint settlement). Such motions shall be reviewed by the Hearing Officer. The Hearing Officer may deny the motion and hear the matter on the merits, or refer the motion to the Three-Member Board for decision. If the Hearing Officer denies the motion, the order of the Hearing Officer is final.

**Motion to Stay** – Shall be acted on by the Three-Member Board.

**Motion to Compel** – Shall be acted on by the Hearing Officer, whose decision is final.

**Motion for Discovery** – Shall be acted on by the Hearing Officer, whose decision is final.

**Motion to Quash** – Shall be acted on by the Hearing Officer, whose decision is final.

**All Other Motions** – The Hearing Officer shall decide and act on all other motions. The order of

the Hearing Officer is final.

### **Settlement Agreements**

Settlement negotiations and agreements must be conducted in advance of the hearing. The Three-Member Board must approve all settlement agreements. Any provision of the settlement agreement pertaining to the employment relationship must be in compliance with the Rules and Regulations of the Personnel Board and the Enabling Act. The parties are encouraged to communicate with the Personnel Board prior to the final execution of a settlement agreement to ensure that the terms reached are consistent with the Personnel Board's Rules and Regulations and the Enabling Act.

Should the parties reach a proposed settlement, a Joint Notice of Settlement should immediately be filed advising the Personnel Board that the parties have agreed to a resolution of the matter in dispute. Upon receipt of such notification, the Hearing Officer shall immediately stop the administrative process. The Hearing Officer will neither rule on nor make any recommendations regarding the terms of the proposed settlement. No later than seven (7) business days after notifying the Personnel Board of the settlement, the parties must submit to the Employee Relations Department a copy of the final written unexecuted agreement containing the terms and conditions of the settlement agreement. If the provisions of the settlement agreement relating to the terms and conditions of employment are consistent with the Rules and Regulations of the Personnel Board, the parties shall fully execute the agreement, and it will be placed on the Personnel Board's agenda for review and approval.

If the parties fail to timely submit a fully executed settlement agreement after notifying the Personnel Board that settlement has been reached the matter will be placed on the Personnel Board's agenda at its next regular meeting in order for the parties to show cause why the settlement agreement should not be enforced or the matter should not immediately proceed to hearing.

### **Conduct of the Hearing**

The purpose of the hearing is to determine whether there is a sufficient basis for the disciplinary action or the employee's grievance. The Hearing Officer shall hear or receive evidence only on the disciplinary charge(s) as outlined in the Scheduling Order or on the specific grievance as described in the Personnel Board Director's determination on grievability. The Hearing Officer's review is de novo, thus the appeal will be decided without giving deference to previous conclusions of the Appointing Authority. The Hearing Officer shall not be bound to follow technical rules of evidence. All relevant and material evidence may be admissible, but the Hearing Officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. The Hearing Officer may, in his or her discretion, subpoena witnesses or documentation she deems essential to the consideration of the disciplinary charge(s) being heard.

All witnesses shall testify under oath and shall be subject to cross-examination. The Hearing Officer

will afford the parties, witnesses, and representatives respect and fairness consistent with his or her duty to maintain decorum and exercise due diligence throughout the proceedings. The Hearing Officer shall exercise ultimate control over the manner and order of witness examination and the presentation of evidence. Exhibits received into evidence by the Hearing Officer during the hearing shall be filed as part of the record of the appeal. Rebuttal and surrebuttal evidence may be heard at the discretion of the Hearing Officer. Summations of the evidence and the law may be heard at the discretion of the Hearing Officer.

Failure to fully participate in the hearing and to abide by all orders, rules, regulations, and procedures may result in dismissal of the appeal. Failure to appear at the hearing may result in the hearing being canceled, and the case closed. A Report and Recommendation will not be produced, and the Board Order will reflect that the party abandoned their claim.

#### **Burden of Proof**

The Respondent (the Appointing Authority), shall have the burden of proving that there is substantial and legal evidence to support the disciplinary action taken.

#### **Report and Recommendation**

Unless expressly agreed to by the parties in writing or verbally on the record, within five (5) business days of the close of the hearing, the Hearing Officer shall submit a Report and Recommendation with Findings of Fact to the Employee Relations Department. Upon receipt and review, the Employee Relations Department will distribute the Report and Recommendation to the parties of record via email.

If the Hearing Officer determines that the employee is not guilty of the charge(s) alleged, the Hearing Officer should recommend reinstatement of the employee under such conditions as may be determined, including whether the employee should receive backpay and or any other benefits to which the employee may be entitled. If the Hearing Officer determines that the employee is guilty of the charge(s) alleged, the Hearing Officer shall include in their recommendation whether the employee shall be dismissed, demoted, suspended, or otherwise disciplined.

The parties may submit written objections to the Hearing Officer's Report and Recommendation to the Employee Relations Department within three (3) business days following its issuance. Any written objections to the Hearing Officer's Report and Recommendation must be based on specific factual findings and/or specific legal arguments.

#### **Decision by the Board**

The Three-Member Board must consider the Hearing officer's Report and Recommendation and modify, alter, oppose or affirm said report and certify its findings to the Appointing Authority

and any interested party. Unless the parties agree in writing, if the Personnel Board fails to act within forty-five (45) days after receipt of the Hearing Officer's Recommendation, it shall become the order of the Personnel Board.

The Personnel Board meets monthly. Notices of meetings of Personnel Board are posted in accordance with the Alabama Open Meetings Act. Meeting notices, agendas, and minutes can be obtained from the Personnel Board website in the Public Information section.

**Compliance with Board Order**

An Appointing Authority must immediately comply with all decisions and orders of the Personnel Board. The Appointing Authority must submit written confirmation of compliance to the Employee Relations Department within ten (10) calendar days following issuance of the Personnel Board's final Order. Failure to comply with the Order of the Personnel Board may lead to the initiation of appropriate legal action in the Circuit Court of Jefferson County to compel said compliance.