

Administrative Appeal Procedures

Effective July 1, 2015



PERSONNEL BOARD OF
JEFFERSON COUNTY, ALABAMA

ADMINISTRATIVE APPEAL PROCEDURES

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A. INTRODUCTION

These Administrative Appeal Procedures were promulgated under the authority of Section 22 of the *Enabling Act* of the Personnel Board of Jefferson County, Act. No. 248, H. 580, as amended, and were adopted by the Personnel Board of Jefferson County (PBJC) to establish guidelines to promote the just and efficient conduct of the administrative hearings provided to Classified Employees. Rule 12 of the *Rules and Regulations of the Personnel Board of Jefferson County*¹ specifically addresses disciplinary actions and appeals. In addition, Rule 15 of the *Rules and Regulations of the Personnel Board of Jefferson County* addresses hearings that may arise from a grievance. These administrative procedures are not intended in any way to circumvent, substitute and/or replace any of the requirements under the *Enabling Act* as executed through the Rules and Regulations of the Personnel Board and to the extent there is a direct conflict, the *Enabling Act* shall prevail.

B. THE APPEAL PROCESS

With regard to disciplinary appeals, the role of the Personnel Board is to ensure that a Regular Employee of the Classified Service who for cause has been **discharged, demoted, suspended** for either a single suspension of more than five scheduled working days or more than a total of ten scheduled working days in the twelve-month period immediately preceding the suspension², or **involuntarily placed on administrative leave without pay** for more than five working days³, is provided a fair process under which the employee is provided written notice of the nature and substance of the disciplinary charges brought against him and a reasonable opportunity to respond to the charge.

Each jurisdiction shall give notice to each classified employee of her rights regarding appeals to the Personnel Board. The most current version of the *Rules and Regulations of the Personnel Board* are available on the Personnel Board website: <http://www.pbjcal.org/documents/rules/default.aspx>.

I. Who May Appeal and Types of Disciplinary Actions Which May Be Appealed

A Regular Employee who for cause is **discharged, demoted, suspended** for either a single suspension of more than five scheduled working days or more than a total of ten scheduled working days in the twelve-month period immediately preceding the suspension⁴, or **involuntarily placed on administrative leave without pay** for more than five working days has the right of appeal to the Personnel Board.⁵ (Personnel Board Rules 12.1; 12.2; 12.14; and 13.20(c)).

A Regular Employee is defined as a Full-Time Classified Employee who has completed a Probationary Period and not thereafter separated from the Classified Service. A Probationary Period is defined as an uninterrupted twelve-month period of full-time paid service within a discrete class.⁶

¹ Where noted, the Rules and Regulations of the Personnel Board of Jefferson County are fully incorporated by reference herein. [cited as Personnel Board Rule #]

² See Rule 12.14

³ See Rule 13.20(c)

⁴ See Rule 12.14

⁵ Demotions governed by PBJC Rule 11.6(b), and suspensions governed by PBJC Rule 12.14, are excluded from the appeals provisions.

⁶ See Rule 1.3

II. Initiating the Appeal

An appeal is initiated by the employee filing a written Notice of Appeal with the Director of the Personnel Board within ten (10) calendar days after the date the employee receives written notice of the Appointing Authority decision to discipline.⁷ The Personnel Director shall determine whether the appeal is timely filed, and whether the Personnel Board has jurisdiction to hear the matter. Matters eligible for appeal will be assigned a case number, designating the appealing employee as the “Complainant” and the employing jurisdiction as the “Respondent.” In most circumstances, the Personnel Director will appoint a Hearing Officer who will handle the appeal and prepare a Report and Recommendation with Findings of Fact for consideration by the Three-Member Board. The employing jurisdiction will receive notification of the appeal, and should immediately provide the Personnel Board with copies of any internal policy or procedure relied upon in making the decision to discipline the employee.

Personnel Board Rule 12.4 specifies the information the employee must include in the Notice of Appeal. Notice of Appeal forms are accessed from the “FORMS” section of the Personnel Board website, <http://www.pbjcal.org/formsdocs.aspx>, or available at the front desk of the Personnel Board.

III. 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 of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday or any other day the Personnel Board is in fact closed based on the official dates of closure posted on the Personnel Board’s website. In this event, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday or other day the Personnel Board is closed. A half-holiday shall be counted the same as a business day. Personnel Board closures can be found online at www.pbjcal.org/holidayschedule.aspx.

IV. Hearing Officer Role

Section 22 of the *Enabling Act* provides for a public hearing of disciplinary appeals. In most instances, the Personnel Board appoints a Hearing Officer to handle pre-hearing matters, take testimony and submit a Report and Recommendation with Findings of Fact for consideration by the Three-Member Board. Upon consideration of the Report and Recommendation the Three-Member Board may modify, alter, set aside or affirm the findings in the Report and Recommendation.

V. 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.

VI. Filing and Service of Documents, Correspondence and other Materials

⁷ See Rules 12.3 and 12.4. An appeal is subject to dismissal if the employing jurisdiction failed to provide proper notice of the disciplinary action to the employee or to the Personnel Director.

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 either in person, by U.S. Mail, or by emailing ER@pbjcal.org. Email is the preferred method of correspondence. If U.S. Mail is utilized, the postmark must be on or before any deadline under the Rules and Regulations of the Personnel Board as calculated under Section III above.

All pleadings and other documents filed in the appeal shall be entered on a docket maintained by the Employee Relations Staff. 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.

C. PRE-HEARING REQUIREMENTS

I. Scope of Hearing/Issues to be Decided

The scope of the Hearing is limited to the disciplinary charges that serve as the basis of the appeal. Matters outside the discipline at issue shall not be heard. During the Pre-Hearing Conference, described in more detail below, the parties shall agree to a statement of the issues that will be heard. If an employee's appeal disputes some, but not all, of the charges alleged, the party shall so state at the Pre-Hearing Conference. If the Appointing Authority who issued the discipline is no longer pursuing any portion of the charges alleged, the Appointing Authority shall so state at the Pre-Hearing Conference. Evidence regarding any portion of the disciplinary matter that is no longer being pursued shall not be admitted at the Hearing.

When multiple pending appeals involve a common question of law or fact, the Director may determine administratively, or upon motion of a party, that the appeals be consolidated and presented at the same Hearing.

II. 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. The hearing date will not be changed absent extraordinary circumstances. If a party subsequently seeks to have the hearing date rescheduled, 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.

III. Initial Instructions to the Parties

The Personnel Board will issue within five (5) calendar days of receipt of Notice of appeal a set of Initial Instructions to the parties. These instructions will advise the parties of the process and procedures that must be followed. Deadlines within the Initial Instructions shall be calculated in accordance with Section III, Time Calculations, above. A sample Initial Instructions to the Parties is attached as Appendix A.

IV. Scheduling Order

The Personnel Board will issue 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. Deadlines within the Scheduling Order shall be calculated in accordance with Section III above. A sample Scheduling Order is attached as Appendix B.

V. Pre-Hearing Conference

A Pre-Hearing Conference will be held at the Personnel Board normally within thirty (30) days following the receipt of the notice of appeal. An assigned designee of the Employee Relations Department will conduct the Pre-Hearing Conference. Each party to the appeal or its attorney of record, if any, is required to attend the Pre-Hearing Conference. Contractually designated union representatives may appear at the conference with the employee so represented. Non-lawyer staff members of the attorney of record may not appear at the conference *in lieu of counsel*. Parties should be prepared to discuss and resolve outstanding discovery issues, if any; other issues that need resolutions prior to the hearing, if any; and the possibility of settlement.

VI. 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 five (5) business days prior to the Pre-Hearing Conference. 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 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 21 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 21-day period in which to respond to the discovery request. The motion should be filed with the Personnel Board. The decision of the Hearing Officer on the Objection or Motion to Quash is final. If a party fails to produce documents within the 21-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 motion should be filed with the Personnel Board. The decision of the Hearing Officer on the Motion to Compel is final.

VII. Witness and Exhibit Lists

No later than five (5) business days prior to the Pre-Hearing Conference each party shall submit to the Personnel Board a list of anticipated witnesses to be called to testify at the hearing and a list of anticipated exhibits that will be introduced 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. Amendments, if any, to the witness and exhibit lists must be submitted in writing no later than 30 calendar days prior to the hearing. Any exhibit or other document that a party anticipates using at the hearing must be exchanged with the other party no later than 10 calendar days prior to the hearing.

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

VIII. Subpoena Requests

If the party seeks to have the Personnel Board issue a subpoena for the production of witnesses or documents, the party must file a "Subpoena Request" with the Employee Relations Department no less than 30 days prior to hearing. The party must provide the complete name and street address for each person or entity to be subpoenaed, a brief description of the anticipated testimony of the witness, and a brief description of the documents requested. The party requesting the subpoena must include a sworn affidavit, attesting that the testimony and documents subject to subpoena are necessary in order for the party to present his case. If any of the preceding information is not provided to the Personnel Board, the subpoena will not be issued.

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. Subpoenas will only be served on residents of Jefferson County. If requested, a subpoena for a nonresident of Jefferson County will be prepared and given to the party, who shall be responsible for service on the nonresident. 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. Subpoenas shall be served in a manner determined by the Director, and consistent with the Alabama Rules of Civil Procedure (Ala. Civ. P. Rule 45).

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 contempt thereof.

To compel the production of documentary evidence from a third party witness, any party to an appeal may file with the Employee Relations Department, a written Request for Issuance of Subpoena *Duces Tecum*. Each request shall specify: (1) name of person or entity who is to produce such documentary evidence; (2) street address for service of the subpoena (within Jefferson County); and (3) a brief statement supporting the relevancy and materiality of the documentary evidence to the appeal.

IX. 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 generally will be given three (3) business days in which to submit a written response or opposition to such motion. The Director of Personnel shall act on any Motion for Voluntary Withdrawal of the Appeal. The Three-Member Board shall decide Motions seeking to Dismiss the Appeal, or to Accept a Settlement Agreement from the parties. The Hearing Officer shall decide all other motions. The order of the Hearing Officer is final.

X. Pre-Hearing Order

No later than 10 days prior to the hearing, the Hearing Officer will issue a Pre-Hearing Order. That order shall include the following: 1) a statement of the charges to be heard; 2) a statement of undisputed facts; 3) the stipulations agreed to by the parties; 4) each party's position on the issues in dispute; 5) a list of witnesses to be called by each party; 6) a list of exhibits to be offered by each party; and 7) any other instructions from the Hearing Officer about the manner of the proceedings. Any omissions or objections to the information contained in the order should be sent to the Employee Relations Department within three (3) business days after the Hearing Officer enters the Pre-Hearing Order. Failure by any party to abide by the provisions of the Pre-Hearing Order may result in punitive action by the Hearing Officer against the noncomplying party. A sample Pre-Hearing Order is attached as Appendix C.

XI. Settlement Agreements

The Personnel 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 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 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 matter should not immediately proceed to hearing.

D. HEARING PROCEEDINGS

I. Conduct of 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 charges as outlined in the Pre-Hearing 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 her discretion, subpoena witnesses or documentation she deems essential to the consideration of the disciplinary charge 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 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.

The Complainant may remain in the hearing room throughout the course of the hearing. The Respondent may have one representative, in addition to its' attorney, remain in the hearing room during the course of hearing, even if that representative may be called to testify.

Documents received into evidence by the Hearing Officer shall be marked by a Personnel Board representative, and filed as part of the record of the appeal. Rebuttal and surrebuttal evidence may be heard in the discretion of the Hearing Officer. Summations of the evidence and the law may be heard at the discretion of the Hearing Officer.

II. 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.

III. Report and Recommendation

Unless expressly agreed to by the parties in writing, 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, the Employee Relations Department will distribute the Report and Recommendation to the parties of record via email. In isolated situations where an employee does not have an email, U.S. mail will be used.

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. 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 to the Employee Relations Department written objections to the Hearing Officer's Report and Recommendation 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. If no objections are filed, the Personnel Board shall consider the Report and Recommendation without further argument from the parties. If objections are filed, the Personnel Board shall hear argument only on those matters to which one or more of the parties objected.

IV. Decision by the Board

The Three-Member Board must consider the Hearing officer's Report and Recommendation and modify, alter, set aside 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. If no objections were filed to the Report and Recommendation, the Personnel Board shall consider the Report and Recommendation without further argument from the parties. If either party filed objections, the Personnel Board shall hear argument only on those matters to which one or more of the parties objected.

The Personnel Board meets on the second Tuesday of every month. 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.

V. 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.

VI. Judicial Review

Any decision rendered by the Personnel Board pursuant to Rule 12.6 or 12.11 is final and subject to appeal by either party to the Circuit Court of Jefferson County to review questions of law and whether the decision or order of the Personnel Board is supported by substantial and legal evidence. On appeal, the Circuit Court must review the record and affirm, reverse, remand or render said cause. The decision of the Personnel Board controls until reversed on appeal. See Rule 12.13 for the specific requirements that govern the filing of the appeal.

E. AUDIO AND VIDEO RECORDING OF PROCEEDINGS

I. Audio and Video Recording

The Personnel Board of Jefferson County conducts its business meetings in public, in accordance with the Alabama Open Meetings Act, Ala. Code § 36-25A-11 (1975).⁸ In addition, under the Personnel Board's Enabling Legislation, the Personnel Board and its hearing officers are required to conduct certain disciplinary hearings in public.

As a general matter, the Personnel Board does not prohibit individuals present at meetings and disciplinary hearings from making audio or video recordings of the proceedings. All such recording must be conducted openly. In certain circumstances, however, recording may be prohibited or subjected to appropriate conditions.

To ensure that any audio or video recording is conducted "openly," any person making an audio or video recording must inform the Hearing Officer or other presiding officer before commencing recording. The Hearing Officer may require that the individual making the recording do so in a manner that does not unduly disrupt or distract from the proceedings. As an example, the Hearing Officer may order that the individual making the recording remain stationary in the rear of the hearing room, and/or may require that any set-up or take-down of the recording equipment occur before or after the proceedings.

In circumstances where the further publication, dissemination or broadcasting of the audio or video recording could bring undue publicity, scandal, or disrepute to any person, or where private personally identifying information will be revealed or discussed, the Hearing Officer may temporarily halt or prohibit audio or video recording.

⁸ A meeting of a governmental body, except while in executive session, may be openly recorded by any person in attendance by means of a tape recorder or any other means of sonic, photographic, or video reproduction provided the recording does not disrupt the conduct of the meeting. The governmental body may adopt reasonable rules for the implementation of this section. Ala. Code § 36-25A-6

In all circumstances, the official record of the hearing shall be the designated recording, orders, transcripts, evidence, and other materials kept and maintained by the Personnel Board and its staff in accordance with Section 4 of the Open Meetings Act and the *Enabling Act*.

Any individual making an audio or video recording is responsible for their own actions, and any subsequent actions in connection with the recording. The Personnel Board shall not be liable or responsible for any legal consequences arising out of any further transmission, duplication, dissemination, or publication of any such audio or video recording.

II. Obtaining Hearing Records from Personnel Board

The Personnel Board of Jefferson County maintains records of hearings for a period of six (6) years following final disposition of the matter. The evidentiary records of hearings are stored and maintained electronically. A certified copy of the record from any public hearing can be obtained via service of subpoena to the Personnel Director issued from court of competent jurisdiction. Costs of subpoenaed documents, CD recordings, or transcripts will be assessed to the requestor for the production of such records.

APPENDICES

- A. [Sample Initial Instructions to the Parties](#)
- B. [Sample Scheduling Order](#)
- C. [Sample Pre-Hearing Order](#)