

Chapter 11 : Grievance Policy and Procedures

Section 11-1: Purpose

This Chapter establishes an effective process for the fair, expeditious, and orderly adjustment of grievances before they become major issues of discontent or dispute. Nothing in this Chapter is intended to imply that employees may be dismissed only “for cause” or to otherwise alter an employee’s “at will” status. Employees also have access to the open door policy for discussion of employment issues. (See Section 13-16).

Section 11-2: Policy

The County seeks to employ and retain the most qualified persons available for positions with the County and is justly proud of the accomplishments of its staff in serving the public. When an employee of the County believes that any condition affecting him or her is unjust, inequitable, arbitrarily applied or a hindrance to work performance, the employee may use the following procedure without fear of reprisal. The same procedure may be followed by a group of employees. Because justice delayed is justice denied, grievances must be resolved with dispatch.

Responsible action under the grievance procedure is a right of employment. Each step of the procedure is to be conducted with the open, thoughtful communication and mutual respect that is characteristic of successful day-to-day contact between employees and their supervisors. Responsibility for finding satisfactory solutions to employment-related problems is shared by all participants at each stage of the grievance procedure.

Section 11-3: Objective of Procedure

The grievance procedure is intended to provide an immediate and fair method for resolving problems that may arise during the course of an employee's service with the County. The grievance procedure is designed to assure the employee of the fairness of the process by providing for a right of appeal in the event that an employee believes that fair treatment has been denied.

Through the good faith observance of this procedure, the County hopes to prevent conditions which may give cause for grievance. This can be achieved in many ways, among which are:

- a. a reduction in employee concerns caused by supervisory decisions;
- b. a more uniform application and interpretation of policies and conditions which govern employment;
- c. avoidance of prejudice;
- d. alerting management to supervisory problems.

Section 11-4: Coverage

This grievance procedure is available to all regular permanent full-time and part-time County employees in the classified service (See Section 1-3), except probationary employees, Department Heads and employees otherwise covered by applicable grievance procedures of State or local agencies. The procedure is not available to employees in the unclassified service. The procedure is available to regular permanent employees of constitutional offices of the County or the Department of Social Services when the constitutional officer or Director of Social Services has

requested that their employees be covered and the Board of Supervisors has approved such request, pursuant to the provisions of Sections 63.2-219 or 2.2-3008 of the Code of Virginia. Law enforcement officers as defined in Section 9.1-500 of the Code of Virginia have the option of using this procedure or the law enforcement officer's procedure set out in Chapter 5 of Title 9.1 of the Code of Virginia.

Section 11-5: Definition of Grievance

a. A grievance is a complaint or dispute relating to the employment of the employee or employees making the complaint. A grievance involves, but is not necessarily limited to, one or more of the following:

(1) disciplinary actions, including those that involve dismissal, demotion or suspension, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;

(2) concerns regarding the meaning, interpretation or application of personnel policies, procedures, rules and regulations;

(3) acts of retaliation^{*} for using the grievance procedure or for participation in the grievance of another County employee;

* An increase in the penalty that is the subject of the grievance at any level of the grievance shall give rise to a rebuttable presumption that the increase was an act of retaliation.

(4) complaints of discrimination on the basis of race, color, creed, religion political affiliation, age, disability, national origin or sex;

(5) Acts of retaliation^{*} because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, or has sought any change in law before the Congress of the United States or the General Assembly.

(6) Acts of retaliation^{*} because an employee has reported an incident of fraud, abuse, or gross mismanagement.

b. The Board of Supervisors and its management team shall retain the exclusive right to manage the affairs and operations of County government. Accordingly, the following complaints, among others, are non-grievable:

(1) the contents of ordinances, resolutions, statutes, or established personnel policies, procedures, rules, and regulations;

(2) work activity accepted by the employee as a condition of employment or work activity which may be reasonably expected to be a part of the job content;

(3) establishment and revision of wages or salaries, position classifications or general benefits;

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An increase in the penalty that is the subject of the grievance at any level of the grievance shall give rise to a rebuttable presumption that the increase was an act of retaliation.

- (4) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly;
- (5) the methods, means, and personnel by which such work activities are to be conducted;
- (6) non-disciplinary (i) discharge; (ii) demotion; (iii) layoff because of lack of work or reduction in work force; or (iv) job abolition, except where such action affects an employee who has been reinstated within the previous six months as the result of a grievance;
- (7) the hiring, promotion, transfer, assignment and retention of employees;
- (8) the relief of employees from duties of the County in emergencies.

In any grievance brought under the exception contained in (6) above, the action shall be upheld upon a showing by the County that: (a) there was a valid reason for the action, and (b) the employee was notified of such reason in writing prior to the effective date of the action.

Section 11-6: Determination of Grievability

Decisions regarding whether or not a matter is grievable, including questions of access to the procedure, shall be made by the County Administrator at the request of the Department Head or the grievant. The issue of grievability may be raised at any step of the procedure subsequent to the submission of a written grievance and prior to the panel hearing, but once raised the issue shall be resolved before further processing of the grievance. The issue of grievability must be resolved prior to the panel hearing

or it shall be deemed to have been waived. The request for a determination of grievability is made by completing Grievance Form D and forwarding it to the County Administrator. The decision on grievability shall be made within ten (10) calendar days of the request. A copy of the ruling shall be sent to the grievant. Decisions concerning grievability may be appealed by the grievant to the Circuit Court of Gloucester County for a hearing on the issue of grievability.

Proceedings for review of the County Administrator's decision shall be instituted by filing a notice of appeal on Grievance Form D with the County Administrator within ten (10) calendar days from the date of the grievant's receipt of the decision, and giving a copy thereof to all other parties. Within ten (10) calendar days thereafter, the County Administrator or his designee shall transmit to the Clerk of the Circuit Court a copy of the decision, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the County Administrator to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the County Administrator to transmit the record on or before a certain date. The court may affirm the decision of the County Administrator or may reverse or modify the decision. The decision of the court is final and not appealable.

Section 11-7: Procedural Steps

Step I: Supervisory Level. An employee who has an employment-related complaint or problem first discusses it directly with his or her immediate supervisor. The grievance need not be placed in written form at this step. The grievance shall be reported within twenty (20) calendar days from the time that the employee first

becomes aware of the condition or work activity giving rise to the grievance. The supervisor shall render a response to the aggrieved employee within five (5) workdays of the complaint. This first step is intended to provide for an informal, initial processing of employee complaints by the immediate supervisor through a non-written, discussion format.

Step II: Department Head Level. If a satisfactory resolution of the problem is not reached through Step I, the employee may file a written grievance, identifying the nature of the complaint and the expected remedy, on Grievance Form A. The written grievance is presented to the Department Head and a copy is given to the immediate supervisor within five (5) workdays of the supervisor's response to Step I. A meeting to review the grievance shall be held among the grievant, the immediate supervisor and the Department Head within five (5) workdays of receipt of the grievance, unless this time limit is extended by mutual agreement for a period not to exceed five (5) workdays. The Department Head shall provide a written reply to the grievant within five (5) workdays after the second step meeting. Concurrently, a copy of the grievance and reply, together with a copy of all related materials, shall be forwarded by the Department Head to the Director of Human Resources. For purposes of this policy, "Department Head" shall mean the head of the employee's department; in the case of employees of constitutional offices, it shall mean the constitutional officer; in the case of employees of the Department of Social Services, it shall mean the director of that department.

Step III: County Administrator Level. If a satisfactory resolution of the problem is not reached at the second step, the employee may submit the written

grievance on Grievance Form A to the Director of Human Resources; provided, however, that an employee of a constitutional officer or the Department of Social Services covered by this procedure may, in the employee's discretion, proceed immediately to Step IV. Submission of the written grievance to the third step shall occur within five (5) workdays of the second step reply. The Director of Human Resources will coordinate the Step III meeting. The County Administrator and the immediate supervisor shall meet with the employee within five (5) workdays or indicate that an extension is necessary. Such extension shall not exceed five (5) additional workdays except by mutual agreement of the County Administrator and the grievant. The Department Head or other intermediate supervisor may attend this meeting if requested by the grievant, the immediate supervisor, or the County Administrator. Using Form B, a written reply by the County Administrator shall be provided to the grievant within five (5) workdays of this meeting.

Step IV: Panel Level. If the response of the County Administrator does not resolve the grievance, the employee may proceed with the grievance by requesting a panel hearing. This request shall be made in writing to the County Administrator on Grievance Form B within five (5) workdays of the grievant's receipt of a response from Step III, or Step II if applicable. The County Administrator shall insure selection of the panel and arrange an organizational meeting of the grievance panel within ten (10) working days of receipt of the request. The date of the hearing shall be established at the organizational meeting and shall be within ten (10) working days of such meeting. The County Administrator shall provide the panel with copies of the grievance record at their organizational meeting. The County Administrator shall provide the grievant with

a list of the documents furnished to the panel. The grievant and/or the grievant's attorney, at least ten (10) days prior to the scheduled panel hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding. Documents, exhibits, and lists of witnesses shall be exchanged between the parties in advance of any panel hearing.

Section 11-8: Panel Procedures

The panel is charged with the responsibility of interpreting the application of appropriate government policies and procedures in the case. It does not have the prerogative to formulate or to alter existing policies or procedures nor to direct subsequent action of management when the panel determines that the action of management grieved was inappropriate.

The conduct of the panel hearing is as follows:

- a. The panel determines the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private.
- b. The panel may at the beginning of the hearing ask for statements clarifying the issues involved.
- c. Exhibits, when offered, may be received in evidence by the panel, and when so received, are marked and made part of the record.
- d. The grievant and then the grievant's supervisor, or their representative(s), present the claim and proofs and witnesses who submit to questions or other examination or cross-examination. The panel may, at its discretion, vary this procedure but must afford full and

equal opportunity to all parties and witnesses for presentation of any material or relevant proofs.

- e. The parties may offer evidence and shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel is the judge of relevancy and materiality of the evidence offered. The panel has the authority to determine the admissibility of evidence, without regard to the burden of proof or the rules of evidence. All evidence shall be presented in the presence of the panel and the parties, except by mutual consent of the parties.
- f. The panel chair shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the chairman shall declare the hearing closed.
- g. The hearing may be reopened by the panel on its own motion or upon application of a party for good cause shown at any time before a decision is made.
- h. The majority decision of the panel is final and binding in all its determinations, and shall be consistent with existing policies, procedures, and law. No panel member shall be allowed to abstain from voting.
- i. Any relief granted by the panel shall not be final if the County Administrator, or his designee, determines that the relief granted is not consistent with law or written policy of the County. In the event that the County Administrator has had a direct personal involvement with the event or

events giving rise to the grievance, the question of consistency of the relief granted by the panel with law or written policy of the County shall be made by the Commonwealth's Attorney.

- j. Either party may petition the circuit court for an order requiring the implementation of the decision of the panel.

The decision shall be filed in writing by the panel chairman with the County Administrator not later than ten (10) working days after completion of the hearing. The decision shall be prepared in the format shown on Grievance Form C. Copies of the decision shall be transmitted to the employee and to the employee's supervisor by the County Administrator within five (5) working days after the County Administrator receives it.

Section 11-9: General Provisions

- a. Step II is not observed by direct reports of Department Heads; such grievants proceed from Step I to Step III.
- b. A grievance shared by a group of employees begins at Step II, using Step I time limits.
- c. References to "workdays" are to the days during which the administrative offices of the County are customarily open, from Monday through Friday, not including holidays observed by the County. All time periods listed in this procedure may be extended by mutual agreement of the grievant and the County Administrator, or by others as specifically provided elsewhere in this procedure.

- d. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the panel hearing, 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 (5) workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the County Administrator. The County Administrator, may require a clear written explanation of the basis for just cause extensions or exceptions. The County Administrator, shall determine compliance issues. Compliance determinations made by the County Administrator shall be subject to judicial review upon the filing of a petition with the circuit court seeking such review within thirty (30) days of the compliance determination.
- e. All stages of the grievance beyond the first step shall be prepared in writing on forms supplied by the Human Resources Department.
- f. The only persons who may normally be present at Step I or II meetings are the grievant, the individual hearing the matter, and appropriate witnesses for each side. The grievant shall bear the cost, if any, of calling the grievant's witnesses. Witnesses shall be present only while actually providing testimony. At Step III, the grievant, at his option, may have present a representative of choice. If the grievant is represented by

legal counsel, the County may also be represented by counsel. Either or both parties may be represented by legal counsel at Step IV.

- g. Once an employee reduces the grievance to writing, the specific relief expected to be obtained through use of this procedure must be stated on the appropriate form and may not later be changed by the grievant.
- h. The determination that an employee is not covered by this grievance procedure or that a complaint is not grievable shall not be construed to restrict any employee's right to seek, or management's right to provide, customary administrative review of complaints outside the scope or coverage of the grievance procedure.

Section 11-10: Composition of Panel

The panel shall be impartial and composed of three (3) members. One member shall be chosen by the grievant, one member shall be chosen by the County Administrator and the third member shall be chosen by the first two. If no agreement on a third member can be reached, the selection shall be made by the Judge of the Circuit Court. In all cases, the third panel member shall be the Chairperson of the panel.

Such 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, any person 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 such an attorney shall serve as a panel member.