

## XII. GRIEVANCE POLICY AND PROCEDURE

### 12.1 Policy

It shall be the policy of the Board of Supervisors to encourage resolution of employee problems and complaints wherein employees can freely discuss their concerns with immediate supervisors and upper management levels. However, to the extent such concerns cannot be resolved; the grievance procedure shall afford an immediate and fair method for the resolution of disputes which may arise between an agency and its employees. The grievance procedure shall include:

#### a. Definition of Grievance

A grievance shall be a complaint or dispute by an employee relating to his employment, including but not necessarily limited to (i) disciplinary action, including dismissals, disciplinary demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in sub-section (B)(iii) below; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and (iv) acts of retaliation as the result of the use of or participation in the grievance procedure or 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, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. For the purposes of clause (iv) the original sanction can not be increased.

#### b. Management Responsibilities

Management reserves the exclusive right to manage the affairs and operations of County government. Accordingly, the following complaints are not grievable: (i) establishment and revision of wages or salaries, position classifications or general benefits; (ii) work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content; (the measurement and assessment of work activity through a performance evaluation shall not be grievable except where the employee can show that the evaluation was arbitrary or capricious); (iii) the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations; (iv) failure to promote except where the employee can show established promotional policies or procedures were not followed or applied fairly; (v) the methods, means and personnel by which such work activities are to be carried on; (vi) the hiring, promotion, transfer, assignment and retention of employees within the agency (provided such actions do not constitute disciplinary actions); and (vii) the relief of employees from duties of the agency in emergencies. In any grievance brought under the exception to Section 12.1 B (vi) the action shall be upheld upon a showing by the agency that: (i) there was a valid business reason for the action, and (ii) the employee was notified of such reason in writing prior to the effective date of the action.

#### c. Coverage of Personnel

All regular, full time and part time County personnel, excluding probationary employees, are eligible to file grievances as provided in this section with the following exceptions:

1. Appointees of the Board of Supervisors including the County Administrator, and members of the various Boards, Commissions, or Agencies of the Board of Supervisors.
2. Constitutional Officers, however, the employees of a Constitutional officer shall be included within the County grievance procedure provided that the Constitutional Officer and the County have both agreed that these employees shall be included within the County's personnel system.
3. Agency and/or Department Directors.
4. Employees whose terms of employment are limited by law.
5. Temporary, limited term and seasonal employees.

An employee who has voluntarily resigned shall not have access to the County grievance procedure, except to grieve a

resignation resulting from formal discipline, unsatisfactory job performance, or an involuntary resignation. Such grievance must be filed within thirty (30) calendar days of the dismissal date.

Any grievance initiated by a regular, classified County employee prior to separation from County service may, at the employee's option, continue to be processed through the grievance procedure.

After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause will result in a decision in favor of the other party on any grievable issue provided the party not in compliance fails to correct the non-compliance within five (5) work days of receipt of written notification by the other party of compliance violation. Such written notification by the grievant shall be made to the County Administrator. Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party.

## 12.2 Determination of Grievability

If some question should exist concerning the grievability of a specific problem and if the question cannot be resolved to the satisfaction of both the employee and his supervisor at the departmental level, the employee may within ten (10) work days make a request to the County Administrator for a ruling of grievability who shall respond within ten (10) work days.

In any case, no complaint may be addressed beyond the County Administrator level before grievability has been determined. Only after grievability has been determined shall a grievance be processed through the grievance panel stage. Decisions of the County Administrator may be appealed by the employee within five (5) work days to the Frederick County Circuit Court for a hearing de novo on the issue of whether or not the grievance qualifies for a panel hearing. Proceedings for review of the decision of the County Administrator shall be instituted by filing a notice of appeal with the County Administrator within five (5) work days from the date of receipt of the decision and giving a copy, thereof, to all other parties. Within five (5) work days thereafter, the County Administrator shall transmit to the Clerk of the Court to which the appeal is taken a copy of the decision of the County Administrator, 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. Within thirty (30) days of receipt of such records by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the County Administrator and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decisions of the County Administrator or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth (15) day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

## 12.3 Grievance Procedure

An employee wishing to file a grievance shall have the right to follow all steps of this procedure as listed below with complete freedom from reprisal. This does not, however, confer the right upon anyone to make slanderous or libelous statements. The use of recorders is not permitted in the management steps.

STEP I An employee, who has a grievance, as defined herein, shall within thirty (30) calendar days of the occurrence of the action or event causing the grievance or of the date when the employee could have reasonably been expected to have learned of the act or event, contact his immediate supervisor for a discussion of the grievance. The supervisor shall meet with the employee within five (5) work days to discuss the grievance. The supervisor shall give the employee a reply within five (5) work days following the meeting.

STEP II If the grievance is not resolved as a result of STEP I, the employee may within five (5) work days, thereafter, file a written grievance with their Department Head. Other arrangements for submission of a grievance such as a personal interview or tape recording will be made available for the visually-impaired or those with motor impairments. The employee must be sure that the grievance is complete in all detail at this stage of the procedure. The Department Head will then within five (5) work days meet with the employee to discuss the grievance. The Department Head will inform the employee in writing of his decision and the reasons therefore within five (5) calendar days following the meeting.

STEP III If the Department Head's response does not resolve the grievance, the employee may within ten (10) work

days thereafter file a written request for a hearing with the County Administrator containing the employee's explanation of what has occurred. A copy shall also be sent to the employee's Department Head. Upon receipt of the written request for a hearing, and verification that Steps I and II have been exhausted, the County Administrator shall within (5) work days schedule the hearing requested. The County Administrator may request the presence of the Department Head or any other County official at the hearing and the employee may also have a representative of his choice present. The County Administrator shall give the employee a written reply or a method understood by complainant within five (5) work days after the conclusion of the hearing. A copy of the reply shall be sent to the employee's Department Head.

STEP IV If the County Administrator's reply does not resolve the grievance, the employee may within seven (7) work days, thereafter, request in writing to the County Administrator that his grievance be submitted to a panel hearing.

In submitting this written request it is not necessary that the employee again provide a written explanation of what has occurred as this was contained in his written request submitted at STEP II and III and as part of the record will be made available to the grievance panel.

Within ten (10) work days after the date of the written request for a panel hearing, the HR Department will provide a list of at least five (5) prospective panel members to The Department Head and the grievant. To insure an impartial panel, such panel shall not be composed of any persons having direct involvement with the grievance being heard, or with the problem giving rise to the grievance; for example, the grievant, the Department Head, supervisors replying at any management step, representatives of the grievant at the third step and witnesses who have appeared at any management step. In addition, managers who are in a direct line of supervision of a grievant are also excluded from serving as panel members. Also, 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.

Furthermore, the following relatives of a participant in the grievance process or a participant's spouse shall not serve as panel members, i.e., spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin.

Additionally, due to their sensitive relationships to the grievance process, employees in the personnel classification series shall not serve as panel members. Three (3) members who will constitute the panel shall be selected within ten (10) work days from this list - one member shall be chosen by the Department Head; one member shall be chosen by the grievant; and the remaining member shall be selected by the first two appointees and shall serve as the chairperson. In the event that agreement cannot be reached as to the third panel member, the Chief Judge of the Circuit Court will select the third member. The panel hearing shall be scheduled to occur within thirty (30) calendar days from the date that the third panel member is selected. The panel has the responsibility to interpret the application of appropriate County policies and procedure in the case. It does not have prerogative to formulate or to change policies or procedures.

The employee may have present at the hearing a representative or legal counsel at his own expense. Copies of the written record in the case from STEP II and III shall be provided the panel members by the County.

The conduct of the hearing shall be as follows:

The County shall provide a copy of the record to the panel, the supervisor, and the grievant.

- a. The panel may at the beginning of the hearing ask for statements clarifying the issues involved.
- b. Exhibits, when offered, may be received in evidence by the panel, and when so received shall be marked and made part of the record.
- c. The employee and supervisor, or their representative, shall then present their claim and proofs and witnesses who shall submit to questions or other examination. The panel may at its discretion, vary this procedure but shall afford full and equal opportunity to all parties and witnesses for presentation of any material or relevant evidence.
- d. The parties may offer evidence and shall provide such additional evidence as the panel may deem necessary for an understanding and determination of the dispute. The panel shall be the judge of relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the panel and of the parties.
- e. All evidence taken by the panel shall be under oath.

- f. The majority decision of the panel shall be rendered within ten (10) work days of the conclusion of the hearing and shall be final and binding and consistent with law and written policies.
- g. The parties should not discuss the substance of any grievance or the problem giving rise to the grievance with any panel members prior to or subsequent to the hearing. Any matters requiring the attention of the panel should be communicated in writing with copies to all parties.
- h. The panel shall have the authority to establish such other procedures for the hearing as are consistent with state law.

#### 12.4 Compensation and Expense Reimbursement Guidelines

- a. Non-County employees serving as panel members are not compensated or reimbursed for any expenses. The time spent by County employees who serve as witnesses or panel members during normal working hours shall not have this time charged against any leave. It is expected that the number of witnesses called would remain within reasonable limits.
- b. Grievant's who are still employed by the County are compensated at their regular rate of pay for the time spent during normal working hours in the management-step meetings, the panel hearings and other hearings provided in the procedure. This compensation is not charged against any leave.
- c. Employees who are grieving termination are not compensated except in cases where a panel decision results in reinstatement with back pay.
- d. The grievance procedure is designed for an employee to go through the process without the necessity for representation. While the employee has the freedom to select a representative of his choice if desired, there is no provision for any compensation or expense reimbursement for a representative, whether such person is a County employee or someone outside of County service. Additionally, there is no provision for any compensation or expense reimbursement for a representative regardless of the outcome of the grievance process.

#### 12.5 Appeal of a Panel Decision

- a. If a written request to reconsider the panel decision is submitted by either party within five (5) work days of receipt of the decision, the panel by majority vote may elect to review its decision and/or reopen the hearing for a good cause shown.
- b. Any challenge of a panel decision on the grounds of inconsistency with law and written policy shall be submitted by either party within five (5) work days to the County Administrator.
- c. The County Administrator may on his own action remand to panel for further consideration a decision which appears to be inconsistent with law or written policy.
- d. Either party may petition the Frederick County Circuit Court for an order requiring implementation of the decision of the panel.

#### 12.6 Retention of Records

All complaints received by the County Administrator and responses from the panel will be kept by the HR Department for a period of three years.

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### **XIII. PERSONNEL RECORDS**

The purpose of this policy is to establish an official personnel file and to provide a procedure governing the access, dissemination and purging of information contained within this file.

The official personnel file shall be defined as the employment file containing personal information relevant to the individual's employment which is maintained by the HR Department.

The official personnel file shall be the only file which is to be considered official and complete in matters related to wage and salary, employee selection, employee relations including promotion, discipline, evaluation and other official actions discussed herein. Information pertaining to any personnel related aspect of employment (i.e. unemployment compensation requests, etc.) shall be contained within the file.

Access to personnel files shall be governed by the Virginia Freedom of Information Act and as set forth herein. The following individuals shall be designated as having regular access to the official personnel files:

- a. The Board of Supervisors, the County Administrator, the Assistant County Administrator, the HR Director and his staff.
- b. The members of a grievance panel selected in accordance with the approved County grievance procedures.
- c. The Virginia Employment Commission - Unemployment Compensation Division.
- d. The Equal Employment Opportunity Commission and/or any other agency charged with responsibility for investigating claims of discrimination.
- e. Federal, State, or local law enforcement agencies during the investigation of a violation or potential violation of the law.

The following individuals shall be designated as having regular access to a limited number of the official personnel files:

- a. Individual employees or former employees shall have regular access to their own personnel file after having satisfactorily demonstrated their identity.
- b. Department Heads shall have regular access to the official files of employees under their authority only.

In the discretion of the County Administrator, however, the County may disclose the contents of any personnel file to such other persons as deemed appropriate.

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