

GENERAL ORDER
FAIRFAX COUNTY POLICE DEPARTMENT



SUBJECT: GRIEVANCE PROCEDURES FOR SWORN AND CIVILIAN EMPLOYEES	NUMBER: 310.3
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CANCELS ORDER DATED: 4-1-12	DATE: 4-1-13
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I. PURPOSE

The purposes of this Order are to establish the grievance procedures available to sworn and civilian employees under Chapter 17 of the Personnel Regulations of the County of Fairfax; to define for sworn employees the choice they have in certain cases to proceed under this Order or the provisions of General Order 310.2 and to detail the appellate avenues open to employees who proceed under this Order.

II. POLICY

It shall be the policy of the Department to provide fair, equitable and clearly defined means for the resolution of grievances, to ensure employees and their supervisors are accorded reasonable opportunity to present the facts bearing on a grievance, and to guarantee the opportunity to exercise the rights set forth in this Order.

III. COVERAGE OF PERSONNEL

- A. All regular, permanent employees (sworn and civilian) in the competitive service of the County are eligible to file complaints under this procedure.
- B. Excluded from the grievance procedure are the following:
 - 1. Temporary and exempt employees.
 - 2. Employees serving their initial probationary periods unless their complaints include allegations of discrimination as defined in Section IV. B. 4. of this General Order.
 - 3. Sworn police employees who have elected to proceed under the procedures set forth in General Order 310.2.
- C. Sworn employees shall declare, in writing, their choice between the procedures of this Order or of 310.2 at the following points:

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1. In discipline cases at the station/division level, within 20 workdays of the time that the employee is notified by the station/division commander of the intention to impose discipline within the limits of station division authority, or to recommend disciplinary action within the limits of bureau authority.
 2. In discipline cases at bureau or higher levels, within 20 workdays of the time that the employee is notified by a bureau commander of the discipline recommendation which will be forwarded to the Chief of Police, or to impose disciplinary action within the limits of bureau authority.
- D. A sworn employee who elects to appeal under this General Order must submit, within the 20 workday period, a completed Step 2 Grievance Form (which will result in a grievance hearing by their respective bureau commander).
- E. Parties to the grievance may, by mutual agreement, waive any or all intermediate steps or meetings, with the exception of the initial complaint, reducing the complaint to writing and the request for grievability determination.
- F. A sworn employee's decision to use the provisions of this Order or to proceed under General Order 310.2 is final and binding. In no case shall an employee be permitted to use both procedures for disciplinary cases.
- G. The provisions of this Order shall be the only procedures to be used by sworn employees for the processing of grievances arising from matters not involving discipline.
- H. The Personnel Resources Division (PRD) will be responsible for the coordination of grievance procedures in cases that do not result from internal investigations or disciplinary actions. The Internal Affairs Bureau will be responsible for the coordination of grievance procedures in cases that result from administrative investigations or disciplinary actions.

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IV. TYPES OF COMPLAINTS

- A. Employee complaints will be classified at the point of grievability determination (see Section VI.D.) as one of the following:
1. Grievable, with a binding decision from a hearing panel of the Civil Service Commission.
 2. Non-grievable but eligible for a hearing and an advisory decision from a hearing officer appointed by the Civil Service Commission.
 3. Non-grievable with no hearing.
- B. Grievable complaints which receive binding decisions from the Civil Service Commission include:
1. Dismissals, unsatisfactory service separations, demotions and suspensions.
 2. Unfair application of specific personnel policies, procedures, rules and regulations.
 3. Acts of retaliation as a result of utilization of this procedure, the pay for performance appeals procedure or for participation in the grievance of another County employee.
 4. Discrimination against an employee, including a probationary employee, on the basis of race, color, creed, religion, age, disability, national origin, sex, political affiliation, marital status, union affiliation, genetic information, veteran status, or disabled veteran status;
 5. Discrimination or retaliation against an employee, including a probationary employee, because of participation in political activities permitted under state law and County ordinances or failure to participate in political activities, whether permitted or not by state law or County ordinance.

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6. Acts of retaliation because the employee (i) has complied with any law of the United States or of the Commonwealth; (ii) has reported any violation of such law to a governmental authority; (iii) has sought any change in law before the Congress of the United States or the General Assembly; (iv) has reported an incidence of fraud, abuse, or gross mismanagement to the Board of Supervisors Audit Committee, the Auditor to the Board, his/her department head, or to any other federal, state, or County government authority, such as the Commonwealth's Attorney for the County of Fairfax, or the U.S. Attorney for the Eastern District of Virginia.

C. Non-grievable complaints eligible to receive advisory decisions from a hearing officer appointed by the Civil Service Commission include:

1. The physical plant.
2. The methods and conditions of the specific job.
3. Relations with fellow employees.
4. Unfair application of County departmental rules.
5. Performance appraisals.
6. Written reprimands.

V. NON-GRIEVABLE COMPLAINTS

A. Complaints that are not grievable under this procedure include:

1. Salaries and wages.
2. Position classification.
3. Employee benefits.
4. Oral reprimands.

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5. The contents of ordinances, statutes, or established personnel policies, procedures, rules and regulations.
 6. Failure to promote, except where the employee contends that specific promotional policies or procedures were not followed or applied uniformly.
 7. Discharge, lay-off or suspension from duties because of lack of work or reduction in work force, except where such actions affect an employee who has been reinstated within the previous six months by the Civil Service Commission as the result of the final determination of a grievance. In such cases, the agency must show that there was a valid business reason for the action and that the employee was notified of such reason in writing prior to the effective date of the action.
 8. Management of County employees, including the right to make personnel appointments in accordance with adopted selection policies and techniques, to establish rules and regulations governing work performance and performance evaluations, to transfer and assign employees within the County, to determine the need for shift operation and rotation of the workweek, to assign overtime, to determine job training and career development, and to determine duties or actions in emergency situations.
 9. Decisions of performance evaluation appeals panel, except in accordance with the provisions of Chapter 12 of the County Personnel Regulations.
- B. Appeals of position classification are handled in accordance with the criteria set forth in Section 3.6 of the County Personnel Regulations.

VI. STEPS OF THE PROCEDURE

A. Step 1: Immediate Supervisor

An employee who has a complaint shall discuss the problem directly with their supervisor within 20 workdays of the date the employee should

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have reasonably gained knowledge of the event giving rise to the complaint. The complaint need not be reduced to writing until this step has been completed. The term "workday" as used herein shall mean any Monday through Friday that is not a County holiday.

A verbal reply by the supervisor shall be made to the complaint during the discussion or within five workdays following the meeting.

B. Step 2: Station/Division or Bureau Commander

If the complaint is not resolved after the first step meeting and where there is a station/division or a bureau commander, the employee may reduce the complaint to writing on "Complaint Form - Second Step." All grievance forms are obtainable from the Department of Human Resources (DHR).

The employee shall provide a statement of the grievance and information upon which it is based; specify the alleged wrongful act and resultant harm; and specify the relief sought through the use of this procedure. The fully completed Complaint Form shall be delivered by the employee to the division commander within five workdays of the first step meeting or the supervisor's reply, if given at a later date. The division commander shall meet with the employee within five workdays of receipt of the Complaint Form.

A written reply by the division commander shall be made to the complaint within five workdays following the meeting.

C. Step 3: Chief of Police

If the reply from the second step meeting is not acceptable to the employee, or where no division or bureau commander exists, the employee may appeal the last response to the Chief of Police.

"Complaint Form - Third Step" shall be completed by the employee and delivered to the Chief of Police within five workdays of receipt of the last response. The Chief of Police shall meet with the employee within five workdays of receipt of the Complaint Form.

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A written reply by the Chief of Police shall be made to the complaint within five workdays following the meeting.

D. Step 4: Grievability Determination

1. When a complaint cannot be satisfactorily resolved pursuant to Steps 1 through 3 above, the employee shall request on the appropriate form a determination concerning the grievability of the complaint within 10 workdays of receipt of the third step reply.
2. All requests for grievability determination shall be submitted to the County Executive. The County Executive will determine if the complaint is grievable, and if so, based upon the criteria set forth in Section IV, establish whether the decision rendered by the Civil Service Commission shall be binding or advisory. Decisions of the County Executive shall be made within 10 workdays of receipt of such request.
3. Decisions regarding grievability are appealable only to the Fairfax County Circuit Court. Such appeals shall be made by filing a notice of appeal with the County Executive within 10 workdays from the date of receipt of the decision.
4. The Circuit Court shall have a hearing de novo on the issue of grievability within 30 days of receipt of the appeal. The Court may affirm, reverse or modify the decision of the County Executive.
5. The decision of the Circuit Court is final and is not appealable. Procedures governing the review by the Circuit Court are found in Virginia Code Section 15.2-1507.
6. In no case shall the County or Commonwealth's Attorney be authorized to decide the issue of grievability.

E. Step 5: Appeal to the Civil Service Commission

1. If the complaint has been determined to be grievable, as provided herein, the employee may file a request for hearing on the appropriate form with the Fairfax County Civil Service Commission.

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The employee shall file the request within 10 workdays following the receipt of the determination that the complaint is grievable.

2. Appeals shall be heard by the Commission as soon as possible after receipt of the employee's appeal request. The Commission shall notify the employee and the Chief of Police in writing of the time and place of the appeal hearing. The Commission, in scheduling hearings on appeals, shall give priority on its docket to dismissal and unsatisfactory service separation cases.
3. The jurisdiction and authority of the Civil Service Commission shall be confined exclusively to those complaints previously determined to be grievable as provided herein. While the Commission has authority to determine the appropriate application of an existing rule or policy, the Commission does not have the authority to add to, detract from, alter, amend or modify in any way County or Department policy or procedure and its findings shall be consistent with all applicable laws and ordinance.
4. No member of the Civil Service Commission shall hear a grievance if they have a direct involvement with the grievance being heard by the Commission, or with the complaint or dispute giving rise to the grievance. The following relatives of a participant in the grievance process or a participant's spouse are prohibited from hearing said grievance: spouse, partner, child, descendants of a child, sibling, niece, nephew and first cousin.

VII. REPRESENTATION

- A. Personal face-to-face meetings are required at all steps. The employee and County management may have a representative present at all steps. If the employee is represented by legal counsel, management likewise has the option of being represented by counsel.
- B. At all steps, appropriate witnesses also may be asked to provide information.

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- C. In any complaint involving a charge of discrimination, at the request of any party to the grievance, the Director of the Office of Equity Programs, or his designee, may attend step meetings.

VIII. GRIEVANT'S EXPENSES

- A. The grievant must bear any cost involved in employing representation or in preparing or presenting his case.
- B. Whenever possible, grievances will be handled during the regularly scheduled work hours of the parties involved. Civil Service Commission hearings are held during the County's business day whenever possible.
- C. The Civil Service Commission has no authority to award legal fees or punitive damages.

IX. EXTENSION OF TIME

- A. The parties to the grievance, by mutual agreement, or the County Executive upon the request of one of the parties, may extend any or all of the time periods established in this procedure.
- B. After the initial filing of a written complaint, failure of either the employee or the respondent to comply with all substantial procedural requirements of the grievance procedure 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 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 Executive.

X. RESOLUTION PRIOR TO HEARING

Any grievance shall be considered settled at the completion of any step if all parties are satisfied. In fact, it is expected that the great majority of grievances will be settled at the first or second step. However, nothing in this procedure

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should be construed as limiting the employee's right to exhaust the remedies provided by this procedure.

XI. HEARINGS

- A. Hearings shall be conducted as described in Addendum 1 to Chapter 17 of the Personnel Regulations of the County of Fairfax.
- B. Hearings shall be open to the public. However, upon request of either party, the hearing shall be private. The hearing officer or the Commission, by majority vote, may close a hearing to the public if the testimony about to be presented might impugn the personal reputation of a party or witness to said hearing, or if the right to privacy of such party or witness requires that the hearing be closed. Parties and their representatives shall be allowed to attend the hearing at all times. All witnesses shall be excluded from the hearing, except when testifying, at the request of either party.
- C. Failure of either party without just cause to comply with all substantial procedural requirements at the hearing, shall result in a decision in favor of the other party.
- D. The decision of the Commission shall be filed in writing by the Chairperson with the parties not later than 10 workdays after the completion of the hearing. Copies of the decision shall be transmitted to the County Director of Human Resources, the employee, the Chief of Police and the County Executive.
- E. The majority decision of the Commission shall be final and shall be consistent with the provisions of law and written policies. The finding of the Commission shall be either binding or advisory to the County Executive based upon the classification of the grievance at Step 4 (Sections IV and VI.D).
- F. Either party may petition the Fairfax County Circuit Court for an order requiring implementation of a binding decision from the Commission.

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XII. MAINTENANCE AND CONTROL OF RECORDS

The County's Department of Human Resources is the custodian of grievance records. The coordination with DHR is the responsibility of PRD. After review by the Chief of Police, the agency head copy of all grievance records shall be forwarded to PRD for distribution and filing. A copy of all grievance records alleging discrimination shall be forwarded to the Office of Human Rights and Equity Programs. Grievance records that are tied to administrative investigations shall also be forwarded to the IAB for inclusion in the case file. Grievance records will be maintained and disposed of in accordance with the guidelines established by the Library of Virginia.

XIII. LEGAL REFERENCES

Code of the County of Fairfax, Virginia, Section 3-1-13 (D) & (E)

Code of Virginia, Section 15.2-1507

XIV. ACCREDITATION STANDARDS REFERENCE

VLEPSC

PER.

08.01

08.02

08.03

08.04

This General Order becomes effective April 1, 2013 and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY:

A handwritten signature in black ink, appearing to be "J. Kelly", written over a horizontal line.
Chief of Police

APPROVED BY:

A handwritten signature in black ink, appearing to be "Edward L. Lutz", written over a horizontal line.
County Executive