

FULTON COUNTY DEPARTMENT OF  
HUMAN RESOURCE MANAGEMENT



# APPEAL HEARING GROUND RULES

**2018** EFFECTIVE AUGUST, 1 2018



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# FULTON COUNTY DEPARTMENT OF HUMAN RESOURCES MANAGEMENT APPEAL HEARING MANUAL

EFFECTIVE AUGUST 1, 2018

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## 1. DEFINED TERMS

- A. **Appeal Hearing** means a quasi-judicial proceeding conducted by the Fulton County Administrative Hearing Officer to affirm or reverse disciplinary action taken against a permanent classified employee.
- B. **Appeal Hearing Manual** means the Fulton County Appeal Hearing Manual.
- C. **Appellant** means the employee appealing a disciplinary action.
- D. **Appointing Authority** means the Fulton County department head or Fulton County elected official.
- E. **Administrative Hearing Officer** means the Administrative Hearing Officer of the Fulton County.
- F. **Board of Commissioners** means the Fulton County Board of Commissioners.
- G. **Order** means an order issued by the Hearing Officer setting forth the decision of the Fulton County Administrative Hearing Officer regarding a hearing and the findings of fact.
- H. **Chief Human Resources Officer** means the Chief Human Resources Officer of Fulton County.
- I. **County Attorney** means the Fulton County Attorney.
- J. **Employee Organization** means the public services employee union recognized by the Fulton County Board of Commissioners.
- K. **Fulton County** means the government of Fulton County.
- L. **Fulton County Personnel Guidebook** means Fulton County Government Guidebook - Personnel Policies and Procedures.
- M. **Appeals Coordinator** means the Appeals Coordinator of the Fulton County Appeals.

## 2. AUTHORIZATION

This Appeal Hearing Manual is authorized by the Fulton County Appeals Policy and Procedure (300-16). This manual is intended to set the expectations and basic ground rules for classified employees and Appointing Authorities during the appeals hearing process. It should be noted that this manual is not intended to address each and every law, regulation, rule, procedure and/or policy that may affect the rights and/or responsibilities of any party appearing before an Administrative Hearing Officer.

## 3. FULTON COUNTY APPEAL HEARING MANUAL CONFLICT

If this Appeal Hearing Manual, or any provision thereof, is or becomes in conflict with the Fulton County Personnel Policies and Procedures or any laws; then such provision is superseded and void and the remainder of the Appeal Hearing Manual shall not be affected.

## 4. RECUSAL/DISQUALIFICATION OF AN ADMINISTRATIVE HEARING OFFICER

A party may request the recusal/disqualification of an Administrative Hearing Officer by promptly filing a motion upon discovering a reason for disqualification. Possible reasons for recusal or disqualification, as set forth in the Fulton County Appeals Policy and Procedure, include but are not limited to:

- (1) Conflict of interest, including:
  - (a) having a financial interest in the outcome of the case;
  - (b) the Administrative Hearing Officer's firm representing one of the parties involved; or
  - (c) a member of the Administrative Hearing Officer's family being employed by one of the parties involved.
- (2) Bias toward or against one of the parties involved;
- (3) Prejudgment of one or more of the issues involved; or
- (4) Ex parte communications.

Decisions to deny disqualification by a hearing officer appointed shall be reviewable by an Appeals Conflict Attorney.

A. Written Notice and Deadline for Motion to Disqualify/Recuse

When the Chief Human Resources Officer sends the written notice of the time, date, and place of the hearing to the Appellant/Employee and the Appointment Authority, the written notice shall also include the assigned Administrative Hearing Officer ("AHO"). Either party can submit a Motion to Disqualify/Recuse the AHO. The deadline to submit the motion is ten (10) business days from receipt of the written notice. The motion should be submitted to the Department of Human Resources Management, the non-moving party (i.e., the party that did not submit the motion), and the assigned AHO.

When the non-moving party and/or the assigned AHO do not object (i.e., agree) to the motion to disqualify/recuse the AHO, the non-moving party and/or the assigned AHO must state so, in writing, within five (5) business days from the date of submission of the motion to disqualify/recuse the AHO, to the Department of Human Resources. The moving party (i.e., the party that submits the motion) should be copied on the submission.

When the non-moving party and/or the assigned AHO do object (i.e., disagree) to the reassignment of the Appeal Hearing to another AHO, the non-moving party and/or the AHO has five (5) business days, from the date of submission of the motion to disqualify/recuse, to submit a response to the Department of Human Resources. The moving party should be copied on the submission.

Administrative Hearing Officers will not make decisions related to motions to disqualify/recuse.

B. Decision of the Appeals Conflict Attorney(s)

The Department of Human Resources will submit the motion and response(s) immediately to the Appeals Conflict Attorney(s) for a determination to be made, by the Appeals Conflict Attorney(s), within five (5) business days. The Appeals Conflict Attorney(s) will not be an advocate for either party and will determine if the Appeal Hearing is to be reassigned to another AHO or remain with the assigned AHO that is the subject of the motion to disqualify/recuse. The decision of the Appeals Conflict Attorney(s) is matter specific and made on a case-by-case basis. A decision to disqualify or recuse an AHO does not constitute disqualification or recusal from all Appeal Hearings.

The decision of the Appeals Conflict Attorney(s) will be made in writing and submitted to the Department of Human Resources, the Appointing Authority, and the Appellant/Employee. The decision of the Appeals Conflict Attorney(s) shall be final.

## 5. APPEAL HEARINGS

### A. General Guidelines

Appeal Hearings may be scheduled before an Administrative Hearing Officer. Consideration will be given to all concerned parties in the scheduling of Appeal Hearings, and all such Appeal Hearings shall be conducted in a manner as provided by the Georgia Open Meetings Act. Appeal Hearing proceedings shall be as informal as is compatible with justice. Notification of Appeal Hearings shall be provided to the Appellant, the concerned Appointing Authority, the Administrative Hearing Officer, and the assigned County Attorney representative for participation. Hearings are public, but the Administrative Hearing Officer may close all or part of the hearing from the public, pursuant to Georgia Open Meetings Act. All Appeal Hearings will be recorded and the recordings will be preserved in accordance with Fulton County's record retention procedures. Specifics of the Appeal Hearings are as follows:

- (1) The Chief Human Resources Officer or Appeals Coordinator is the timekeeper. The Administrative Hearing Officer will take breaks throughout the hearing and parties will not be charged for this time. Each party is allotted (a) five (5) minutes for opening remarks; (b) ninety (90) minutes to present the party's case and cross-examine any witnesses regarding a dismissal or sixty (60) minutes to present their case and cross-examine any witnesses for all other matters; and (c) five (5) minutes for closing statements.
- (2) The Administrative Hearing Officer or Appeals Coordinator opens the Appeal Hearing by providing an overview of the subject of the Appeal Hearing and confirms that the Appellant and his/her representatives, and the Appointing Authority and his or her representative from the County Attorney's office are all present. The Administrative Hearing Officer will require the sequestration of any persons, other than the parties, who will testify as witnesses at the Appeal Hearing.
- (3) Throughout the Appeal Hearing the burden of proof will remain with the Appointing Authority. The Administrative Hearing Officer shall provide time for the Appointing Authority or their representatives and Appellant or their representatives to make opening remarks. Remarks should be limited to what the parties intend to prove during the hearing through the presentation of testimony and evidence.
- (4) Neither party may raise an objection during the other party's opening and/or closing statement.
- (5) At the conclusion of the parties' opening statements, the Appointing Authority shall present his or her case. At the conclusion of the Appointing Authority's case, the Appellant will then present his/her case. The Appointing Authority and/or the Appellant shall call witnesses to the stand to testify. The Administrative Hearing Officer shall swear in all witnesses.
- (6) Witnesses shall identify themselves by name for the record. Absent extraordinary circumstances and good cause shown, any document, photograph, media (video or audio) or other tangible thing that a party wishes to present to a witness for identification and/or authentication would have to be one that was exchanged with the opposing side by the established deadline. After proper identification and/or authentication by a witness, those items are reviewed by the Administrative Hearing Officer and if admissible, are entered into evidence. All documents to be presented as

evidence should be pre-numbered under the following format: AA # (Appointing Authority's) and AP # (Appellant's).

- (7) The opposing party shall have an opportunity to cross examine any witness.
- (8) After both parties have questioned the witness, the Administrative Hearing Officer may question the witness.
- (9) The Administrative Hearing Officer shall confer with the parties to determine if a witness should be dismissed. If a witness is not dismissed, the Administrative Hearing Officer may require that the witness leave the hearing but remain under oath, until recalled by either party or the Administrative Hearing Officer for clarification.
- (10) The above procedures are repeated until all witnesses for each party have testified.
- (11) The Appointing Authority and the Appellant shall present closing arguments with a five (5) minute limit.
- (12) The Administrative Hearing Officer or Appeals Coordinator shall read closing statement and conclude the Appeal Hearing.
- (13) Once a decision is rendered and the case is concluded, an Order will be issued within thirty (30) calendar days of the date of the conclusion of the Appeal Hearing. See Section 5. Appeal Hearings, M. Order below.

#### B. Absence of the Administrative Hearing Officer

If the Hearing Officer is not present thirty (30) minutes following the scheduled start time of an Appeal Hearing, then the Appeals Coordinator may adjourn the Appeal Hearing and reschedule the Appeal Hearing.

#### C. Executive Session

The Administrative Hearing Officer can move into executive session as permitted by the Georgia Open Meetings Act (O.C.G.A. § 50-14-1 et seq.).

#### D. Postponement

A request for postponement or motion for continuance of an Appeal Hearing shall be delivered to the Chief Human Resources Officer. The first and second requests regarding a particular Appeal Hearing will be determined by the Chief Human Resources Officer. Any subsequent requests for postponement shall be determined by the Administrative Hearing Officer.

##### (1) Postponements

Requests for postponement should normally be presented to the Chief Human Resources Officer in advance of any scheduled Appeal Hearing, preferably at least three (3) working days prior to the date set for the scheduled Appeal Hearing. However, in some emergency situations, this may not be possible and, in such cases, the application for postponement should be made as far in advance of the scheduled Appeal Hearing as practicable, and may be made orally by an authorized representative of the requestor to the Administrative Hearing Officer on the scheduled date of the hearing.

In all cases, the party making the request for a postponement must demonstrate to the satisfaction of Chief Human Resource Officer or the Administrative Hearing Officer that he/she has exercised due diligence in all matters pertaining to the request for postponement.



(2) Attorney Conflicts and Method of Resolution

Scheduling conflicts for attorneys of record appearing before the Administrative Hearing Officer shall be governed by and resolved according to the provisions of the Georgia Uniform Rules of the Superior Courts, Rule 17. 1. Method of Resolution.

E. Evidence

(1) Presentation of Documents

Documents intended to be presented as evidence in an Appeal Hearing must be exchanged between the parties of that Appeal Hearing at least ten (10) days prior to the Appeal Hearing. Two (2) copies of each exhibit shall be provided to the Appeals Coordinator so that a sufficient number of copies will be available for distribution during the hearing. In the sole discretion of the Hearing Officer, failure to follow any aspect of this rule may result in the document being excluded from consideration by the Hearing Officer at the Appeal Hearing.

(2) Evidence and other matters

As provided in Section 9 of the Fulton County Civil Service Act of 1982, in addition to any other requirements imposed by common law, the state and federal constitutions, state and local law, and Fulton County rules and regulations, the Appeal Hearing shall conform to applicable provisions of Chapter 13 of Title 50 of the O.C.G.A., the "Georgia Administrative Procedure Act," as set forth in the civil service rules and regulations.

(3) Evidence/exhibit copies

A list of all documentary and physical evidence should be tendered at the Appeal Hearing by the Appellant and Appointing Authority. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits, for which two (2) copies are required, must be provided to the opposing party at least ten (10) days prior to the Appeal Hearing date and must be marked and redacted by counsel prior to the Appeal Hearing so as not to delay the Appeal Hearing before the Administrative Hearing Officer. **Exhibits must be marked and redacted when exchanged with opposing counsel. Failure to comply with this requirement can result in the exclusion of the evidence and will count against the timeliness of the parties to redact the exhibits of all privacy material.**

F. Combining Cases Prohibition

If an employee has more than one disciplinary appeal pending before an Administrative Hearing Officer, those appeals shall not be combined unless both the Appellant and the Appointing Authority agree in writing to the combination. Said agreement to combine the matters must be delivered to the Administrative Hearing Officer a minimum of ten (10) days before the appeal is heard.

G. Electronic, Skype, Video and Telephone Testimony and Virtual Hearing

Skype, video conference, and/or telephone testimony from witnesses will be allowed if agreed to by all parties and as permitted by O.C.G.A § 50-13-15. In an effort to protect the health and safety of all hearing participants during the declared public health state of emergency related to Coronavirus Disease 2019 (COVID-19) and comply with Centers for Disease Control and Prevention (CDC) guidance

regarding social distancing, in-person attendance at hearings may be suspended and, at the determination of the Chief Human Resources Officer, replaced with virtual hearings. Virtual hearings will be conducted via videoconferencing platforms including, but not limited to, Skype, Zoom and GoToMeeting. Prior to each hearing, the Appeals Coordinator shall ensure that all witnesses have reliable and adequate electronic means (i.e., computer, tablet or smartphone) to participate in the hearing.

#### H. Subpoenas

All subpoenas must be requested from the Chief Human Resources Officer not less than ten (10) days prior to the published date of the Appeal Hearing unless otherwise noted, and the Administrative Hearing Officer will not consider any further requests to compel attendance except for good cause shown.

Requests for the issuance of a subpoena must be made in writing and received by the Appeals Coordinator not less than ten (10) days prior to the scheduled hearing. The request should include the Appellant's name, Appeal Hearing date, and the complete names and addresses of individuals to be subpoenaed. There is no charge for each subpoena requested. A request for postponement will not be granted based on the fact that a party failed to request issuance of a subpoena. Nor will it be postponed unless the subpoena was served timely.

#### I. Requests for Certified Copies of Fulton County Procedures and Other Documents

All requests for certified copies of the Fulton County Personnel Policies and Procedures should be forwarded to the Appeals Coordinator no later than three (3) days prior to the Appeal Hearing or applicable deadline for which the signature is needed. Counsels should enter the certified copies of the Fulton County Personnel Policies and Procedures as an exhibit during the hearing. The Administrative Hearing Officer will not accept any additional evidence after the hearing is concluded.

Requests for the Chief Human Resources Officer's signature, on an Appeal-related matter (i.e., certification that costs have been paid and/or request for certified copy of records) should be submitted to the Appeals Coordinator no less than three (3) days prior to any Appeal Hearing or deadline for which the signature is needed. The Appeals Coordinator will notify the requesting party when the documents are available for pick up. The Appeals Coordinator will not be available on the day of any Appeal Hearing to handle any request. These requirements are not intended to expressly or implicitly foreclose any other lawful methods for obtaining a copy of the Fulton County Personnel Guidebook.

#### J. Minimum and Maximum Discipline

Appointing Authorities who impose discipline against classified employees are subject to the provisions of the Fulton County Discipline for Classified Employees Policy and Procedure (305-16), which sets forth the minimum and maximum penalties for each alleged offense. The Administrative Hearing Officer cannot affirm any penalty that is below the minimum or above the maximum amount provided by Fulton County Personnel Policies and Procedures.

#### K. Failure of a Party to Appear

If a party does not appear at the Appeal Hearing, the Appeal Hearing will go forward in the party's absence.



#### L. Audio Recording of Appeal Hearings

An audio recording shall be made of all Appeal Hearings. A copy of said recording shall be made available to either party to the Appeal upon request. In all cases, either party may elect, at that party's own expense, to have a transcript of the proceedings made from the recording, or both parties may elect to share that expense. The Human Resources Management Department does not provide transcription of the hearing but will provide a court reporter for the take down. All requests for audio copies of Appeal Hearings are processed by the Appeals Coordinator. A written request is required to obtain a copy of the hearing CDs, and must include the following information: Appellant's name, Appeal Hearing date(s), and the name of the Appointing Authority. Requests should also include the requestor's name, address, and daytime telephone number. The Human Resources Management Department, in compliance with §50-18-71(c)(1) of Georgia's open records act, charges a fee for the search, retrieval, production and other costs associated with complying with requests for audio copies of Appeal Hearings. The Appeals Coordinator will contact the individual making the request with the total amount due to obtain an audio copy of the Appeal Hearing. Monies are due in advance, or at the time of pick-up. These requirements are not intended to foreclose any other lawful methods for obtaining audio copies of Appeal Hearings.

#### M. Order

After reaching a final decision on an appeal, the Administrative Hearing Officer shall issue an Order setting forth the his/her decision and findings of fact within thirty (30) calendar days after the conclusion of an Appeal Hearing. The Order shall indicate whether the disciplinary action taken by the Appointing Authority is affirmed or reversed. The decision of the Administrative Hearing Officer in such cases shall be final and conclusive, in the absence of an appellate review in the courts. Copies of the Order shall be made a matter of official record and shall be furnished to all parties at interest in the matter. ("Civil Service Act of 1982, as amended and Fulton County Appeals Policy and Procedure (300-16), Section IX")

#### N. Appeal Hearing Continuation

If an Appeal Hearing is not concluded by 5:00 p.m., then the Appeal Hearing will be recessed. The Appeals Coordinator will determine when the Appeal Hearing will reconvene and then notify the parties.

#### O. Information Provided to the Fulton County Administrative Hearing Officer Prior to an Appeal Hearing

Prior to an Appeal Hearing, the Administrative Hearing Officer shall be provided copies of the following information relating to the subject Appeal:

- (1) Written notice to the Appellant which shall include the notice of the charges, the proposed effective time and date of such disciplinary action, and an explanation of the reasons for the proposed disciplinary action and notice that the Appellant has an opportunity to respond orally or in writing to the charges;
- (2) Written notice to the Appellant of the disciplinary action taken by the Appointing Authority;
- (3) The Appellant's Request for Appeal to the Administrative Hearing Officer; and
- (4) The Prehearing Conciliation Report.

P. Appeals filed with the Superior Court

Either party shall have the right to appeal the final decision of the Administrative Hearing Officer to the Superior Court of Fulton County in the same manner and under the same laws, procedures, and time frames that now or hereafter govern appeals under the Civil Service Act of 1982.

Any party filing a writ of certiorari and/or a motion in Superior Court should provide the Appeals Coordinator a copy of said filing within five (5) business days. The Appeals Coordinator will not include any evidence in response to the Writ of Certiorari that was not submitted by the parties during the hearing. Exhibits must be admitted into evidence by the Administrative Hearing Officer during the hearing to be considered as part of the record.

Q. Motions

The parties may file relevant motions (i.e., motions for extension of time, etc.) and the hearing officer will set a reasonable deadline for the opposing party's response. Motions for Summary Judgment and Motions for Directed Verdict will not be considered by the hearing officer due to the evidentiary process of the appeal hearings.

**6. AMENDMENTS**

The Chief Human Resources Officer shall have the authority to amend this Appeal Hearing Manual.

**7. FULTON COUNTY APPEAL HEARING MANUAL EFFECTIVE DATE**

The Appeal Hearing Manual and any amendments thereto shall become effective upon adoption and publication by the Chief Human Resources Officer. Following adoption, revisions to the Appeal Hearing Manual shall be applied prospectively to Appeal Hearings filed after the revisions were adopted.

**8. CERTIFICATION**

This Fulton County Appeal Hearing Manual was amended by the Fulton County Human Resources Management Department on July 2, 2020.

*Kenneth Hermon by Stacey Jones with expressed permission*  
Kenneth L. Hermon Jr., Chief Human Resources Officer  
Fulton County Human Resources Management Department