

FULTON COUNTY DEPARTMENT OF
HUMAN RESOURCE MANAGEMENT
PERSONNEL BOARD
APPEAL HEARING GROUND RULES



2018 EFFECTIVE AUGUST, 1 2018



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FULTON COUNTY PERSONNEL BOARD 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 Personnel Board to affirm or reverse disciplinary action taken against a permanent classified employee.
- B. **Appeal Hearing Manual** means the Fulton County Personnel Board 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. **Board Attorney** means the Board Attorney of the Fulton County Personnel Board.
- F. **Board of Commissioners** means Fulton County Board of Commissioners.
- G. **Board Order** means an order issued by the Personnel Board setting forth the decision of the Fulton County Personnel Board regarding a hearing and the findings of fact.
- H. **Chair** means the Chair of the Fulton County Personnel Board.
- I. **Chief Human Resources Officer** means the Chief Human Resources Officer of Fulton County.
- J. **County Attorney** means the Fulton County Attorney.
- K. **Employee Organization** means the public services employee union recognized by the Fulton County Board of Commissioners.
- L. **Fulton County** means the government of Fulton County.
- M. **Fulton County Personnel Guidebook** means Fulton County Government Guidebook - Personnel Policies and Procedures.
- N. **Personnel Board** means Fulton County Personnel Board.
- O. **Personnel Board Coordinator** means the Personnel Board Coordinator of the Fulton County Personnel Board.
- P. **Vice Chair** means the Vice Chair of the Fulton County Personnel Board.

2. **AUTHORIZATION**

This Appeal Hearing Manual is authorized by Fulton County Personnel Policies and Procedures Guidebook – PP 300-16 Appeals. This manual is intended to set the expectations and basic ground rules for classified employees and Appointing Authorities during their interaction with the Personnel Board during an Appeal Hearing. 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 the Personnel Board.

3. **FULTON COUNTY PERSONNEL BOARD APPEAL HEARING MANUAL CONFLICT**

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thereof, is or becomes in conflict with the Fulton County Personnel Guidebook or any laws; then such provision is superseded and void and the remainder of the Appeal Hearing Manual shall not be affected.

4. **APPEAL HEARINGS**

- A. General Guidelines

Appeal Hearings may be set for regularly scheduled or special meetings of the Personnel Board. 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. In the Appeal Hearing of an appeal the proceedings shall be as informal as are compatible with justice. Notifications of such Appeal Hearing shall be provided to the Appellant, the concerned Appointing Authority, the Personnel Board members, and the County Attorney for participation. Hearings are public, but the Personnel Board 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 Appeal Hearings follow:

- (1) The Chief Human Resources Officer or Personnel Board Coordinator is the timekeeper. The Personnel Board 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 their 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 Chief Human Resources Officer opens the Appeal Hearing by providing an overview of the subject of the Appeal Hearing, introduces the Personnel Board members present, determines the existence of a quorum, confirms that the Appellant and his/her representatives are present, confirms that the Appointing Authority and the County Attorney or an attorney of the County Attorney's office are present, and introduces the Board Attorney. The Chief Human Resources Officer will require the sequestration of any persons 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 Chief Human Resources Officer provides 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.
- (4) No party may raise an objection during another party's opening and/or closing statement.
- (5) At the conclusion of the parties' opening statements, the Appointing Authority will present its 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 calls witnesses to the stand to testify with no questions from the Personnel Board allowed. The Board Attorney swears in all witnesses.
- (6) Witnesses shall identify themselves by name for the record. 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 Board Attorney and if admissible, are entered into evidence and distributed to the Personnel Board members for their review. 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 has an opportunity to cross examine any witness.
- (8) After both parties have questioned the witness, the Personnel Board members may question the witness.

- (9) The Board Attorney confers with the parties to determine if the witness could be dismissed. The Board members may require that the witness remain under oath but must leave the hearing, until recalled by either party or the Personnel Board for clarification if not dismissed.
- (10) The above procedures are repeated until all witnesses for each party have testified.
- (11) The Appointing Authority and the Appellant present closing arguments with a five (5) minute limit.
- (12) The Chief Human Resource Officer reads closing statement and concludes the Appeal Hearing.
- (13) The Personnel Board approves a motion to move into executive session to deliberate the appeal and develop findings of facts to support its decision after a majority vote to either affirm or reverse the Appointing Authority disciplinary action.
- (14) Once in open session, a vote by the Personnel Board will be taken.
- (15) Once the decision is rendered and the case is concluded, a Board Order will be issued within thirty (30) calendar days of the date of the conclusion of the Appeal Hearing. See Section 5. Appeal Hearings, T. Board Order below.

B. Quorum

A quorum consists of four members of the Personnel Board. If a quorum is not present thirty (30) minutes following the scheduled time for convening an Appeal Hearing, then the Chair or the Vice Chair, or in their absence, the Chief Human Resources Officer or his/her designee, may adjourn the Appeal Hearing and notify the parties of a lack of a quorum and reschedule the Appeal Hearing.

C. Executive Session

The Personnel Board 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 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. The third and additional requests will be determined by the Personnel Board.

(1) Postponements

Applications for postponements should normally be presented to the Chief Human Resources Officer in advance of any scheduled Appeal Hearing, preferably so that such applications are received by the Chief Human Resources Officer 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 before the Personnel Board by an authorized representative of the applicant.

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

The grounds for granting a postponement may include, but are not limited to, the following:

- a. Illness of a party to an appeal, provided that the Chief Human Resources Officer or Personnel Board may require as a condition of granting a postponement in such cases that a written statement from an attending physician shall be subsequently provided, evidencing the illness and the inability of the party to attend the Appeal Hearing;
- b. Withdrawal, discharge, or substitution of an attorney of record in an appeal;
- c. Illness of an attorney of record or absence due to a conflict as provided in the Georgia Uniform Rules of the Superior Courts, Rule 17.1;
- d. Absence of a party or an attorney of record as a result of being a member of the Georgia General Assembly during a legislative session, or as a result of being a member of the Board of Regents of the University System of Georgia, the Georgia Board of Education, or other boards created under the laws of the State of Georgia, while attending a meeting of such state constituted board;
- e. Absence of a witness, provided that there is a showing that:
 - The witness is absent;
 - The witness has been subpoenaed;
 - The witness does not reside outside of the state;
 - The testimony is material;
 - The witness is not absent by the permission, directly or indirectly, of the applicant for a postponement;
 - The applicant for a postponement expects that he/she will be able to procure the testimony of the witness at the next scheduled Appeal Hearing of the Personnel Board;
 - The application is not made for the purpose of delay, but to enable the party to procure the testimony of the absent witness; and
 - If requested by the Personnel Board, the applicant shall provide a summary of the facts expected to be proved by the absent witness.

(2) Attorney Conflicts and Method of Resolution

Conflicts for attorneys of record appearing before the Personnel Board 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. Ten (10) copies of each such document shall be provided to the Personnel Board so that a sufficient number of copies will be available for distribution to all members of the Personnel Board. In the sole discretion of the Personnel Board, failure to follow any aspect of this rule may result in the document being excluded from consideration by the Personnel Board 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 conducted on appeals 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 ten (10) copies are required, must be marked by counsel prior to the Appeal Hearing so as not to delay the Appeal Hearing before the Personnel Board, **and must be provided to the opposing party at least ten (10) days prior to the Appeal Hearing date. Exhibits must be marked when exchanged with opposing counsel. Failure to comply with this requirement can result in the exclusion of the evidence.**

F. Combining Cases Prohibition

If an employee has more than one disciplinary appeal pending before the Personnel Board, 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 Personnel Board a minimum of ten (10) days before the appeal is heard.

G. Electronic, Skype, Video and Telephone Testimony

The Personnel Board will not allow skype, video conference, and/or telephone testimony from witnesses.

H. Subpoenas

All witness 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 Personnel Board 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 Personnel Board 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.

I. Depositions

Prior sworn testimony of witnesses who are present at the Appeal Hearing, via affidavit or deposition, may be offered for the purposes of impeachment or to refresh the recollection of a witness. Depositions and/or affidavits of witnesses who are not present at the Appeal Hearing will be admitted into evidence at the discretion of the Board Attorney. A party desiring to admit into evidence an affidavit and/or deposition of a witness who will be unavailable to testify at the Appeal Hearing must make the request, in

writing, to the Board Attorney. In the written request, the requesting party should set out the legal and/or factual basis for admission of the affidavit and/or deposition. At the time of the request, the requesting party must provide a copy of the proposed affidavit and/or deposition to the Board Attorney and opposing party. The requesting party must submit the request no later than ten (10) days before the Appeal Hearing. Any party opposing this request must submit, in writing, the basis for the party's opposition. The opposing party must submit this basis, to the Board Attorney, no later than five (5) days before the Appeal Hearing. The Board Attorney will inform the parties of his/her decision prior to the commencement of the Appeal Hearing. The proposed affidavit/deposition will not be given to the Board unless admitted into evidence by the Board Attorney.

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

All requests for certified copies of the Fulton County Personnel Guidebook should be forwarded to the Personnel Board Coordinator to obtain Chief Human Resources Officer's signature three (3) days prior to the Appeal Hearing or deadline for which the signature is needed. Counsels should enter the certified copies of the Fulton County Personnel Guidebook as an exhibit during the hearing. The Personnel Board will not accept any additional evidence after the hearing is concluded.

Requests for the Chief Human Resources Officer's signature, on a Personnel Board-related matter (i.e., certification that costs have been paid and/or request for certified copy of records) should be submitted to the Personnel Board Coordinator no less than three (3) days prior to any Appeal Hearing or deadline for which the signature is needed. The Personnel Board Coordinator will notify the requesting party when the documents are available for pick up. The Personnel Board 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.

K. Minimum and Maximum Discipline

The Appointing Authorities who impose discipline are governed by Fulton County Personnel Guidebook 305-16: Discipline for Classified Employees which states the minimum and maximum penalties for each alleged offense. The Board cannot affirm any penalty that is below the minimum or above the maximum amount provided by Fulton County Personnel Guidebook.

L. Failure of a Party to Appear

If a party does not appear at the Appeal Hearing, the Personnel Board will hear the case and make a determination and ruling based on the evidence and facts presented at the Appeal Hearing.

M. 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 of the Appeal Hearing 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 Personnel Board does not provide transcription of the hearing nor does it provide a court reporter. All requests for audio copies of Appeal Hearings are processed by the Personnel Board 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 requester'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 Personnel Board 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 expressly or implicitly foreclose any other lawful methods for obtaining audio copies of Appeal Hearings.

N. Board Order

After reaching a final decision on an appeal, the Board Attorney shall prepare a Board Order to be distributed within thirty (30) calendar days after the date of the conclusion of an Appeal Hearing setting forth the Personnel Board's decision and findings of fact. The Board Order shall indicate those Personnel Board members in attendance at the Appeal Hearing and their decision to affirm or reverse the actions of the Appointing Authority. The decision of the Personnel Board in such cases shall be final and conclusive, in the absence of an appellate review in the courts. Copies of the Board 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-Amended and Fulton County Personnel Guidebook 300-16 VIII")

O. Appeal Hearing Continuation

If an Appeal Hearing is not concluded by 5:00 p.m. on the day of the Appeal Hearing, then the Appeal Hearing will be recessed. The Personnel Board will determine when the Appeal Hearing will reconvene and then notify the parties. The Appeal Hearing cases nearing completion that are not concluded on the day scheduled will be recessed.

P. Information Provided to the Fulton County Personnel Board Prior to an Appeal Hearing

Prior to an Appeal Hearing, the members of the Personnel Board shall be provided copies of the following relating to that Appeal Hearing:

- (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 Personnel Board; and
- (4) The Prehearing Order.

Q. Appeals filed with the Superior Court

Either party shall have the right to appeal the decision of the Personnel Board 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.

After a writ of certiorari and/or a motion has been filed in Superior Court, the counsels should provide the Personnel Board Coordinator a copy within five (5) business days so as to allow adequate time for the Personnel Board to prepare its response. The Personnel Board will not include any evidence in its response to the Writ of Certiorari that was not submitted by the parties during the hearing. Exhibits must be admitted into evidence by the Board Attorney during the hearing to be considered as part of the record.

5. AMENDMENTS

The Personnel Board shall have the authority to amend the Appeal Hearing Manual.

6. FULTON COUNTY PERSONNEL BOARD APPEAL HEARING MANUAL EFFECTIVE DATE

The Appeal Hearing Manual and any amendments thereto shall become effective upon adoption by the Personnel Board. Upon adoption by the Personnel Board, the provisions of the Appeal Hearing Manual shall apply prospectively to Appeal Hearings if the applicable provision was in effect at the time the disciplinary action on appeal was taken.

7. CERTIFICATION

This Fulton County Personnel Board Appeal Hearing Manual was adopted by the Fulton County Personnel Board on August 1, 2018.



Ouida W. Collins, Chair
Fulton County Personnel Board



Kenneth L. Hermon Jr., Chief Human Resources Officer
Fulton County Human Resources Management Department