



## **PERSONNEL POLICY**

### **SUBJECT: APPEALS**

DATE: January 1, 2017

Number: 300-16

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#### **I. Statement of Policy**

The purpose of this policy is to achieve, codify and implement the provisions and intent of the Civil Service Act of 1982, as amended. This policy is effective upon its approval by the County Manager and Fulton County Board of Commissioners (“BOC”), and shall have the force and effect of law, as delegated to Fulton County by the Georgia State Legislature in the Fulton County Civil Service Act (the “Civil Service Act”).

This policy governs personnel administration, transactions and procedures within Fulton County concerning disciplinary actions taken for cause against classified employees as described in the Civil Service Act, as amended. The County Manager, in consultation with the Chief Human Resources Officer and the County Attorney, is authorized to establish and modify, as needed, a procedure for implementing this policy.

#### **II. Applicability**

Any permanent Fulton County Classified employee who has been dismissed, suspended, demoted, or otherwise disciplined for cause, whereby the employee suffers any loss in salary, grade, or classification, shall have the right to appeal such action to the Personnel Board. The grounds for appeal to the Personnel Board shall be limited to those cases wherein the employee alleges that the action taken was prohibited by applicable law and may include those cases wherein personal, political, religious reasons are alleged.

These policies do not create a contract of employment. Employment for non-classified employees remains “at will”.

Only permanent employees in the Classified Service are entitled to appeal to the Personnel Board. A "permanent employee" is an employee whose retention in the service has been confirmed by the Appointing Authority and the Chief Human Resources Officer, upon completion of his/her probationary period of employment with Fulton County. A permanent employee who may be serving in a higher class, either temporarily or by reason of a probationary appointment, shall not have the right to appeal any actions taken with respect to the temporary or probationary appointment until such time they have reached permanent classified status in the position.

### **III. Establishment and Implementation of Procedure**

The County Manager, in consultation with the Chief Human Resources Officer and the County Attorney, is authorized to establish and modify, as needed, a procedure for implementing this policy.

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## PERSONNEL PROCEDURE

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#### I. Format.

An employee can initiate an appeal by filing an appeal form with the Department of Human Resources Management in writing at any time within ten (10) business days from the date of being notified of the disciplinary action. Appeal forms not filed with the Department of Human Resources Management within ten (10) business days will be deemed untimely and the right to appeal will be waived. The Chief Human Resources Officer shall not forward untimely appeals to the Personnel Board. Appointing Authorities concerned shall notify individual employees in writing of their appeal rights under this regulation, as applicable.

Pursuant to the Discipline for Classified Employees Policy (305-16), the notice of disciplinary action provided to a classified employee must include the charges against the employee, the effective time and date of such disciplinary action and an explanation of the reasons for the disciplinary action and shall give the employee an opportunity to respond orally or in writing to the charges. To the extent that a classified employee contends that the notice of disciplinary action fails to comply fully with these requirements, then the employee may challenge the sufficiency of the notice in writing to the Personnel Board within ten (10) business days of the filing of the employee's appeal. The failure to challenge sufficiency of notice in writing within the ten business days will result in a forfeiture of the employee's right to contest the sufficiency of the notice of disciplinary action at the appeal hearing.

An appeal hearing is a quasi-judicial proceeding and the rules governing such hearings are contained in the Personnel Policies, Procedures and applicable laws. Additional rules, other than written housekeeping rules governing the appeal hearing that coincide with the Personnel Policies, Procedures and applicable laws and that were in effect at the time of the disciplinary action, limiting or expanding the requirements of appeals hearings may only be instituted by amendments to the Personnel Policies and Procedures.

The Personnel Board is authorized to issue ground rules to govern appeal

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hearings. Such rules shall serve as guidelines for all participants in appeal hearings. Such rules shall be in writing, indicating the date of adoption, and maintained by the Chief Human Resources Officer and made available for inspection upon request. Any ground rule established to govern appeal hearings may only be applied prospectively to appeal hearings if the applicable rule(s) was in effect at the time the disciplinary action on appeal was taken.

Appeal hearings are to be held at the Fulton County Government Center and are governed by the Georgia Open and Public Meetings law and are public meetings until such time as the Personnel Board votes to go into executive session for purposes of deciding the appeal. The hearing is intended to receive evidence either to refute or to substantiate the specific charges that have led to the appeal. It shall not be a forum for discussion of extraneous or irrelevant matters having no bearing on the charges at issue. All parties at action and witnesses shall be given ample time and opportunities to develop points, subject to the rules outlined herein.

During the hearings, the Personnel Board, the Chief Human Resources Officer unless he is the Appointing Authority in the appeal, and the Attorney representing the Personnel Board shall not be advocates for or against either party. The Chief Human Resources Officer and/or his staff are, however, permitted in any case to testify about matters within their knowledge concerning the rules, policies and procedures of Fulton County. It shall be the duty of the Personnel Board to be impartial in its conduct and rulings, both on and off the record.

All questions relating to admissibility of evidence or other legal matters shall be decided by the Attorney for the Personnel Board. Appeal hearings shall follow accepted legal procedure insofar as is practicable, but strict adherence to the technical rules of evidence observed in courts of law is not required. The Board may listen to admissible hearsay testimony and may accept depositions and affidavits, if such testimony is material and relevant to the issues.

## **II. Hearings**

Each appeal shall be heard by the Personnel Board at the earliest practicable date following the receipt of an appeal request.

The Chief Human Resources Officer shall send out a written notice of the time, date and place of the hearing. This notice shall be sent to the Appellant/Employee and/or his/her authorized representative and the Appointing Authority. A copy of the notice shall also be sent to the County Attorney's Office.

The general policy of the Personnel Board concerning postponements shall be that cases set for hearings will be heard on the dates set, and that postponements will be granted only for good cause shown. Postponement of the opening date of a hearing shall be requested in writing by the moving party and served on the Chief Human Resources Officer and each of the other parties in interest. Such requests shall contain

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detailed reasons and explanation of the reason a postponement is needed and suggest alternative dates for resetting. Except in emergency situations, postponement requests will not be honored if they are not received at least three (3) working days before the date set for the hearing. The Chief Human Resources Officer, after consultation with the Personnel Board and the other parties at interest, shall then take action appropriate to the circumstances involved, including notification to all concerned.

### **III. Prehearing Conference**

The Chief Human Resources Officer, at his/her discretion, may arrange a prehearing conference between the Chief Human Resources Officer (or his/her designee), the Appointing Authority (or his/her designee) and the Employee/Appellant prior to the hearing in order to consider and determine the following elements:

- Simplification of the issues.
- Possible conciliation and settlement without a hearing.
- Limitation on the number of witnesses.
- Acceptance of evidence of deposition.
- Stipulation as to any uncontested facts.
- Other matters that may aid in the disposition of the appeal.
- Exchange of names of known witnesses.

An electronic recording of transactions may be made during prehearing conferences upon request of either party at Interest.

### **IV. Witnesses and Documents**

The Personnel Board Attorney or Chair of the Personnel Board shall administer the oath to witnesses. In the event that a prehearing conference has not limited the number of witnesses and the number of witnesses asked for seems to be excessive, at the discretion of the Personnel Board's Attorney, the party requesting the witnesses may be required to justify the request and the basis for calling excessive witnesses. The Personnel Board Attorney may exclude numerous character witnesses or excessive witnesses testifying to duplicative or identical facts.

The Personnel Board may cross-examine only those witnesses that have testified for either party in the appeal on matters relevant to the evidence and issues.

The Chief Human Resources Officer shall have the power to issue subpoenas for the attendance of witnesses and production of documents and records as necessary, as authorized by the Civil Service Act. The Personnel Board shall not consider any testimony or document not admitted into evidence by the Appointing Authority or employee. The parties are required to exchange documents at least ten (10) days prior to the hearing.

## **V. Counsel or Representation**

Employees appearing before the Personnel Board may, if desired, be represented by legal counsel at their expense, a representative of an Employee Organization recognized by the Board of Commissioners, or they may act as their own counsel and conduct their own hearings. Appointing Authorities will be assisted by the Office of the County Attorney. The Personnel Board will be assisted by an attorney not involved in the appeal.

## **VI. Transcripts**

An electronic recording shall be made of all appeal hearings by the Chief Human Resources Officer. In addition to the electronic recording, a certified Court Reporter may, if desired, be employed by either party at interest, at their expense. Copies of tapes may be purchased, if desired.

## **VII. Order of Hearing**

In all hearings, the burden of proof shall be on the Appointing Authority, and he/she shall have the right to open and to conclude the hearing. The Appellant/Employee or counsel may cross-examine Appointing Authority witnesses and then present the Appellant's case at the conclusion of the Appointing Authority's presentation. The Appointing Authority or counsel may cross-examine the Appellant and his/her witnesses. After the presentation of all evidence from both parties, the Personnel Board may hear closing arguments, which shall not be considered evidence, and shall then take the case under advisement and render a decision. The Personnel Board is not permitted to close a hearing or terminate the hearing recordings until the record is complete with all evidence desired to be submitted by either party and closing arguments have concluded.

## **VIII. Decisions, Orders, Findings and Conclusions**

(1) The Personnel Board, after reaching a decision in the case, shall cause an Order to be prepared by the attorney for the Personnel Board within thirty (30) calendar days from the date of the final hearing. The Order of the Personnel Board 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 Order of the Personnel Board shall include findings of fact supporting its decision as to whether the Appointing Authority had authority to exercise such action and did exercise such action for cause within the rules, regulations and policies of Fulton County. If so found, the Personnel Board shall affirm the action of the Appointing Authority. Failure to issue an order within the time parameters established herein shall automatically result in approval of the personnel action taken by the Appointing Authority. In the event that the Personnel Board finds that the action taken was prohibited by applicable law, the Personnel Board shall reverse such action. The Personnel Board shall not modify the terms and conditions of any action of the Appointing Authority but in its order of affirmance or

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reversal may make recommendations of disposition which shall not be binding but have persuasive force only. The decision of the Personnel Board in such cases shall be final and conclusive in the absence of an appellate review in the courts (by writ of certiorari). Copies of the Board's Order shall be made a matter of official record and shall be furnished to all parties in interest. A copy of the Board's Order shall be placed in the employee's official personnel file maintained by the Department of Human Resources Management.

(2) In the event that a majority of the Personnel Board is unable to agree upon a decision in an appeal hearing, the Board's Order shall indicate that the Board was unable to reach a decision and the appealed action shall stand.

(3) The Personnel Board may, within ten (10) days from the date of issuance of the Board's Order, modify or revise its former Order to correct any clerical or typographical errors.

#### **IX. Destruction of Obsolete Appeal Tape Recordings.**

Obsolete electronic tape recordings of past appeal hearings which are one (1) year old or older may be destroyed unless a request for a copy and/or retention of such tapes has been received from any party in interest during this one-year period.