

CITY OF LITTLE ROCK
HUMAN RESOURCES DEPARTMENT



DISCIPLINARY ACTION APPEAL
HEARING PROCEDURAL MANUAL

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The following sections of this manual have been developed as a guide for Representatives in the conduct of a Hearing and in the preparation of the report to the City Manager.

I. INTRODUCTION

A disciplinary action taken against an employee shall be for just cause. The City of Little Rock (The City) provides procedures to appeal disciplinary actions and to grieve alleged improper adverse actions to those employees in regular and limited service positions (RFTP, RPTP, LSPF, or LSPP) who have completed the post-hire and post-promotion probation. To ensure that employees are notified of their rights of appeal, a disciplinary action must be documented on an official City of Little Rock form.

Employees in temporary positions (TAPP) and employees who have not completed the post-hire probation do not have access to procedures to appeal disciplinary actions. Employees in post-promotion probation do not have access to procedures to appeal disciplinary actions less than termination of employment.

Disciplinary actions shall be administered without regard to an employee's Fair Labor Standards Act (FLSA) exemption status, except where noted in this section.

The purpose of the Hearing is to only address the items stated on the Disciplinary Action Form and to ascertain facts pertaining to the appealed disciplinary action. Evidence of alleged comparable disciplinary action taken against other employees, harassment allegations, or other matters that do not directly relate to the reason for the disciplinary action will not be addressed. At Disciplinary Action Appeal Hearings, the employee is entitled to be represented by a union steward, attorney, or other representative. Both parties may present witnesses and documentary evidence, and will be given an opportunity to present their case, an oral rebuttal, and to ask questions of witnesses. However, the Appeal Hearing is not a trial and rules of evidence normally observed in a court are not applicable. The Director of Human Resources or designee shall be in charge of the entire Hearing procedure.

The appellant, their representatives, and the Department's representatives (Representatives) are expected to be familiar with the Administrative Personnel Policy and Procedures Manual and, if applicable, the American Federation of State, County and Municipal Employees (AFSCME) Agreement before any Hearings are conducted. Both the Policy and Agreement can be retrieved at <https://www.littlerock.gov/for-job-seekers/human-resources/helpful-documents/>. Should Representatives require advice in the interpretation or application of this policy, they are encouraged to contact the Labor and Relations Manager or designee.

II. APPEAL RIGHTS

Regular and Limited Service employees (RFTP, RPTP, LSPF, and LSPP) who have completed their post-hire probation may appeal disciplinary actions. (See below). Promoted employees on probation do not have access to procedures to appeal disciplinary actions that are less than termination of employment.

Non-Uniform Non-Union Eligible employees who have completed the post-hire probation may appeal suspensions and terminations. Non-Uniform Non-Union Eligible employees cannot appeal an Oral Reprimand nor can they appeal a Written Reprimand but may choose to have a written rebuttal attached to the Written Reprimand that will be placed in his/her personnel file.

Non-Uniform Union Eligible employees who have completed the post-hire probation may appeal written reprimands and appeal the disciplinary action on the basis the action is untimely. Non-Uniform Union Eligible employees cannot appeal an Oral Reprimand. See the appeal process in the American Federation of State, County and Municipal Employees (AFSCME) Agreement.

Uniformed Employees - See the appeal process in Civil Service Commission Rules and Regulations.

III. HEARING TIMETABLE

Hearings will be conducted in a timely manner pursuant to the provisions contained in this Section. Representatives are expected to adhere to the following time limits, except in an emergency situation as outlined below (Section III-3).

Step 1: Eligible employees are required to submit a completed Disciplinary Action Appeal Request Form directly to the Labor and Employee Relations Division-Human Resources Department within ten (10) business days from receipt of the disciplinary action. The Disciplinary Action Appeal Request Form can be retrieved directly from the Labor and Employee Relations Division-Human Resources Department or from the City's website at www.littlerock.gov (On the website, Select "Human Resources" then "Helpful Documents" then "Forms for Employees"). *Please note that eligible employees are required to complete the City's Disciplinary Action Appeal Request Form and any other type of written or verbal request for a Disciplinary Action Appeal will not be accepted.*

Step 2: Upon notice of Appeal, the Human Resources Department shall notify the Department where the employee works or worked. The Department will then have five (5) business days to provide the documentation it used to base its decision to discipline to the employee and if applicable, a full witness list it intends to call at the Appeal Hearing. A partial witness list is unacceptable. The employee will be

required to pick up the materials at the offices of the employee's Department Head and sign a receipt documenting that the materials were received from the Department. Notification to the employee of the availability of the materials will be made by telephone and email to the contact information provided to Human Resources by the employee. Notification will be deemed to have been made when at least three (3) attempts are made to reach the employee by telephone and email. The attempts should be made once each business day and documented appropriately. Failure to pick up the documents will not prevent or delay the Hearing from being scheduled.

Step 3: The appellant must provide a full witness list and documentation to be presented at the Hearing to the Department at least five (5) business days from expiration of the five (5) day period referenced in step two (2). A partial witness list is unacceptable.

Step 4: The Human Resources Department shall hold the Hearing after a minimum of ten (10) business days from receipt of the Disciplinary Action Appeal Hearing Request. The employee shall be notified of the final date, place and time of the Hearing via City email (if applicable), and U.S. Postal Mail with a Delivery Confirmation Receipt. **Notification will be deemed to have been made upon receipt of the delivery confirmation.** The Hearing will not be rescheduled unless there is a documented emergency.

- a. A documented emergency is defined as illness, death in family or other catastrophic, unforeseen event. A scheduling conflict is not considered a documented emergency.

Step 5: The inability to reach the employee to notify him/her of the Hearing date shall be deemed a waiver of the Appeal Hearing, unless good cause is shown why the employee failed to receive notice. This decision will be made by the Hearing Officer assigned to hear the Appeal.

Non-Uniform Union Eligible Employees

Step 6: Suspensions of ten (10) days or more or termination will be heard by a representative of the City Manager and representative from the AFSCME Union upon request of the appellant. Upon completion of the Hearing, if there is concurrence, a joint finding and recommendation will be submitted to the City Manager. If the two Hearing Officers are unable to agree, they shall submit separate findings and recommendations to the City Manager within ten (10) business days after the date of the Hearing. The City Manager will, within five (5) business days, review both recommendations and make a final decision. All parties will be notified in writing of that decision.

IV. HEARING PROCEDURES

1. The Department's representatives have the burden of proof during the Hearing and they will present their case first;
2. The Appellant will present his/her case next. If desired, the Department representative may submit rebuttal evidence. Rebuttal evidence may only address something that arose during an employee's presentation and is not to be a repeat of evidence already submitted;
3. Each side will have an opportunity to ask questions;
4. If witnesses are called, the other side will have an opportunity to question them also. All witnesses will be asked to step outside and wait to be called. The Hearing Officer shall direct the witnesses not to discuss the case among themselves.
5. Each party may give an oral rebuttal to any evidence presented.
6. The Department representatives may also testify but only two (2) representatives may also be witnesses.

All attendees, representatives, and witnesses must sign the record of attendance. When representatives from either side call a witness, they must have them to identify themselves before asking any questions.

The Appellant or the Appellant's representative(s) and the Department representatives must not interrupt or try to talk over someone while they are speaking. Each side will be given an equal opportunity to present their side and to ask questions. All parties are asked to abide by the protocols of the Hearing and to conduct themselves in a professional manner at all times.

If a representative becomes disruptive or speaks out of turn during the Hearing, the Hearing Officer will give a warning that if they continue to do so, the Hearing will be terminated and a final decision will be made based on the overall evidence presented thus far. If the employee prefers to proceed without a representative, that will be permitted. If the representative(s) at fault would like to submit a position statement with relevant evidence for the Hearing Officer to consider after terminating the Hearing, he/she will have 48 hours to submit the position statement to the Hearing Officer.

Only evidence pertaining to the items stated on the Disciplinary Action Form will be considered. The Hearing Officer will reject evidence and disallow witnesses he/she believes are not relevant to the disciplinary action in question. Representatives are not allowed to argue with the Hearing Officer. The Hearing Officer will allow the representatives to state their objection, if any, on the record. Once the Hearing Officer decides testimony or any evidence is not relevant and the representative notes an objection for the record, representatives must move on to submit relevant evidence or rest their case.

Representatives will only be allowed to call witnesses who have direct knowledge of the disciplinary action in question. Representatives will only be allowed to testify, to cross

examine, and present written documentation that is directly related to the disciplinary action in question.

V. NOTIFICATION TO APPELLANT

The Appellant or Appellant's representative will be advised of the date, time, and location where the disciplinary action Appeal Hearing will be held. In addition, the following procedures must be followed.

1. The Appellant or Appellant's representative will be asked to bring a copy of his/her evidence to the Hearing for the Hearing Officer.
2. It is the Appellant's or Appellants Representative's responsibility to provide a full witness list and documentation to be presented at the Hearing to the Department at least five (5) business days from expiration of the five (5) day period referenced in step two (2). A partial witness list is unacceptable.
3. Comply with the Hearing procedures as set forth in the Disciplinary Action Appeal Procedural Manual.
4. No food will be allowed during the Hearing.

Only audio recording of the Hearing is permitted. If the Appellant or Appellant's representative desires a copy of the recording of the Hearing, he/she will be responsible for the cost of a disc, thumb drive or other device for use in providing a copy of the recording of the Hearing. The Hearing will start on time and all participants are advised to be punctual. Should the Appellant be unable to attend the Hearing as scheduled, he/she must advise the Hearing Officer assigned to the case immediately. The Hearing will not be rescheduled unless there is a documented emergency as set forth in Section III, 4a Hearing Timetable.

Appellants who are late (15 minutes or more), or who do not show, except for emergencies, are considered to have forfeited their Hearing rights.

VI. THE HEARING

Typically, there will only be two representatives allowed for the Department and for the Appellant and/or Representative, unless the Appellant is represented by more than one attorney. In such cases, the Appellant or the Appellant's Representative must notify the Human Resources Department within ten (10) days from receipt of the disciplinary action that he/she intends to have more than one attorney and how many attorneys will be present at the Disciplinary Hearing. The Department will then be notified to ensure equal representation for the Appellant and the Department.

A. Rights of Parties

Each party may call and examine witnesses and cross-examine opposing witnesses.

B. Objections

The Hearing Officer rules on objections raised by either party. The purpose of the Hearing is to only address the items stated on the Disciplinary Action Form and to ascertain facts pertaining to the appealed disciplinary action.

All relevant information will be considered by the Hearing Officer and given the weight that it merits. Procedures for objections are set forth in Section IV-Protocols of the Hearing.

C. Evidence

Evidence shall be admitted if it is directly related to the disciplinary action in question.

Evidence is relevant when it has a tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the disciplinary action in question. Irrelevant and unduly repetitious evidence will not be allowed.

It is suggested that parties requesting evidence under the Freedom of Information Act (FOIA) to be used as evidence during the Hearing must do so as soon as possible prior to the Hearing. Only relevant evidence will be allowed by the Hearing Officer. The Hearing will not be rescheduled if parties have not obtained all relevant evidence prior to the Hearing.

Hearsay evidence is admissible in the Hearing. However, it will be used only for the purpose of supplementing or explaining direct evidence, and must not be considered sufficient, in itself, to support a finding.

New Evidence (evidence not previously disclosed by the Department or employee) may be introduced during the Hearing if:

1. It pertains to the existing charges; and
2. Upon discovery, the Appellant was informed as to the nature of the evidence.

If these conditions are met, the introduction of new evidence would not constitute a violation of the Appellant's rights in the due process.

D. Private Communications

A Hearing Officer cannot entertain private communications from either party. All matters relative to the Appeal must be presented in open Hearing with both parties present.

E. Time Limit

The Hearing will not exceed four (4) hours in duration. A continuance may be granted at the discretion of the Hearing Officer, if deemed necessary.

VII. FINDING AND RECOMMENDATION TO THE CITY MANAGER

The Hearing Officer's findings and written recommendations to the City Manager will be based upon a "preponderance of the evidence." Preponderance of the evidence means that, when weighed with evidence opposed to it, has more convincing force and the greater probability of truth. It may also be defined as more than 50% of the weight of the evidence presented.

The submission to the City Manager will include a summary of: the reason for discipline, the documentary evidence and oral testimony, findings and recommendations relating to all evidence presented.

The Human Resources Department will forward the written recommendation to the City Manager as soon as administratively feasible, who will make a final decision within five (5) business days.

The Hearing Officer's recommendation may be to:

1. Uphold the infractions as stated on the Disciplinary Action Appeal form and either sustain or modify, either increase or decrease the level of disciplinary action;
2. Overturn the disciplinary action entirely, that could lead to harsher disciplinary action, up to, and including termination.
3. Overturn the disciplinary action and remand the action to the Department to evaluate possible infractions and disciplinary action. The Department should contact the Human Resources Director for steps to reissue the action.

