



PERSONNEL POLICY

SUBJECT: APPEALS

DATE: August 21, 2019

Number: 300-16

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 an Administrative Hearing Officer.

Only permanent employees in the Classified Service are entitled to appeal to an Administrative Hearing Officer. 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.

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

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.

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



PERSONNEL PROCEDURE

SUBJECT: APPEALS

DATE: August 21, 2019

Number: 300-16

I. Format.

A classified 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 accept or forward untimely appeals to an Administrative Hearing Officer. 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 Administrative Hearing Officer 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 ground 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.

Ground rules shall be in writing, indicating the date of adoption, and maintained

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

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, which are public meetings, are to be held at the Fulton County Government Center and are governed by the Georgia Open and Public Meetings law and, unless and until such time the public disclosure of information is unlawful and the Administrative Hearing Officer closes the hearing for that limited purpose. The hearing is intended to receive evidence either to uphold or reverse the appealed disciplinary action. 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 Administrative Hearing Officer shall not be an advocate for or against either party. It shall be the duty of the Administrative Hearing Officer 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 Administrative Hearing Officer. 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.

II. Standards of Conduct for Hearing Officers

The following standards shall apply to the attorneys who are appointed pursuant to the Civil Service Act of 1982, as amended, to serve as Administrative Hearing Officers. These standards are designed to promote honesty, integrity and impartiality in fulfilling the duties assigned to the hearings officers by the Civil Service Act.

(1) Impartiality. Administrative Hearings Officers shall conduct hearings in an impartial manner. Administrative Hearing Officers shall hear only those matters in which it is possible to remain impartial and even-handed. If at any time an Administrative Hearing Officer is unable to hear a case in an impartial manner, the Administrative Hearing Officer is obligated to recuse himself or herself from presiding over the matter.

(2) Conflict of Interest. An Administrative Hearing Officer shall refrain from hearing or otherwise deciding a case presenting a conflict of interest. A "conflict of interest," for purposes of this policy, is defined as any personal or professional involvement, association or relationship which might create an impression of possible bias or could reasonably be seen as raising a question about the Hearing Officer's impartiality. A conflict of interest may arise from a financial or other personal interest of the Administrative Hearing Officer or of an immediate family member. A conflict of interest exists if:

- (a) the financial or other personal interest reasonably could be perceived to influence the official action of the Administrative Hearing Officer;
- (b) an Administrative Hearing Officer previously represented or provided legal advice on a specific subject to a party before the hearing officer;
- (c) an Administrative Hearing Officer, during his or her term, engages in the private practice of law on behalf of an employee before any other Fulton County Administrative Hearing Officer, grievance review committee or other personnel entity of Fulton County;
- (d) an Administrative Hearing Officer, during his or her term, engages in the private practice of law in any matter as to which he or she has exercised jurisdiction as an Administrative Hearing Office; or
- (e) an Administrative Hearing Officer, during his or her terms, engages in the private practice of law in any case wherein the Administrative Hearing Office represents any person or entity in any pending claim or lawsuit against Fulton County and/or any other county-related entity, except as provided in F.C.C. § 102-371.5.

An Administrative Hearing Officer shall promptly disclose all actual and potential conflicts of interest reasonably known to the Administrative Hearing Officer and shall decline to hear any appeal in which an actual or apparent conflict of interest exists. If an Administrative Hearing Officer has any doubt about whether a conflict exists, he or she shall recuse himself or herself in order to preserve the integrity of the appeals process. The Chief Human Resources Officer is authorized to reassign a hearing when a conflict of interest exists.

An Administrative Hearing Officer must avoid any professional associations, relationships or representations that would be a conflict of interest or give the appearance of impropriety. For the duration of his or her appointment as an Administrative Hearing Officer, an Officer must not accept employment or representation that would conflict with the Officer's obligations under the Civil Service Act or this policy. Administrative Hearing Officers are specifically prohibited from representing clients in any matters involving disciplinary actions taken for cause against a Fulton County Classified employee, including representing any client appealing disciplinary action pursuant to the provisions of this policy or the Civil Service Act of 1982, as amended.

An Administrative Hearing Officers shall guard against conflicts of interest both during and after the appeal hearing. An Administrative Hearings Officer shall not subsequently establish a professional or personal relationship with either party that would raise legitimate questions about the integrity of the appeals process.

III. Hearings

Each appeal shall be heard by the Administrative Hearing Officer 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 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 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 Administrative Hearing Officer and the other parties at interest, shall then take action appropriate to the circumstances involved, including notification to all concerned.

IV. Conciliation Meeting

Upon receipt of a request by the employee, the Chief Human Resources Officer may arrange a prehearing conciliation meeting 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.
- Stipulation as to any uncontested facts.
- Other matters that may aid in the disposition of the appeal.

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

V. Witnesses and Documents

The Administrative Hearing Officer shall administer the oath to witnesses. The Administrative Hearing Officer may exclude numerous character witnesses or excessive witnesses testifying to duplicative or identical facts.

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

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

authorized by the Civil Service Act. The Administrative Hearing Officer 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.

VI. Counsel or Representation

Employees appearing before an Administrative Hearing Officer 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.

VII. 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 will be present to take down the hearing. The parties are responsible for purchasing their own transcripts.

VIII. 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 Administrative Hearing Officer may hear closing arguments, which shall not be considered evidence, and shall then take the case under advisement and render a decision. The Administrative Hearing Officer 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.

IX. Decisions, Orders, Findings and Conclusions

(1) The Administrative Hearing Officer, after reaching a decision in the case, shall cause an Order to be prepared within thirty (30) calendar days from the date of the final hearing. The Order of the Administrative Hearing Officer shall indicate the decision to affirm or reverse the actions of the Appointing Authority. The Order of the Administrative Hearing Officer shall include findings of fact supporting his or her 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 Administrative Hearing Officer 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

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

the Appointing Authority. In the event that the Administrative Hearing Officer finds that the action taken was prohibited by applicable law, the Administrative Hearing Officer shall reverse such action. The Administrative Hearing Officer shall not modify the terms and conditions of any action of the Appointing Authority but in its order of affirmance or reversal may make recommendations of disposition which shall not be binding but have persuasive force only. 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 (by writ of certiorari). Copies of the Administrative Hearing Officer's Order shall be made a matter of official record and shall be furnished to all parties in interest. A copy of the Administrative Hearing Officer's Order shall be placed in the employee's official personnel file maintained by the Department of Human Resources Management.

(2) The Administrative Hearing Officer may, within ten (10) days from the date of issuance of the Order, modify or revise his or her former Order to correct any clerical or typographical errors.

X. 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.