

**ADMINISTRATIVE HEARING PROCEDURES
HUMAN RESOURCES BOARD**

City of Chicago

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(Procedures Revised 12/06)

ADMINISTRATIVE HEARING PROCEDURES

Section 1. Applicability. This regulation shall apply to all disciplinary hearings conducted under the jurisdiction of the Human Resources Board of the City of Chicago pursuant to the City of Chicago's Human Resources Rule XVI.

Section 2. Definitions.

(a) Ordinance - Chapter 25.1-6 of the Municipal Code of the City of Chicago.

(b) Commissioner - Commissioner of Human Resources of the City of Chicago.

(c) Board - Human Resources Board of the City of Chicago.

(d) Notice - Notice prescribed by Ordinance or the Rules and Regulations of the Department of Human Resources or the Human Resources Board, as applicable.

(e) Chief Hearing Officer - Presiding Official designated by the Board to supervise hearings and hearing officers.

(f) Hearing Officer - the official(s) designated by the Board to conduct a hearing.

(g) Employee - A person with career service status.

(h) City - City of Chicago.

(i) Department Head - Supervisory personnel in charge of a designated department of the City of Chicago.

Section 3. Filing. Documents and requests permitted or required to be filed with the Board in connection with a hearing shall be addressed to and filed with the Human Resources Board, Room 1100, City Hall, Chicago, Illinois 60602, in triplicate.* Filing is deemed to be made when received by the Board. The office of the Board is open for filing, inspection and copying of public documents from 9:00 a.m. to 4:30 p.m., Monday through Friday, except on National, State or City legal holidays.

Section 4. Form of Documents.

(a) Documents shall clearly show the title of the proceedings in connection with which they are filed;

(b) Except as otherwise provided, three copies of all documents including notices, motions and petitions, shall be filed with the Board;

(c) Documents shall be typewritten or reproduced from typewritten copy on letter or legal size white paper; and

(d) One copy of each document filed shall be signed by the party or by his authorized representative or attorney.

Section 5. Computation of Time. Computation of any period of time prescribed by this regulation shall begin with the first business day following the date of filing of the documentation with the Board pursuant to Section 3 of these Rules, and shall run until the end of the last day, or the next following business day if the last day is Saturday, Sunday or a legal holiday. Where the period of time is five days or less, Saturdays, Sundays, and legal holidays shall be excluded in the computation of time. Notice requirements shall be construed to mean notice received, but proof that notice was dispatched by means reasonably calculated to be received by the prescribed date shall be prima facie proof that notice was timely received.

* *Email filings are currently being accepted. Phone 312-774-4966 for contact email address for Human Resources Board Project Coordinator.*

Section 6. Appearances.

(a) Any person entitled to participate in proceedings may appear as follows:

(1) A person may appear in his or her own behalf, by an attorney at law licensed to practice in the State of Illinois or "by the bona fide union representative designated by the employee;"

(2) The City of Chicago will appear by the Office of Corporation Counsel or any bona fide representative thereof, or may be represented by an attorney at law licensed to practice in the State of Illinois designated by the Corporation Counsel.

(b) An attorney, "or designated union representative" appearing in a representative capacity shall file a written notice of appearance.

Section 7. Notice of Hearing. All administrative hearings shall be initiated through the issuance by the Board of a written Notice of Hearing, which shall be served upon the employee.

Section 8. Service of the Notice of Hearing. Service shall be complete when the Notice of Hearing is served in person or deposited in the United States mail, postage prepaid, registered or certified, addressed to the last known address of the person(s) involved, not less than 10 days before the date designated for the Hearing.

Section 9. Motion and Answer.

(a) Any party receiving a Notice of Hearing may file an answer with the Board not later than five days prior to the date of hearing. All answers or motions together with an affidavit showing service preliminary to a hearing shall be served personally or mailed postage prepaid, correctly addressed and deposited in a United States Post Office mailing facility upon the Board and the Hearing Officer at least five days prior to the date of hearing, or upon good cause shown on such other date as the Hearing Officer shall designate.

(b) Unless made orally on the record during a hearing, a motion shall be in writing and shall be accompanied by any documentation, affidavits or other evidence relied upon or deemed appropriate, by order of the Board or Hearing Officer. At least two copies of all such motions shall be filed with the Board (one for the Board and one for the Hearing Officer) and at least one copy served on each additional party, if any, to the hearing.

(c) No oral argument will be heard on a motion unless the Hearing Officer directs otherwise. A written brief may be filed with a motion or an answer to a motion, stating the arguments and authorities relied upon.

(d) A written motion will be disposed of by written order and on notice to all parties.

(e) The Hearing Officer shall rule upon all motions except that he shall have no authority to dismiss or decide a hearing on the merits. All parties to the proceeding shall have a right to be heard and to establish a record. All motions to dismiss a hearing shall be decided by the Board.

(f) Unless otherwise ordered, the filing of an answer or motion shall not stay the proceeding or extend the time for the performance of any act.

Section 10. Consolidation and Severance of Matters -- Additional Parties. In the interest of convenient, expeditious and complete determination of matters, the Hearing Officer may on due cause shown consolidate or sever hearing proceedings involving any number of parties to be brought in provided said actions can be done without prejudice to a substantial right of any party to the hearing.

Section 11. Postponement or Continuance of Hearing. For good cause shown, a hearing may be postponed or continued by the Board prior to the appointment of a Hearing Officer or by the Hearing Officer upon his own motion or upon motion of a party to the hearing; such motion of the party

shall set forth facts attesting that the request for continuance is not for purpose of delay. Notice of any postponement or continuance shall be given in writing to all parties to the hearing within a reasonable time in advance of the previously scheduled hearing date. All parties involved in a hearing shall avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously.

Section 12. Chief Hearing Officer. The Chief Hearing Officer is designated by the Board and is responsible solely to the Board. He shall supervise all hearings and Hearing Officers and shall insure that all hearings to be conducted in full compliance with procedures adopted by the Board. He shall also review all petitions for rehearing and shall make recommendations to the Board with reference thereto and to determine the adequacy of the record. The Chief Hearing officer shall be responsible for the assignment of cases to a specific Hearing Officer.

Section 13. Authority of Hearing officer. The Hearing Officer has the authority to conduct a hearing, take all necessary action to avoid delay, maintain order and insure the development of a clear and complete record. He shall have all powers necessary to conduct a hearing including the power to:

- (a) Administer oaths and affirmations;
- (b) Regulate the course of hearings, set the time and place for continued hearings, fix times for filing of documents, provide for the taking of testimony by deposition, if necessary, and generally conduct the proceedings according to generally recognized administrative law and this rule;
- (c) Examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitious or cumulative testimony and set reasonable limits on the amount of time each witness may testify;
- (d) Rule upon offers of proof and receive relevant evidence;
- (e) For good cause shown receive and rule upon motion to

quash, modify or to pay reasonable production costs in advance.

(f) Sign and issue subpoenas that require attendance, giving testimony and the production of books, papers and other documentary evidence;

(g) Direct parties to appear and confer for the settlement or simplifications of issues, stipulation of facts and to otherwise conduct pre-hearing conferences;

(h) Dispose of procedural requests or similar matters;

(i) Render Findings of Fact and Recommendation for an Order to the Board;

(j) Enter any Order that further carries out the purpose of this rule; and

(k) At his discretion, accept probative, relevant, material evidence from any party.

Section 14. Bias or Disqualification of Hearing Officer.

(a) Immediately upon receipt of information concerning personal bias, prejudice or disqualification of a Hearing officer, any interested party may file prior to any further action in the hearing a sufficient affidavit setting forth allegations of personal bias, prejudice or disqualification of a presiding Hearing Officer. The Hearing Officer shall then rule on said petition. At the conclusion of the hearing, the Board shall determine this issue as part of the record of the case. When a Hearing Officer is disqualified, or it becomes impractical for him to continue, another Hearing Officer may be assigned.

(b) The Hearing Officer may at any time voluntarily disqualify himself.

Section 15. Pre-hearing Conferences.

(a) Upon written notice by the Hearing officer in any proceeding, or upon written request by any party, the Hearing officer may direct parties or their attorneys to appear at a specified **time and place for a conference**, prior to or during the course of the hearing, for the

purpose of formulating issues and considering:

- (1) The simplification of issues;
- (2) The necessity or desirability of amending the pleadings for the purpose of clarification, amplification or limitation;
- (3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record to avoid unnecessary introduction of proof;
- (4) The limitation of the number of witnesses;
- (5) The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and
- (6) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

(b) Opportunity shall be afforded all parties to be represented by legal counsel and to dispose of the case by stipulation, agreed settlement or consent order, unless otherwise precluded by law. Any stipulation, agreed settlement or consent order reached between the parties before a final determination by the Board, shall be submitted in writing to the Hearing Officer and shall become effective only if approved by the Board.

(c) The Hearing Officer shall at the completion of the Pre-hearing Conference enter an order which recites any action taken by the Hearing Officer and the agreements made by the parties as to any of the matters considered, and which specifies as the issues for hearing those not disposed of at the conference. The order controls the subsequent course of the hearing unless subsequently modified.

Section 16. Discovery. Any party to the hearing may, upon written request made prior to the hearing and filed with the Hearing Officer and served upon the Office of the Corporation Counsel, be entitled to:

(a) Any and all written statements made by the Employee concerning the charges filed, which are within the custody and control of the City of Chicago;

(b) Any and all oral statements made by the Employee concerning the charges filed which have been reduced to writing or summaries of which have been reduced to writing which are within the custody and control of the City of Chicago;

(c) Any and all written statements or written summaries of oral statements of any witness to be produced by the City in the City's case-in-chief at the hearing of said charges;

(d) Results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case which are within the custody and control of the City of Chicago; and

(e) Any evidence within the custody or control of the City of Chicago which is favorable to the Employee in terms of his guilt or innocence to the charges filed against him.

Section 17. Subpoenas.

(a) Upon application to the Hearing Officer by any party, the Hearing Officer may subject to the limitations on discovery prescribed by this Rule issue a subpoena for attendance at a hearing, which subpoena may also include a command to produce books, papers, documents or tangible things designated therein which are reasonably necessary to the resolution of the matter under consideration.

(b) Every subpoena shall state the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place therein specified.

(c) The Hearing Officer or the Board, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable or oppressive.

Section 18. Conduct of the Hearing.

(a) Hearings shall be public unless required by Statute or Rule of the Board to be otherwise. Any person called by a party may submit written statements relevant to the subject matter of the hearing. However, the person submitting such a statement shall be subject to cross-examination by any party. If the person submitting a written statement is not available for cross-examination upon timely request, the written statement shall be stricken from the record. The Hearing Officer may take evidence from any person whether or not such person is a party to the proceedings.

(b) The following shall be the order of proceedings of all hearings, subject to modification by the Hearing Officer for good cause:

- (1) Presentation, argument and disposition of motions preliminary to a hearing on the merits of the matters raised in the Notice or Answer;
- (2) Presentation of opening statements;
- (3) City of Chicago's case-in-chief;
- (4) Employee's case-in-chief;
- (5) City of Chicago's case in rebuttal;
- (6) City of Chicago's closing statement;
- (7) Employee's closing statement.

Section 19. Default. Failure of a party to appear on the date set for hearing, or failure to proceed as ordered by the Hearing Officer, shall constitute a default. The Hearing Officer shall thereupon enter such findings and recommendations as is appropriate under the pleadings and such evidence as he shall receive into the record.

Section 20. Evidence.

(a) A party may conduct examinations or cross-examinations without rigid adherence to formal rules of evidence, provided the examination or cross-examination can be shown to be necessary and pertinent to a full and fair disclosure of the subject matter of the hearing. In addition, the Hearing Officer may receive material, relevant

evidence, which would be relied upon by a reasonably prudent person in the conduct of serious affairs, which is reasonably reliable and reasonably necessary to resolution of the issue for which it is offered; provided that the rules relating to privileged communications and privileged topics shall be observed.

(b) The Hearing Officer shall exclude immaterial, irrelevant and repetitious evidence.

(c) When the admissibility of disputed evidence depends upon an arguable interpretation of substantive law, the Hearing Officer shall admit such evidence.

Section 21. Official Notice. Official notice may be taken of all facts of which judicial notice may be taken.

Section 22. Hostile Witnesses and Adverse Party.

(a) If the Hearing Officer determines that a witness is hostile or unwilling, he may be examined by the party calling him as if under cross-examination.

(b) The party calling such a witness, upon the showing that he called the witness in good faith and is surprised by his testimony, may impeach the witness by proof of prior inconsistent statements.

(c) Any party to the hearing, may be called and examined as if under cross-examination at the instance of any adverse party. The party calling for the examination is not concluded thereby but may rebut the testimony thus given by counter testimony and may impeach the witness by proof of prior inconsistent statements.

Section 23. Transcription of Proceedings.

(a) Oral proceedings at which evidence is presented shall be recorded by a certified court reporter. Any transcription will be retained through and including the time allotted for appeal, revision, rehearing or other manner of review prior to final disposition as provided for by the Board or by law.

(b) The transcript made in connection with the hearing shall

constitute the official transcript.

(c) The record in an administrative hearing shall include:

- (1) Pre-hearing records;
- (2) All pleadings (including all Notices and Answers, Motions, Briefs and Rulings);
- (3) Evidence received;
- (4) A statement of matters officially noticed;
- (5) Offers of proof, objections and rulings;
- (6) Official transcript; and
- (7) Findings and Recommendations of the Hearing Officer.

Section 24. Hearing officer's Findings and Recommendations.

(a) The Hearing Officer's Findings and Recommendations shall be in writing.

(b) The Hearing Officer shall then submit his Findings and Recommendations to the Board.

Section 25. Rehearings.

(a) Except as otherwise provided by law, and for good cause shown, the Board may in its discretion, order a rehearing in a contested case on petition of an interested party.

(b) Where the record of testimony made at the hearing is found by the Board to require further information the Board may order a reopening of the Hearing.

(c) A motion for a rehearing or a motion for the reopening of a hearing shall be filed with the Board, in duplicate, within 10 days of the date of mailing of the Board's Order. If a rehearing is ordered by the Board, a rehearing shall be noticed and conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record for the Board's reconsideration. A decision or order may be amended or vacated after rehearing.

Section 26. Existing Statutory or Agency Procedures and Practices.

This Rule shall not be construed to limit or repeal additional requirements imposed by any act of law or otherwise, or to change existing Board procedures which are equivalent to or exceed the standards or administrative procedures prescribed in this Rule.

Section 27. Post Discipline Hearing Procedure.

(a) Where specifically provided for by ordinance or labor agreement, an employee with Career Service status may be discharged, demoted or suspended for a period exceeding thirty days before a Human Resources Board hearing in accordance with these procedures.

(b) Prior to discharge, demotion or suspension for a period exceeding thirty days, the employee must be given written notice of the charges against him or her and an explanation of the evidence supporting said charges. Said charges and explanation need not be in any particular form, but must be sufficient to apprise the employee of the matters on which discipline may be based.

(c) The notice of charges and explanation of evidence shall also state that the employee may respond in writing to the charges and evidence before action is taken. The notice shall specify the deadline for submitting the response and the person to whom the response shall be directed.

(d) The notice and explanation, together with the employee's response, if any, shall be delivered to the department head, who shall review the same and make a decision, which shall be disclosed to the employee.

(e) If the department head decides to discipline the employee, the employee shall be given written notice of such decision. The employee may appeal the department head's decision to the Human Resources Board by making a written request therefor within ~~seven~~ **** five** calendar days of the effective date of discipline. An appeal shall not affect the effective date of discipline. The written notice must contain the following statement: "If you desire a hearing on this disciplinary action, you must file a written request for the hearing with the Human Resources Board of

*** MCC 2-74 requires appeal within five (5) days.*

the City of Chicago, Room 1100, City Hall, Chicago, Illinois. Your written request must be received by the Human Resources Board within five (5) ~~seven (7)~~ calendar days of your receipt of this notice. Late request will not be accepted." ****

(f) If the employee requests a hearing, a date therefor shall be set, not more than forty-five (45) days following receipt of the request for hearing by the Human Resources Board. Either party may request a continuance for good cause shown, but the hearing must be completed within sixty (60) calendar days of the initial hearing date, unless further delay is caused by the employee. The Human Resources Board shall render a decision on the appeal not more than sixty (60) calendar days after the close of the hearing. If the time limitations provided for herein are not met, the employee shall be entitled prospectively to the pay and benefits of the position held before the imposition of suspension or discharge, or in the case of a demotion the difference in pay between the former and current position, beginning with the first day after the failure to meet the time limit, pending decision of the Human Resources Board, but the employee shall have no right to be returned to work except by order of the Human Resources Board. Nothing herein shall deprive the Human Resources Board of jurisdiction to decide the merits of the disciplinary action.

(g) An employee whose discipline is not upheld shall receive full back pay for any period when he or she was off work, less any lesser disciplinary action imposed by the Board. Said employee shall be reinstated to his or her position or such lower position as determined by the Board, upon notification of the Board's decision, or following such lesser discipline as may be imposed by the Board, as appropriate.

(h) Except as may be inconsistent with this Section, these Administrative Hearing procedures shall apply to appeal hearings.

**** MCC 2-74 requires appeal within five (5) days.*

***** Email filings are currently being accepted. Phone 312-774-4966 for contact email address for Human Resources Board Project Coordinator.*

Section 28 - Use of Recording Devices at Public Meetings and

Hearings

The following rules govern the use of audio and video recording devices in meetings and hearings and are issued by the Human Resources Board pursuant to the Illinois Open Meetings Act:

(a) Written Notice Required

Any person wishing to use a recording device must provide written notice to the Human Resources Board via mail or facsimile to:

Human Resources Board
City Hall, Room 1100
121 N. LaSalle Street
Chicago, Illinois 60602
Fax No. (312) 744 - 1521

**Note: You may also phone
312-774-4966 for contact
email address for Human
Resources Board Project
Coordinator.**

Such written notice must include the name, address and telephone number of the person wishing to record the meeting or hearing; state the date and time of the meeting or hearing; and describe the type of recording device that will be used. **Written notice must be received by the Human Resources Board at least 24 hours in advance of the meeting or hearing sought to be recorded.**

(b) Small Hand-Held Devices

Small hand-held devices may be used in a seated position as long as use of those devices does not interfere with the view or hearing of those seated by or near those persons in spectator seats.

(c) Large Devices

Large devices requiring a tripod or other support, or those devices that would interfere with the viewing or hearing of those seated by or near the user, may only be used in the rear of the meeting or hearing room.

(d) General Specifications/Requirements

A maximum of three (3) large devices shall be permitted in the meeting and/or hearing room. Space shall be allocated on a first reserved and first come basis.

All setting up, testing, adjusting, etc. of equipment must be completed at least ten (10) minutes prior to the start of the meeting or the hearing.

The presiding officer at the meeting or hearing will advise each individual speaking at the meeting or testifying at the hearing that they have the right not to be recorded. The presiding officer will prohibit the recording of any individual who refuses to be recorded.

The Human Resources Board and its hearing officers reserve the right to take appropriate action to preserve safety, decorum and quiet.