

SECTION 34. GRIEVANCES

(As amended February 15, 2005, October 21, 2008, July 12, 2011, and June 30, 2015)

34-1. Definitions.

- (a) ***Alternative dispute resolution or ADR:*** Methods, such as conciliation, mediation, settlement conferences, and peer review, for settling disputes more informally and quickly than through the grievance procedure described in Section 34-8.
- (b) ***CAO's designee:*** For the purpose of this section, a staff member of the Labor/Employee Relations Team.
- (c) ***Consolidated grievance:*** Two or more grievances that are filed by one employee or 2 or more different employees and which are processed as one grievance, if the grievances:
 - (1) concern the same subject; and
 - (2) request the same or similar relief.
- (d) ***Grievant:*** An employee or former employee who files a grievance.
- (e) ***Immediate supervisor:*** The individual responsible for the assignment and evaluation of an employee's work.
- (f) ***Informal resolution:*** Efforts made to resolve a grievance before the filing of a written complaint.
- (g) ***Party:*** An employee who files a grievance or the department that responds to the grievance.

34-2. Eligibility to file a grievance.

- (a) A merit system employee who has successfully completed the probationary period and has merit system status, including a term employee, may file a grievance on a matter described in Section 34-4.
- (b) A probationary or temporary employee may file a grievance over a disciplinary action, except for an oral admonishment, but may not appeal a grievance decision by the CAO to the MSPB.
- (c) A bargaining unit employee may not file a grievance under this section over a matter covered in the collective bargaining agreement, but may file a grievance under the grievance procedure in the appropriate collective bargaining agreement.

- (d) An individual must be an employee of the County government when the individual files the grievance, unless:
 - (1) the 30-day time period to file a grievance extends after the date when the individual's employment is terminated by resignation, retirement, termination, or dismissal; or
 - (2) the subject of the grievance is the County's deduction of funds from the employee's unpaid salary, leave, or compensatory time to satisfy the employee's unpaid debt to the County.
- (e) If an employee who files a grievance resigns, retires, or is separated from County employment before the grievance is resolved, the County must continue to process the grievance if the relief requested by the employee could still be granted.
- (f) A County law enforcement officer may not use the grievance procedure to appeal a matter for which there is a remedy or appeal under the Law Enforcement Officers' Bill of Rights.

34-3. Policy on grievances.

- (a) **Objectives.** The objectives of the grievance-resolution process are to:
 - (1) resolve grievances at the lowest level and provide an opportunity for resolution at each step;
 - (2) provide for review and resolution of grievances by the immediate supervisor, department director, and CAO; and
 - (3) provide specific and reasonable time limits for each level or step in the review of a grievance.
- (b) **Responsibilities of department directors and supervisors.** A department director or supervisor:
 - (1) must not interfere with an employee's right to file a grievance;
 - (2) must not coerce or discriminate against an employee who files a grievance; and
 - (3) must consider an employee's grievance fairly and promptly.
- (c) **Use of ADR.** County employees and supervisors should consider using ADR methods at each step in the grievance procedure to resolve disputes, if appropriate.

- (d) ***Freedom from harassment or retaliation for filing a grievance.*** A supervisor or coworker must not restrain, interfere, coerce, discriminate, or retaliate against an employee for filing a grievance.
- (e) ***Employee's right to representation.*** An employee may choose a representative to represent the employee at each step of the grievance procedure.
- (f) ***Representation of a supervisor.*** A labor organization or an official, employee, or representative of a labor organization that is certified under a County collective bargaining law to represent an employee must not also represent the supervisor of the employee, unless the supervisor is included in the same bargaining unit as the employee.
- (g) ***Use of official time to prepare and present a grievance.***
- (1) An employee must have the approval of the employee's supervisor before the employee uses official time to prepare or present a grievance or to represent another employee in a grievance.
 - (2) A supervisor must allow an employee to use up to 4 hours of official time to prepare a grievance.
 - (3) To use more than 4 hours of official time to prepare a grievance, an employee must:
 - (A) submit a written request to the supervisor that explains why the employee needs more than 4 hours; and
 - (B) have the supervisor's approval of the request.
 - (4) If an employee's supervisor denies the employee's request for more than 4 hours of official time to prepare a grievance, the employee may appeal the supervisor's denial to the OHR Director. The decision of the OHR Director is final.
 - (5) A supervisor must allow an employee to use official time to present a grievance at any step of the grievance procedure.
 - (6) An employee who represents another employee is entitled to official time to attend grievance meetings.
- (h) ***Pay status of employee witness at a grievance meeting.*** The County must compensate an employee who attends a grievance meeting as a witness for the time spent at the meeting as follows:
- (1) the employee's regular hourly salary during the employee's established work hours; and

- (2) compensatory time or overtime pay under Section 10-7 of these Regulations during the employee's non-work hours.
- (i) ***Confidentiality of documents and meetings associated with a grievance.***
 - (1) The following documents and other matters associated with a grievance are confidential:
 - (A) the grievance and grievance file;
 - (B) responses to the grievance;
 - (C) grievance meetings and other proceedings related to the grievance; and
 - (D) written reports and materials related to the investigation of a grievance.
 - (2) The department director, OHR Director, or CAO, as appropriate depending on the step of the grievance procedure, must ensure that only the following individuals are allowed to review the documents listed in (1) without the grievant's written authorization:
 - (A) the grievant;
 - (B) the grievant's representative; and
 - (C) individuals who are directly involved in responding to the grievance or resolving it.
 - (3) Only the following may attend a grievance meeting or other grievance proceeding without the consent of the grievant:
 - (A) the grievant;
 - (B) the grievant's representative;
 - (C) individuals designated by the CAO, OHR Director, or department director who are directly involved in responding to the grievance or resolving it;
 - (D) individuals designated by the CAO, OHR Director, department director, or County Attorney to represent individuals who are directly involved in responding to the grievance or resolving it; and
 - (E) witnesses.

- (4) The OHR Director must keep grievance files in OHR at least 2 years and then send them to the County Records Center for storage.
- (5) Despite the confidentiality requirements of this subsection, if the OHR Director finds that a grievance filed by a bargaining unit employee is covered by the employee's collective bargaining agreement, the OHR Director must notify the certified representative for the bargaining unit of the employee's name and the subject of the grievance.
- (j) ***Disclosure of facts.*** Each party to a grievance must provide timely full disclosure of facts known by or available to that party directly relating to the grievance, unless that information must not be disclosed under any other applicable law, regulation, or policy. The OHR Director must resolve disputes that arise under this subsection.
- (k) ***Limit on relief.***
 - (1) A grievant must not receive relief in a grievance from a date more than one year before the grievance was filed.
 - (2) If a grievance involves a continuing violation, the grievant is only entitled to relief going back 30 days before the grievance was filed.
 - (3) The above restrictions on relief are not intended to limit the remedial authority of the MSPB under Section 33-14(c) of the County Code.

34-4. *Reasons for filing a grievance.* An eligible employee, as described in Section 34-2, may file a grievance if the employee was adversely affected by an alleged:

- (a) violation, misinterpretation, or improper application of a law, rule, regulation, procedure, or policy;
- (b) improper or unfair act by a supervisor or other employee, which may include coercion, restraint, retaliation, harassment, or intimidation;
- (c) improper, inequitable, or unfair act in the administration of the merit system, which may include involuntary transfer, RIF, promotional action that was arbitrary and capricious or in violation of established procedures, or denial of an opportunity for training;
- (d) improper, inequitable, or unfair application of the compensation policy and employee benefits, which may include salary, a pay differential, overtime pay, leave, insurance, retirement, or a holiday;

- (e) improper disciplinary action, which includes a written reprimand, forfeiture of annual leave or compensatory time, within-grade salary reduction, suspension, demotion, and dismissal; or
- (f) involuntary resignation or improper or unfair termination.

34-5. Matters that may either be appealed directly to the MSPB or grieved under the grievance procedure. An employee with merit system status may choose to file either an appeal directly with the MSPB or a grievance under the County grievance procedure over a demotion, suspension, termination, dismissal, or involuntary resignation. If the employee chooses to file a grievance, the employee may appeal the final grievance decision by the CAO to the MSPB.

34-6. Matters that are not grievable.

- (a) The following matters are not grievable:
 - (1) a position classification;
 - (2) performance ratings, except in cases of failure to follow established procedures;
 - (3) termination of a probationary employee;
 - (4) the termination of a term employee at the end of the term of employment or the completion of the work the employee was hired to perform;
 - (5) resignation, but an involuntary or coerced resignation may be appealed under Section 34 or 35 of these Regulations;
 - (6) employee awards;
 - (7) a matter for which another County appeal process is available, except for a suspension, demotion, dismissal, or termination;
 - (8) a matter that has been clearly identified as not grievable by a statute, regulation, or MSPB decision; and
 - (9) employment discrimination or harassment in violation of Section 5 of these Regulations, unless the alleged violation is related to a disciplinary action, termination, or involuntary resignation.
- (b) An employee may appeal a decision that a matter is not grievable to the MSPB. An employee who wishes to appeal must file the appeal within 10 working days after the employee receives the OHR Director's decision.

34-7. Investigation of complaints of harassment or retaliation for filing a grievance.

- (a) An employee may file a complaint with the OHR Director if the employee was harassed or retaliated against by a supervisor or coworker for filing a grievance. The employee must include a written description of the harassment or retaliation.
- (b) The OHR Director must investigate the complaint and give the employee a written report of findings within 30 calendar days after the OHR Director receives the complaint.
- (c) The employee may file an appeal with the MSPB if the OHR Director denies the complaint. The employee must file the appeal within 10 working days after the employee receives the OHR Director's decision.

34-8. Alternative dispute resolution (ADR).

- (a) **Forms of ADR.** The forms of ADR that are described below are available to the parties to a grievance.
 - (1) **Mediation.** In mediation, a neutral party who has been trained as a mediator is designated by the OHR Director to help the parties resolve a workplace dispute.
 - (2) **Settlement conference.** At a settlement conference, the parties to a dispute present information and arguments to a 3-person committee consisting of representatives of management, the employee, and OHR. After listening to the parties' presentations, the committee makes a recommendation to the parties to resolve the dispute.
 - (3) **Peer resolution panel.** In this form of ADR, a panel of no more than 3 trained Montgomery County employees is chosen by the grievant and the OHR Director. The grievant picks the 1st panel member, the OHR Director picks the 2nd member, and both pick the 3rd. The panel members may use one or more of the following to develop a recommendation to resolve the grievance:
 - (A) interviewing witnesses and reviewing documents;
 - (B) deciding if a policy or practice was applied correctly, fairly, and consistently;
 - (C) hearing brief presentations by the parties to the grievance; and
 - (D) issuing a non-binding advisory decision sustaining the grievance, denying the grievance, or modifying the action that is the subject of the grievance.
- (b) **Ground rules for using ADR.**

- (1) In any form of ADR, each party to a dispute must voluntarily agree to participate. The OHR Director must determine if the County will participate.
- (2) A party to ADR must agree not to use information from or about the ADR process, a recommended resolution, or statements made during ADR discussions as evidence or argument:
 - (A) at another level of the grievance procedure;
 - (B) in a different forum for the same dispute; or
 - (C) in a different grievance or appeal.
- (3) The County must pay the costs associated with the ADR process, except for attorney's fees.
- (4) The parties to an ADR process must agree to maintain the confidentiality of the dispute and information relating to the dispute or the ADR process.
- (5) A grievant may use only one form of ADR.
- (6) Each party is limited to a 30-minute presentation before a settlement conference committee or peer resolution panel.
- (7) If a grievant elects to use an ADR process, the time limits in the grievance procedure are stayed until the ADR process is completed or the grievant chooses to end ADR.
- (8) A party to ADR may accept or reject a recommended resolution to the dispute.

34-9. Grievance procedure.

- (a) ***Time limit for filing a grievance.***
 - (1) A grievance may be dismissed by the OHR Director if it is not filed within 30 calendar days after:
 - (A) the date on which the employee knew or should have known of the occurrence or action on which the grievance is based; or
 - (B) the date on which the employee received notice, if notice of an action is specifically required by these Regulations.

- (2) If a grievant does not file the grievance at the next step of the grievance procedure within the time limits specified in the procedure, the OHR Director may consider the grievance resolved on the basis of the most recent response and may end the consideration of the grievance.
 - (3) If the supervisor, department director, or CAO, as appropriate, does not respond within the time limits specified, the employee may file the grievance at the next higher level.
 - (4) If an employee files an appeal with the MSPB under (3) before the CAO issues a written response to the grievance, the MSPB may choose not to process the appeal, return the appeal to the employee, and ask the CAO to respond to the grievance within a specific period of time.
 - (5) The parties to a grievance may agree to extend the time limits stated in the grievance procedure.
 - (6) The OHR Director may extend the time limits stated in the grievance procedure for compelling reasons. The OHR Director must give the parties prompt notice of an extension.
- (b) ***Technical and procedural review of grievances.***
- (1) An employee must submit a written grievance on the OHR-approved grievance form (Appendix Q) and must provide the information requested on the form.
 - (2) The OHR Director may return the grievance to the employee if the employee does not complete the grievance form or provide the information requested on the form.
 - (3) The staff of the Labor/Employee Relations Team is available to help employees complete the grievance form.
 - (4) As instructed by the grievance form, an employee should send a copy of the grievance to OHR's Labor/Employee Relations Team when the employee files the grievance at the first step of the grievance procedure.
 - (5) The OHR Director must review the grievance and decide if the grievance:
 - (A) presents an issue that is grievable under Section 34-4;
 - (B) was timely filed; and
 - (C) otherwise complies with this section.

- (6) The department that the grievance was filed against should not respond to the grievance if OHR advises the department that the issue is not grievable or the grievance is not timely filed.
 - (7) A department director may use Appendix R to respond to the grievance.
 - (8) The OHR Director or CAO may reconsider issues of timeliness or grievability at any stage of the grievance process.
- (c) ***Consolidated grievances.***
- (1) The OHR Director may consolidate 2 or more grievances and process them together to save time.
 - (2) OHR must give written notice to the employee or employees who filed the grievances that the grievances have been consolidated and will be processed together.
 - (3) If the employee gives written notice to the OHR Director that the employee objects to the consolidation of the employee's grievance with other grievances, the OHR Director must process the employee's grievance separately.
 - (4) If a consolidated grievance includes grievances from more than one department, the OHR Director may designate one department director to respond to the consolidated grievance at Step 2 of the grievance procedure.
 - (5) The department director or CAO, as appropriate, must ensure that:
 - (A) each employee who filed a grievance that was consolidated with other grievances receives a copy of the decision issued at that level; and
 - (B) each employee receives consistent and appropriate relief.
 - (6) Each employee may decide to accept the decision and the relief offered, if any, or may file the grievance at the next level if the relief requested by the employee was not granted.
- (d) ***Burden of proof.***
- (1) The County has the burden of proof in a grievance on:
 - (A) a recovery of an overpayment to an employee or recovery of an employee debt to the County under Section 10;

- (B) a delay of service increment under Section 12;
- (C) an involuntary or coerced resignation under Section 28;
- (D) a termination under Section 29;
- (E) a demotion or termination due to RIF under Section 30;
- (F) an involuntary demotion under Section 36; and
- (G) a disciplinary action under Section 33.

(2) The grievant has the burden of proof in a grievance on any other issue.

(e) ***Steps of the grievance procedure.*** The following table shows the 3 steps of the grievance procedure, the applicable time limits, and the responsibilities of the parties at each step.

STEPS OF THE GRIEVANCE PROCEDURE		
Step	Individual	Responsibility of individual*
1	Employee	Present job-related problem informally to immediate supervisor.
		If unable to resolve the problem, submit a written grievance on appropriate grievance form to immediate supervisor within 30 calendar days.
		If the grievance is based on an action taken or not taken by OHR, submit the written grievance to the OHR Director.
	Department Director	Give the employee a written response within 15 working days after the written grievance is received.
2	Employee	If not satisfied with the department director's response, may file the grievance with the CAO by submitting it to the Labor/Employee Relations Team of OHR within 10 calendar days after receiving the department's response.
	CAO's Designee	Must meet with the employee, employee's representative, and department director's designee within 30 calendar days to attempt to resolve the grievance.
	Employee and Dept. Director	Present information, arguments, and documents to the CAO's designee to support their positions
	CAO's Designee	If unable to resolve the grievance, must provide the CAO with a report that includes background information, issue, the position and arguments of each party, a summary of relevant facts, and a recommended disposition.
	CAO	Must give the employee and department a written decision within 45 calendar days after the Step 2 meeting.
3	Employee	If not satisfied with the CAO's response, may submit an appeal to the MSPB within 10 working days (10 calendar days for a uniformed fire/rescue employee) after the CAO's decision is received.
	MSPB	Must review the employee's appeal under Section 35 of these Regulations
* At each step of the grievance procedure, the parties to a grievance should consider ADR methods to resolve the dispute.		

- (f) ***Request for a transcript of the Step 2 meeting.***
- (1) An employee may request a verbatim transcript of the Step 2 meeting by submitting a written request for a transcript to the OHR Director at least 10 calendar days before the date of the Step 2 meeting.
 - (2) The employee must agree to pay ½ of the cost of obtaining the transcript.
 - (3) The OHR Director must give a copy of the transcript to each party to the grievance or each party's representative.
- (g) ***Step 2 meeting.***
- (1) If the OHR Director issues the decision on the grievance at the Step 1 level, the CAO must appoint a designee who is not a subordinate of the OHR Director to conduct the Step 2 meeting.
 - (2) An employee may file a grievance directly with the CAO (at Step 2) over an action taken by the County to recover a debt owed by the employee to the County.
 - (3) The Step 2 meeting is an informal discussion between the parties of the issues raised by the grievance. The meeting is not an administrative hearing or a trial and formal rules of evidence do not apply. The CAO's designee does not entertain motions. Although persons who speak at a grievance meeting in support of a party's position may be witnesses in a practical sense, they are not considered witnesses in the sense of participants in a formal proceeding such as a trial.
 - (4) At the Step 2 meeting, the grievant and the grievant's representative may present facts, documents, and arguments supporting the grievance. Other employees may speak at the meeting in support of the grievant's position.
 - (5) The department's representative may present facts, documents, and arguments responding to the grievance. Other employees may speak at the meeting in support of the department's position.
 - (6) After each speaker has presented information or argument, the representative of the other party and the CAO's designee may ask questions of the speaker. Formal cross-examination is not allowed.
 - (7) The representative of each party may review the documents presented to the CAO's designee by the other party.
 - (8) At the conclusion of the meeting, the representative of each party may summarize the party's arguments.

- (9) The CAO must give the parties to the grievance a written decision within 45 calendar days after the Step 2 meeting.

34-10. Appeal of a grievance decision.

- (a) An employee with merit system status may appeal a grievance decision issued by the CAO to the MSPB under Section 35 of these Regulations.
- (b) A probationary or temporary employee may not appeal a grievance decision by the CAO to the MSPB.
- (c) A written grievance decision must include information about:
 - (1) how the employee may appeal the decision to the next step of the grievance procedure or file an appeal with the MSPB, if applicable; and
 - (2) the time limits for appealing the grievance to the next step, or to the MSPB.

Editor’s note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to grievances
Firefighter/Rescuer	5, Management Rights 28, Transfers 30, Discipline 38, Contract Grievance Procedure 48, Job Sharing Program
OPT/SLT	2, Management Rights 4, Voluntary Checkoff of Union Fees and Deductions 6, Service Increments 10, Grievances 11, Arbitration 12, Probationary Period for Promoted Employees 22, Transfer 26, Termination 38, Non-discrimination
Police	3, Agency Shop and Dues Checkoff 8, Contract Grievance Procedure 28, Service Increments