

GRIEVANCE/OPEN DOOR REVIEW



FUNCTION CODE: 303

EFFECTIVE DATE: 12-08-98

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I. Purpose

This directive is issued to provide each employee with the official County procedures for handling complaints and grievances. This directive sets forth the County procedures as contained in Administrative Procedure 4-4, effective May 27, 1992. It is the policy of the department to adhere to this procedure. (CALEA 25.1.1)

NOTE: Throughout this directive, the words "Personnel Office" have been changed to the updated "Office of Human Resources." Additionally, words contained in brackets, [], are used for clarifying purposes.

II. Administrative Procedure #4-4

PURPOSE

- 1.0 To provide policies and procedures for the review and resolution of employee grievances.

DEFINITIONS

- 2.0 Bargaining Unit - A group of employees who have been determined under County law to share a community of interest and who may choose a bargaining agent to represent them for the purpose of collective bargaining.
- 2.1 Burden of Proof - As used in this procedure, the responsibility for offering evidence sufficient to persuade those who are charged with deciding or recommending a disposition that what is sought to be proven is more likely true than not true.
- 2.2 Certified Representative - An employee organization chosen by employees as their exclusive bargaining agent as defined in Sections 33-76 or 33-102 of the County Code.
- 2.3 Charging Party - The party to a grievance who has the burden of proof.

- 2.4 Chief Administrative Officer's Designee - For the purposes of this procedure, the staff of the Labor/Employee Relations Section of the Division of Labor/Employee Relations and Training, Office of Human Resources.
- 2.5 Consolidated Grievance - A grievance in which two or more employees file on the same subject and request the same relief or a grievance in which two or more complaints are filed by one employee on the same subject and the same or similar relief is requested.
- 2.6 Department Head - The designated administrative head of each department or principal office of the County Government.
- 2.7 Employee/Grievant
 - A. For the purposes of this procedure, any individual who is a merit system employee in the County Government at the time the grievance is filed.
- 2.8 Employee Representative - An individual selected by an employee to act on his/her behalf in attempting to resolve a grievance.
- 2.9 Formal Resolution - Efforts made to resolve the grievance after a written complaint is filed.
- 2.10 Grievance (CALEA 25.1.1.a) - A formal written complaint by an employee arising out of a disagreement between an employee and supervisor concerning a term or condition of employment in which the employee alleges that he/she has been adversely affected by an action or failure to act by a supervisor which is:
 - A. A misinterpretation, misapplication, or violation of any policy, procedure, regulation, law or practice which is sufficiently established to have precedential value;
 - B. A wrongful written reprimand, within-grade reduction, demotion, suspension, dismissal or termination; or
 - C. Arbitrary and capricious, i.e., without reason or merit.
- 2.11 Immediate Supervisor - The individual responsible for the assignment and evaluation of an employee's work.
- 2.12 Informal Resolution - Efforts made to resolve a grievance before the filing of a written complaint.

- 2.13 Merit System Employee - Any person who is employed by the County in a full-time or part-time year round position in any department or office of the executive and legislative branches of the County government or in any other position specifically so designated by law and who has satisfactorily completed the required probationary period.
- 2.14 Management - Any supervisor in the grievant's chain of command.
- 2.15 Private Communication - Any communication outside the official grievance record, either oral or written, from any person or organization which may be intended to influence, or is likely to influence, the decision on the merits of any matter where a determination is required to be made only on the basis of the official grievance record.
- 2.16 Responding Party - The party to a grievance who does not have the burden of proof.

POLICY

- 3.0 It is County policy to resolve grievances in an orderly and timely manner in an environment of impartiality and mutual respect, with the objective of resolving job-related problems in order to encourage excellence of work and improved level of service.
- 3.1 Employees and their supervisors are to make every effort to resolve differences informally. A provision is made for informal resolution in these procedures and it is expected that employees and supervisors will consider all available alternatives for resolution of problems at this level.
- 3.2 The grievance process is intended to secure, at the lowest possible level, a fair, prompt, and mutually satisfactory resolution of differences.
- 3.3 Grievances involving the interpretation or application of a collective bargaining agreement may not be filed under the County grievance procedure. (CALEA 25.1.1)
- 3.4 A merit system employee has the right of direct appeal to the Merit System Protection Board within 10 workdays of receipt of a notice of suspension, demotion, dismissal or termination, or may choose to file a grievance under Step III of this procedure (Section 6.4). (CALEA 25.1.1.b)

GENERAL

4.0 Limitations on Relief

Section 1-13(c) of the 1994 Personnel Regulations, as amended, states that, "Any remedies for actions instituted by an employee under the Personnel Regulations may not extend earlier than one year from the date of filing the action." Therefore, any relief granted under this procedure is limited to one year from the date a grievance is filed.

4.1 Burden of Proof

- A. The County is the charging party and has the burden of proof in any grievance on:
 - 1. A disciplinary action as defined in Section 28 of the Montgomery County Personnel Regulations (MCPR);
 - 2. A deduction of compensatory leave to repay a debt to the County (Section 9-11(e) of the MCPR), a deduction of compensatory leave for disciplinary reasons (Section 9-11(f) of the MCPR) or a deduction of annual leave (Section 12-4 of the MCPR);
 - 3. The delay of a service increment for substandard performance (Section 10-9 of the MCPR) or the reassignment of a service increment date for disciplinary reasons (Section 10-7 of the MCPR);
 - 4. Termination of an employee with merit system status (Section 25 of the MCPR); and
 - 5. Demotion or termination [of a merit system employee] due to reduction in force (Section 26 of the MCPR).
- B. In all other cases, including transfers and promotions, the employee has the burden of proof.

4.2 Consolidated Complaints

- A. Grievances may be consolidated by the Office of Human Resources when complaints are filed by two or more employees on the same subject and at similar time periods in order to expedite the review of such complaints. Grievances may also be consolidated when one employee files two or more complaints on the same subject and the same or similar relief is requested.
- B. If the grievance is designated by the Office of Human Resources as a consolidated grievance, the employee(s) who filed will be notified in writing. All employees who filed will have their complaint processed at the same time, unless an employee

can show unique circumstances which warrant separate processing. A request for separate processing must be made in writing to the Director, Office of Human Resources, whose decision on the matter is final.

- C. The Director, Office of Human Resources, or designee, upon notice that a consolidated grievance has been established involving employees from more than one department, may designate the head of one of these departments to decide the matter at the department head level of the grievance procedure.
- D. Upon resolution of the consolidated grievance at any level of the process, each employee who has filed will receive a copy of the decision and may accept the decision and relief, if any, or may elect to file at the next level if the requested relief has not been granted.
- E. Any relief granted as a result of a consolidated grievance must be applied in a consistent fashion to all individuals who filed and are party to the action at the time the decision to grant relief is made.

4.3 Confidentiality

- A. Grievances and grievance proceedings are regarded as confidential. All written materials developed in investigating a grievance are confidential and only subject to review by the employee and those individuals directly involved in resolving the grievance. Written authorization must otherwise be obtained from the employee for the release of any or all material. Grievance files will be retained in the Office of Human Resources for two years. [Grievance files will also be retained by the Office of Labor Relations within the Department of Police.] Such files will then be forwarded to the County Records Center for storage. (CALEA 25.1.2, 25.1.3)
- B. Notwithstanding the confidentiality requirements set forth above, if a bargaining unit employee files a complaint under this procedure, and the complaint is determined by the Office of Human Resources to be on a subject covered by a collective bargaining agreement and therefore not appropriate for review under this procedure, the certified representative will be notified in the event that the bargaining unit employee appeals the decision of the Office of Human Resources. Notification to the exclusive representative will be

limited to the employee's name and subject of the grievance.

4.4 Disclosure of Facts

Each person who is responsible for presenting or responding to a grievance, or who holds information pertinent to the resolution of the grievance, must provide full disclosure of evidence relating to the grievance, provided that such disclosure is not precluded by law, policy, or regulation.

4.5 Standing to File Grievances

- A. A grievance must be filed by an individual who is actually employed by the County government at the time of filing. If an employee files a grievance, but his/her employment is terminated before the administrative review process has been completed, the grievance will be processed in accordance with this procedure so long as any personal relief sought could be granted after termination of employment.
- B. A bargaining unit employee may not file a grievance under this procedure if the subject matter of the grievance is covered by a collective bargaining agreement.
- C. Law enforcement officers may not use the grievance procedure to appeal matters which are subject to the appellate process provided under the Law Enforcement Officers' Bill of Rights.
- D. Under Section 33-69(b) of the County Code, an employee organization which has been certified to represent State-County employees may file a grievance in its own right under this procedure.
- E. Probationary and Temporary employees may use the grievance procedure only to appeal a disciplinary action taken against them, a deduction of compensatory leave for disciplinary reasons, or a deduction of compensatory leave to repay a debt to the County. In accordance with Section 29-2 of the Montgomery County Personnel Regulations, final review is limited to the Chief Administrative Officer. (CALEA 25.1.1.a)
- F. State/County employees (incumbents of State of Maryland Merit System positions which are also classified under the County's Merit System) may

use the grievance procedure only to appeal matters relating to the County supplement.

4.6 Filing of Discrimination Complaints

- A. An employee who believes that he/she has been the subject of discrimination based on race, color, sex, religion, age, handicapping condition, sexual orientation, marital status, ancestry, or national origin may file a complaint with the Montgomery County Office of the Human Relations Commission (OHRC) in accordance with Section 4-2 of the Personnel Regulations. Such complaints must be filed directly with the HRC and are not considered grievable under the County Grievance Procedure.
- B. Information concerning formal discrimination complaints may be obtained from the OHRC, 164 Rollins Avenue, Rockville, MD., 20852-4038, or by phone at 468-4265 or 530-6436 (TDD).
- C. Employees are encouraged to seek informal resolution of discrimination complaints through the EEO Officer of the Office of Human Resources, 7th Floor, Executive Office Building, 217-2284.
- D. Complaints of discrimination based on political affiliation must be filed directly with the Merit System Protection Board.

4.7 Grievance Forms

All written grievances must be submitted on the approved form designed specifically for this purpose. The employee must provide all requested information in order for the grievance to be accepted. The Labor/Employee Relations Staff is available to assist employees in completing the form. (CALEA 25.1.1.c)

4.8 Freedom from Harassment/Retaliation

All employees must be assured freedom from restraint, interference, coercion, discrimination or reprisal and no employee is to suffer harassment or retaliation by management or co-workers as a result of exercising his/her rights under this procedure. An employee who feels that he or she suffered such harassment or retaliation should provide the Director, Office of Human Resources, with a written description of the events, facts, and the names of individuals involved in such harassments and/or retaliation. Such allegations will be promptly investigated and written findings issued to the employee within 20 calendar days after

the allegations are received. A decision of the Director, Office of Human Relations, on the allegations may be appealed to the Merit System Protection Board within ten work days after the employee receives the decision.

4.9 Representation (CALEA 25.1.1.e)

- A. Employees have the right to representation of their own choosing and at their own expense, at any level of review. However, Section 29-1 of the 1994 Personnel Regulations, as amended, states that a supervisor or other management official may not be represented by a labor organization which is certified under County collective bargaining laws to represent any employees who are under the supervision or control of the supervisor or management official.
- B. As the use of legal counsel is optional in conjunction with this procedure, the costs incurred in using such counsel are the responsibility of the employee.

4.10 Matters Which Are Not Grievable (CALEA 25.1.1.a)

The 1994 Personnel Regulations, as amended, cited below do not permit grievances on the following matters:

- A. Position classification decisions (Section 7-6 of the Personnel Regulations states that final decisions may be appealed to the Merit System Protection Board [only] if there is a violation of the procedures contained in Section 7-5);
- B. Performance ratings (Section 8-5 of the Personnel Regulations states that performance ratings are not grievable except in cases of failure to follow established procedures [and where the rating resulted in an overall evaluation of unsatisfactory performance]);
- C. Termination during probation of a probationary employee (Section 25-3 of the Personnel Regulations states that a merit system employee may appeal a termination [but limits appeal of a termination to merit system employees]);
- D. Resignation (Section 24 of the Personnel Regulations states that a forced [involuntary] or coerced resignation will be considered the same as a dismissal and may be appealed directly to the Merit System Protection Board); and

- E. Employee awards (Section 11-3 of the Personnel Regulations states that the decision of the Chief Administrative Officer on employee awards is final.)

4.11 Technical and Procedural Review of Grievances
(CALEA 25.1.1.a)

- A. When the employee files the grievance at the first step of the grievance procedure he/she should send a copy of the grievance to the Labor/Employee Relations staff in the Office of Human Resources (instructions are included on the standard form.)
- B. The Director, Office of Human Resources, or designee will decide whether the issue is grievable (i.e. not excluded from the scope of the grievance procedure), has been timely filed, and is otherwise in compliance with this procedure.
- C. The investigating department may withhold a written response if the Office of Human Resources advises that the issue is not grievable or the grievance is not timely filed.
- D. An employee may appeal a decision that a matter will not be handled as a grievance to the Merit System Protection Board. Appeals on technical or procedural determinations must be made within ten workdays after the decision is received by the employee.

4.12 Time Limits

If the employee fails to file his/her grievance at the next step of the grievance procedure within the time limits specified in the procedure, the grievance will be considered resolved on the basis of the most recent response and will be administratively closed. If management fails to respond within the time limits specified, the grievant may file at the next higher level. Failure to file at the next higher level within the time limits, without an agreement to extend the time limits, will result in the grievance being administratively closed. The time limits specified in this procedure may be extended by mutual agreement of the parties, or may be extended by the Director, Office of Human Resources, for compelling reasons. Time limits may otherwise be extended in accordance with Section 1-15 of the Montgomery County Personnel Regulations. (CALEA 25.1.1.b)

4.13 Use of Official Time In Preparing and Presenting a Grievance

- A. An employee is entitled to a reasonable amount of official time for the preparation of a grievance. In general, preparation time should not exceed four hours. All official time for this purpose must be requested by the employee and approved by his/her supervisor in advance. Requests for official time in excess of four hours must be accompanied by a written explanation of the reasons for the request and must be approved by the supervisor.
- B. An employee is entitled to official time for the presentation of the grievance at any step of the grievance procedure. Official time for this purpose is to be coordinated with the employee's supervisor in advance.
- C. An employee who is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) and who is required to appear as a witness will receive regular pay during established work hours, and shall receive regular pay or compensatory leave during non-work hours in accordance with the provisions of the Personnel Regulations. An employee who is covered by the overtime provisions of the Fair Labor Standards Act and who is required to appear as a witness must be paid in accordance with the Act.
- D. An employee who represents another employee in processing a grievance is entitled to official time when presenting the grievance. (CALEA 25.1.1.e)

RESPONSIBILITIES

5.0 County Employee

Make a conscientious effort to informally resolve matters which are of concern by bringing these concerns to the attention of supervisors.

5.1 Supervisor, Manager, and Department Head

Make a conscientious effort to resolve employee grievances at the lowest level, eliminate the cause of dissatisfaction when appropriate, and respond to the employee in a fair and impartial manner.

5.2 Labor and Employee Relations Staff, Office of Human Resources

- A. Provide advice and assistance to management officials and employees in the informal resolution of grievances.
- B. Provide advice and assistance to employees regarding laws, regulations, and procedures applicable to grievances.
- C. Advise managers on technical and substantive aspects of grievances.
- D. Conduct investigations of grievances for decision by the Chief Administrative Officer.

5.3 Chief Administrative Officer

Render decisions on grievances after consideration of reports of investigations conducted by the Labor and Employee Relations Staff of the Office of Human Resources.

PROCEDURES

Informal Resolution (CALEA 25.1.1.b, 25.1.1.d)

6.0 County Employee

If a job related problem exists, present it orally to immediate supervisor for the purpose of obtaining informal resolution of the problem. (CALEA 25.1.1.d)

If unable to informally resolve the problem and wish to file a grievance, submit the grievance on the appropriate form to the immediate supervisor. (This must be done within 20 calendar days from the date the employee knew, or should have known, that the problem existed.)

NOTE: If the grievance is based upon an Office of Human Resources action, the employee must submit the grievance directly to the Director, Office of Human Resources, who will furnish a step II response as the Department Head.

Formal Resolution (CALEA 25.1.1.d)

6.1 Step I - Immediate Supervisor

Provide the employee with a written response within 7 calendar days from receipt of the grievance.

If the employee is not satisfied with the written response, the employee may file the grievance with the department head within (5) calendar days of receipt of the response.

NOTE: If the requested relief is granted at any point in the procedure, the employee is not entitled to have the grievance considered at any subsequent level.

6.2 Step II - Department Head or Designee

Upon receipt of the employee's written grievance, arrange a meeting between the employee, employee representative, and appropriate supervisory personnel in an attempt to resolve the grievance. The department head must respond, in writing, to the employee within 15 calendar days from the date the written grievance is received.

6.3 County Employee

If not satisfied with the department head's response, file the grievance at Step III by submitting it to the Division of Labor/Employee Relations and Training of the Office of Human Resources within five 5 calendar days of receipt of the department head's response.

6.4 Step III - Chief Administrative Officer

Upon receipt of the employee's written grievance, the Chief Administrative Officer's designee will meet with the employee and the department within 15 calendar days in an attempt to resolve the matter. The employee and the department will have an opportunity to present and respond to the grievance and provide all supporting documentation, and may call witnesses as appropriate.

Prior to a final decision, and within 20 calendar days from when all information is received from the parties, the employee and the department will receive written findings of fact and be provided an opportunity to submit comments. Written comments must be submitted to the Labor and Employee Relations Staff within 10 calendar days from receipt of the findings.

The Chief Administrative Officer must provide the employee and the department with a decision in writing on the grievance within 15 calendar days after all information is received from the parties. The decision of the Chief Administrative Officer must include findings of fact, conclusions and a disposition of the grievance.

6.5 Step IV - Merit System Protection Board

If the employee is not satisfied with the Chief Administrative Officer's decision, he/she may appeal to the Merit System Protection Board within 10 work days after the Chief Administrative Officer's decision is received.

EFFECTIVE DATE

7.0 This procedure applies to all grievances filed on or after the effective date [of Administrative Procedure 4-4] and all those being processed in which a fact-finding has not been scheduled.

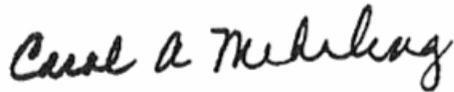
DEPARTMENTS AFFECTED

8.0 All County Departments

III. Proponent Unit: Office of Labor Relations

IV. Cancellation

This directive cancels Function Code 303, 05-21-97.



Carol A. Mehrling
Chief of Police