

Clark County Grievance Procedure
Presented at the September 20, 2011 County Board
Effective October 1, 2011

1.01 PURPOSE

This grievance procedure is established pursuant to Wis. Stat. § 66.0509(1m).

The Clark County Board of Supervisors declares that it is the policy of the organization to treat employees fairly and equitably and to provide employees with a fair means through which to seek local administrative redress for alleged violations, misinterpretations or inequitable applications of Clark County policies, rules and expectations of conduct relative to employee discipline, termination, or workplace safety. An employee has a right to use this Grievance Procedure without retaliation.

Clark County expects an employee and management to exercise reasonable efforts to resolve any questions, problems or misunderstandings prior to using the Grievance Procedure. An employee subject to a contractual grievance procedure shall follow the contractual procedure to the extent those procedures cover the matters covered by the Grievance Procedure. An employee subject to statutory (§59.26(8)(b)1 or Wis. Admin Code DHS Chapter 5 dispute resolution procedures shall be subject to those procedures to the extent those procedures cover the matters covered by the Grievance Procedure.

This grievance procedure may be modified or eliminated by the County at any time, with or without prior notice. This procedure is not a guarantee of employment, a guarantee of any rights or benefits, does not create or grant covered employees with a property interest in their employment or tenure rights of any kind and does not constitute a contract of employment, express or implied. *This grievance procedure may only be modified or eliminated by vote of the County Board. The designated County Committee retains the authority to propose changes to the County Board at their scheduled meetings with prior public notice given.*

1.02 DEFINITIONS

"Employee" for purposes of a grievance for Discipline and Termination (as defined in this procedure) means a "regular full-time" and "regular part-time" employee and who has completed twelve (12) continuous months of employment with the County. "Employee" does not include any of the following: *interns, project employees, temporary/casual/seasonal employees, contract employees, limited term employees, contractors or their respective employees, employees subject to a collective bargaining agreement addressing employee discipline, termination and workplace safety, statutorily appointed individuals identified specifically in statute as serving at the pleasure of an appointing authority, elected officials, and independent contractors or volunteers.*

"Employee" for purposes of Workplace Safety (as defined in this procedure) means a "regular full-time" and "regular part-time" employee of the County.

"Discipline" is defined as any of the following adverse employment actions: disciplinary suspension of employment, disciplinary reduction in base pay; and disciplinary reduction in rank or demotion. "Discipline" does not include any of the following actions: terminations, layoffs, or workforce reduction activities; non-disciplinary wage, benefit or salary adjustments or reductions; non-disciplinary reductions in rank or demotions; plans of correction or performance improvement; performance evaluations or reviews; documentation of employee acts or omissions in an employment file; oral or written reprimands; administrative suspensions pending investigation of misconduct or nonperformance; or change in assignment or assignment location, provided base pay is not reduced or action taken pursuant to an ordinance created under § 19.59(1m), or other non-material employment actions.

“Termination” means an involuntary separation from employment by the County for disciplinary or quality of performance reasons. “Termination” does not include layoff, furlough or reduction in workforce, job transfer, non-disciplinary demotion, reduction or position elimination based on failure to meet qualifications, resignation, abandonment, retirement, non-renewal of contract, death, separation as a result of disability, action taken pursuant to an ordinance created under §19.59(1m), or the end or completion of temporary employment, seasonal employment, contract employment, or assignment.

“Workplace Safety” shall mean any alleged violation of any standard established or adopted under Wisconsin Admin Code, Chapter Comm 32 or federal law or regulation relating to workplace safety. “Workplace safety” does not include conditions of employment unrelated to physical health and safety matters, including, but not limited to, hours, overtime, sick, family, or medical leave, work schedules, breaks, termination, vacation, performance reviews, and compensation.

1.03 GRIEVANCE PROCEDURE FOR DISCIPLINE AND TERMINATION.

A. Filing Procedure.

- 1 Who May File A Grievance For Discipline or Termination.** A grievance may only be filed by the “Employee” who is the subject of the Discipline or Termination.
- 2. Initiating A Grievance.** An Employee may initiate a grievance relating to Discipline or Termination by presenting a written grievance on the form attached to this policy as Appendix A, “Clark County Discipline/Termination Grievance Form. “
 - a. Written Grievance Submission:** The employee must file a written Grievance within ten (10) working days of the termination or employee discipline. The Grievance must be in writing and must be filed with the supervisor and with a copy to the Office of Personnel.
 - b. Amendments:** No amendments may be made to a grievance once it has been filed. *At the discretion of the Impartial Hearing Officer, additional information may be requested.*
 - c. Informal Resolution:** The supervisor and employee must informally attempt to resolve the dispute. *Informal resolution may include any documented format such as e-mails, memos or face-to-face meetings.* The supervisor shall notify the Office of Personnel of this meeting and the results of the meeting within 15 days of the date of the meeting, using form identified as Appendix A.
- 3. Extension of Time To File A Grievance; Impact of Untimely Filing.** The Office of Personnel may grant an Employee an extension of no more than five (5) working days to file a grievance provided the Office of Personnel receives a written request for an extension, on the form identified as Appendix B, “Request for Extension to File a Grievance”, of time to file the grievance from the Employee within the initial five (5) working day period and the Employee demonstrates extenuating circumstances exist which justify the extension. The decision of the Office of Personnel on any extension request is final, binding and non-appealable. Failure to timely file a grievance with the Office of Personnel within five (5) working days or any period of extension granted by the Office of Personnel shall constitute a waiver of the right to use the grievance procedure and an abandonment of the grievance.
- 4. Incomplete Grievance; Failure to Provide Complete Information.** If a timely filed grievance is incomplete, the Office of Personnel shall issue a written request to the Employee identifying the information needed to complete the grievance form and proceed with the grievance procedure. The Office of Personnel must issue the request for additional information within five (5) working days. If no written request is issued by the Office of Personnel within five (5)

working days, the grievance shall move forward under this procedure. Provision of additional information does not constitute the ability to amend the grievance.

5. **Grievance Verification.** By signing the grievance, the Employee is declaring under penalty of law that the statements contained in a grievance relating to Discipline or Termination are true and correct. Any employee who files a grievance that is false or misleading or for the purposes of intimidation, annoyance, or harassment or who otherwise files a grievance in bad faith is subject to disciplinary action.

B. County Answer and Hearing Request. Upon receipt of a complete grievance form, the Office of Personnel shall provide a written response to the Employee either granting or denying the grievance using the form identified as Appendix A. The Employee shall have five (5) working days following receipt of the County's denial of a grievance to file a written request for a hearing with the Office of Personnel. Failure of the Office of Personnel to receive a written request for hearing from the Employee within five (5) working days shall constitute a waiver of the employee's right to use the grievance procedure and an abandonment of the grievance.

C. Hearing Procedure

1. **Selection of Impartial Hearing Officer:** Following receipt of the appeal requesting a hearing before an Impartial Hearing Officer, the Office of Personnel shall provide a list of three names of persons available to serve as an Impartial Hearing Officer. The Office of Personnel and Grievant shall select a name from the list. If the parties can not mutually agree on an Impartial Hearing Officer from the list, then the parties shall strike names from the list with the Grievant striking the first name. The remaining name shall be selected and assigned as the Impartial Hearing Officer.
2. **Hearing Date.** Upon notification of his or her selection, the Impartial Hearing Officer shall schedule a hearing within a period of not less than twenty (20) working days nor greater than forty-five (45) working days. Within five (5) working days of the date of the appointment of the Impartial Hearing Officer, the Impartial Hearing Officer shall conduct a pre-hearing conference with the Employee and the Office of Personnel to select the date for the hearing. Once the hearing date is scheduled, it may be adjourned only upon written motion of the Employee or the County and a finding by the Impartial Hearing Officer that there is an "extenuating circumstance" for an adjournment. The decision of the Impartial Hearing Officer regarding a request for adjournment shall be final, binding and not subject to appeal.
 - a) **Conciliation:** Prior to the Hearing, the parties and Impartial Hearing Officer may engage in conciliation meetings to resolve the dispute. In cases involving allegations of workplace safety, the conciliation meeting shall be mandatory and shall occur not more than ten (10) calendar/working days after assignment to the Impartial Hearing Officer.
 - b) The Impartial Hearing Officer's involvement in any conciliation process shall not disqualify the Impartial Hearing Officer from hearing the merits of any Grievance unless all parties agree to replace the Impartial Hearing Officer.
3. **Discovery; grievance amendment; witnesses and documents; pre-hearing statement; no mediation.**
 - a) There shall be no pre-hearing discovery.
 - b) The Employee and the County shall exchange a list of witnesses, *utilizing Appendix A*, they intend to call at the hearing and any documents and exhibits they intend to introduce at the hearing no less than ten (10) working days before the hearing.
 - c) No amendments may be made to a grievance once it has been filed.

- d) The parties shall provide a copy of the witness list, documents, and exhibits to the Impartial Hearing Officer. No witness, exhibit or document which was not identified or exchanged by a party may be introduced absent a written finding by the Impartial Hearing Officer that there was excusable neglect for the failure of the party to identify a witness or document within the deadline for exchanging witnesses or documents.

4. Hearing.

- a) **Record of Proceedings.** The Impartial Hearing Officer shall conduct the proceedings and make a recording of the proceedings. Following the issuance of the decision, the record shall be provided to the County Clerk of Clark County for preservation.
- b) **Representation.**
 - 1. The Employee and the County may be represented by an attorney *or an individual* of their choice.
 - 2. Neither party shall be responsible for the attorney's or witness fees of the other.
 - 3. The representative shall not be a material witness to the dispute.
- c) **Order of Case; Cross Examination; Exclusion of Evidence.** The Employee shall call witnesses and present testimony and exhibits that are relevant to the grievance. The Employee may call one or more County witnesses in the Employee's case and question the County witnesses with leading questions. At the close of the Employee's case, the County shall call its witnesses and present testimony and exhibits that are relevant to the grievance. The County may call the Employee adversely during its case and question the employee with leading questions. The parties may cross-examine witnesses presented by the other party. Cross-examination shall be limited to ten (10) minutes per witness unless this time period is extended by the Impartial Hearing Officer.
- d) **Rules of Evidence.** The Impartial Hearing Officer is not bound by rules of evidence and may admit all evidence that the Impartial Hearing Officer determines is relevant and may exclude immaterial, irrelevant or unduly repetitious testimony or evidence. The Impartial Hearing Officer shall recognize the rules of privilege. The Impartial Hearing Officer may not base any finding or conclusion solely on hearsay evidence.
- e) **Right of Impartial Hearing Officer to Question.** During the hearing, the Impartial Hearing Officer may ask questions as he/she deems necessary.
- f) **Close of Record; no briefs.** After the Employee and the County have finished introducing evidence, the Impartial Hearing Officer shall close the record. The parties have no right to file briefs or position statements.

D. Burden Of Proof; Impartial Hearing Officer's Decision; Remedies

- 1. **Burden of Proof; Standard of Review.** Except in a grievance involving termination of an Employee that is subject to Wis. Admin. Code Chap. DHS 5, the Employee bears the burden of proof by clear, convincing and satisfactory evidence that the County's decision to Discipline/Terminate the Employee was arbitrary and capricious. If the Employee does not satisfy this burden of proof, the Impartial Hearing Officer shall deny the grievance.
- 2. **Decision.** The Impartial Hearing Officer shall issue a written decision within seven (7) working days of the close of evidence. The decision of the Impartial Hearing Officer shall, at minimum, contain a statement of issue(s), standard of review, findings and, if the grievance is sustained, a remedy for the Employee.
- 3. **Remedies. Written Response:** After receiving the evidence and closing the hearing, the Impartial Hearing Officer shall issue a written response. The Impartial Hearing Officer must answer the following question: Based on the preponderance of the evidence presented, has the Grievant proven the decision of the Administration was arbitrary or capricious? The recommendation shall contain findings of fact, analysis and a recommendation.

E. Costs of Impartial Hearing Officer. The Employee and the County shall equitably (50/50) share the costs of the Impartial Hearing Officer for any grievance filed by the Employee related to a suspension. The County shall pay all costs for the Impartial Hearing Officer associated with a termination.

1.04 GRIEVANCE PROCEDURE – WORKPLACE SAFETY

A. Preconditions to Filing.

- 1. Report of an Unsafe Condition.** It is the expectation that the Employee will make every effort to identify, inform and resolve Workplace Safety issues with their immediate supervisor prior to pursuing the matter via the grievance procedure. An employee may not file a grievance relating to a condition that the Employee believes constitutes a Workplace Safety violation unless the employee has first reported the condition to their Department Head, with a copy to the Maintenance Department and the Office of Personnel in writing on the attached form, Appendix C, "Unsafe Condition Or Hazard Report."
- 2. County Response.**
 - a. Upon verbal notification of an immediate threat related to a potential workplace safety issue, the supervisor is expected to take immediate action.*
 - b. Upon receiving notice of an alleged Workplace Safety violation from an Employee, the County shall have ten (10) working days in which to investigate the condition and advise the employee in writing that the County: (a) has determined that the condition does not constitute a Workplace Safety violation and will not be taking corrective action; or (b) is taking corrective action in accordance with law to address the condition. Such a response will be provided by using the form identified as Appendix C.
- 3. Grievance Filing Limitation.** If the County advises the employee in writing within ten (10) working days that it is taking corrective action in accordance with law and has commenced corrective action within this period, an Employee may not initiate a Workplace Safety grievance.

B. Filing Procedure.

- 1. Who May File A Workplace Safety Grievance.** A grievance may only be filed by an "Employee." The Employee need not be personally impacted by a condition alleged to constitute a Workplace Safety violation.
- 2. Initiating A Grievance.** An Employee may initiate a grievance relating to Workplace Safety by presenting a written grievance on the form attached to this policy as Appendix D, "Clark County Unsafe Condition Report and Workplace Safety Grievance Form" to the Office of Personnel within five (5) working days of:
 - a. the Employee's receipt of written notice from the County that the County will not be taking corrective action with respect to an alleged Workplace Safety violation;
 - b. the County's failure to begin corrective action within ten (10) working days of the Employee's report of the Workplace Safety violation referenced in section (1.04A) above;
 - c. the failure of the County to respond to a report of a Workplace Safety violation within ten (10) working days.
 - d. The Employee must sign and date the grievance. A grievance will not be considered filed until the Employee signs the grievance and the grievance is received by the Office of Personnel.
- 3. Extension of Time; Impact of Untimely Filing.** The Office of Personnel may, in his or her sole and absolute discretion, agree to extend the time for filing a grievance up to an additional five (5) working days based upon a written request for an extension received from the Employee prior to the expiration of the five (5) working day deadline to file the grievance. Any written request for an extension of time must explain the reasons why the Employee cannot meet the grievance filing deadline. Failure to timely file a grievance with the Office of Personnel shall constitute a waiver of the right to use the grievance procedure and an abandonment of the grievance.

4. **Incomplete Grievance; Impact of Failure to Provide Complete Information.** If a timely filed grievance is incomplete, the Office of Personnel shall issue a written request to the Employee identifying the information needed to complete the grievance form and proceed with the grievance procedure. The Office of Personnel must issue the request for additional information within five (5) working days. If no written request is issued by the Office of Personnel within five (5) working days, the grievance shall move forward under this procedure. In the event of a dispute regarding either timeliness or sufficiency of information, the dispute shall be referred to the Clark County Executive Committee to make a determination. The decision of the Executive Committee shall be final and binding.
5. **Grievance Verification.** By signing the grievance, the Employee is declaring under penalty of law that the statements contained in a grievance relating to Discipline or Termination are true and correct. Any employee who files a grievance that is false or misleading or for the purposes of intimidation, annoyance, or harassment or who otherwise files a grievance in bad faith is subject to disciplinary action.

C. **County Answer and Hearing Request.** Upon receipt of a complete grievance form, the Office of Personnel shall provide a written response to the Employee either granting or denying the grievance. The Employee shall have five (5) working days following receipt of the County's denial of a grievance to file a written request for a hearing with the Office of Personnel. Failure of the Office of Personnel to receive a written request for hearing from the Employee within five (5) working days shall constitute a waiver of the employee's right to use the grievance procedure and an abandonment of the grievance.

D. Hearing Procedure

1. **Selection of Impartial Hearing Officer:** The selection of an Impartial Hearing Officer and hearing on a Workplace Safety violation shall be conducted in accordance with the Hearing Procedure in section 1.03 (c) above.

E. Burden of Proof; Impartial Hearing Officer's Decision; Remedies

1. **Burden of Proof; Standard of Review.** The County bears the burden of proving by a preponderance of the evidence that the condition identified by the Employee does not constitute a Workplace Safety violation and that no corrective action is required. If the County does not meet its burden of proof, the Impartial Hearing Officer shall grant the grievance.
2. **Decision.** The Impartial Hearing Officer shall issue a written decision within seven (7) business days of the close of evidence. The decision of the Impartial Hearing Officer shall, at a minimum, contain a statement of:
 - a) the standard of review;
 - b) the particular provisions of Wis. Admin. Code Chap. Comm 32 that are implicated by the Workplace Safety grievance;
 - c) findings; and
 - d) if the grievance is sustained, an order of corrective action.
3. **Remedies.** If the grievance is sustained, the Impartial Hearing Officer may order the County take corrective action in accordance with law to address the Workplace Safety violation. The Impartial Hearing Officer shall have no authority to require the County to take any specific corrective action or provide any specific remedy in response to the Workplace Safety violation.

F. **Costs of Impartial Hearing Officer.** The County shall pay all costs for the Impartial Hearing Officer associated with a Workplace Safety grievance.

1.05 COUNTY BOARD APPEAL OF DISCIPLINE, TERMINATION AND WORKPLACE SAFETY MATTERS

- A. Who May File An Appeal.** An appeal of the Impartial Hearing Officer’s decision may be filed by the Employee or the County.
- B. Requesting An Appeal.** An appeal may be initiated to the County Board by filing an appeal with the Corporation Counsel on the form attached as Appendix D, “Request for Grievance Appeal to the County Board” within seven (7) working days of the date of the Impartial Hearing Officer’s decision. Failure to file a written appeal by the filing deadline will result in the waiver of the right to an appeal and the outcome of the proceedings before the hearing officer shall be final.
- C. County Board Appeal.** When the Corporation Counsel receives a timely request for appeal, the Corporation Counsel shall forward the appeal to the chair of the County Board along with a copy of the hearing record inclusive of any exhibits introduced at the grievance hearing. The Chair shall schedule a meeting of the County Board to review the hearing records and the Impartial Hearing Officer’s decision. The County Board shall not take testimony, accept additional evidence, accept briefing, accept oral argument or otherwise conduct a hearing of any sort in relation to an appeal.
- D. Standard of Review.** The Board shall not overturn or otherwise modify the Impartial Hearing Officer’s decision unless the decision of the Impartial Hearing Officer is found to be one of the following:
 - a. Arbitrary – Based on a notion, whim, or preference;
 - b. Oppressive – Cruelly overbearing; tyrannical; or
 - c. Unreasonable – Having or showing little sense or judgment; excessive, immoderate; or exorbitant.
- E. Decision.** The County Board shall deliver a written decision to the Employee and the County no later than seven (7) working days from the date of the County Board meeting. The written decision shall contain:
 - 1. A statement of the issues;
 - 2. findings, along with an explanation as to why the findings differ from the hearing examiner; and
 - 3. a remedy along with an explanation as to why any remedy differs from the remedy granted by the Impartial Hearing Officer.
- F. Remedies on Appeal; Discipline and Termination.** The County Board may award one or more of the following remedies to the Employee on appeal in a matter involving Discipline or Termination:
 - 1. Reinstatement;
 - 2. a lesser adverse employment action including without limitation, suspension of employment, reduction in suspension, reduction in base pay, reduction in rank, demotion, oral or written reprimand or performance improvement plan;
 - 3. documentation of employee acts and/or omissions in an employment file;
 - 4. back pay; and
 - 5. lost benefits.
- G. Remedies on Appeal; Workplace Safety.** If the County Board determines on appeal that a violation of Workplace Safety has occurred, the County Board may order that corrective action be taken by the County according to law.
- H. Final Decision.** The decision of the County Board shall be final. Any judicial review of the County Board’s decision shall be only as provided by law.

1.06 Statutes and Regulations Incorporated:

Wis. Stat. § 66.0509(1m) – Civil Service System; Veteran’s Preference

Wis. Stat. § 59.26(8)(b)1 – Sheriff; Undersheriff; Deputies

Wis. Admin Code DHS Chapter 5 – Personnel Administration in Local Human Services Agencies

Wis. Stat. § 19.59(1m) - Codes of ethics for local government officials, employees and candidates

Wis. Admin Code, Chapter Comm 32 – Public Employee Safety and Health

1.07 FORMS:

Appendix A: Clark County Discipline/Termination Grievance Form

Appendix B: Clark County Request for Extension To File a Grievance

Appendix C: Unsafe Condition or Hazard Report

Appendix D: Clark County Unsafe Condition Report and Workplace Safety Grievance Form
Appendix E: Clark County Request for Grievance Appeal to Clark County Board