

# Issue Analysis Form



**Date:** May 28, 2019  
**Item:** Personnel Policy Revisions  
**Lead Department(s):** Human Resources  
**Contact Person(s):** Corrie Hurt

## Description and Current Status

Staff has revised the personnel policy entitled Employee Grievance Procedures for the Board's consideration at the May 28, 2019 meeting.

Employee Grievance Procedures – The County Attorney's office has revised the policy entitled Employee Grievance Procedures to be in line with the State Code of Virginia. The policy was completely revamped to ensure that it minimally follows the State Code.

## Government Path

- |  |   |  |
|--|---|--|
| Does this require IDA action?                  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| Does this require BZA action?                  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| Does This require Planning Commission Action?  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| Does this require Board of Supervisors action? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| Does this require a public hearing?            | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| If so, before what date?                       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

## Fiscal Impact Statement

None.

## County Impact

By revising the grievance policy, it ensures that we are in line with the State Code of Virginia.

## Notes

Board of Supervisors  
County of Prince George, Virginia

Resolution

At a regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia this 28<sup>th</sup> day of May, 2019.

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Present:

Donald R. Hunter, Chairman  
Floyd M. Brown, Jr., Vice-Chairman  
Alan R. Carmichael  
Marlene J. Waymack  
T. J. Webb

Vote:

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On motion of \_\_\_\_\_, seconded by \_\_\_\_\_, which carried unanimously, the following Resolution was adopted:

RESOLUTION; PROPOSED REVISIONS; PRINCE GEORGE  
COUNTY PERSONNEL POLICY; SECTIONS 30.1  
THROUGH 30.8 ENTITLED *EMPLOYEE GRIEVANCE  
PROCEDURES*

WHEREAS the Prince George County Personnel Policy Manual has been reviewed by staff and it has been recommended that the revision to the policy entitled *Employee Grievance Procedures* be reviewed and considered for revision in the County's Personnel Policies;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Prince George, this 28<sup>th</sup> day of May, 2019 does hereby amend the Prince George County Personnel Policy by approving the revised policy entitled *Employee Grievance Procedures* as requested.

A Copy Teste:

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Percy C. Ashcraft  
County Administrator

<b>COUNTY OF PRINCE GEORGE PERSONNEL POLICIES</b>  Prince George, Virginia	<b>POLICY NUMBER:</b> 30.1 through 30.8	Page 1 of 13
	<b>SUPERSEDES:</b> 30.1 to 30.8 dated 09/28/11	<b>DATE ISSUED:</b> May 16, 2012
<b>SUBJECT:</b>  Employee Grievance Procedures	<b>AUTHORIZATION:</b> Adopted by the Board of Supervisors May 8, 2012; to become effective May 16, 2012	

### ~~30.1~~ **General Provisions**

~~The purpose of this policy is to afford an immediate and fair method for the resolution of disputes which may arise between an agency and its employees.~~

### ~~30.12~~ **Objective**

~~The Prince George grievance procedure establishes the process by which eligible employees can access a grievance procedure to resolve employment disputes.~~

~~All non-probationary regular full-time and regular part-time employees of the County may utilize the Grievance Procedure. Specifically excluded from such procedure are: part-time temporary employees; constitutional officers; county administrator; department directors; and, employees of the General District Court and Court Services Unit. Also excluded from the mandatory coverage of this procedure are law enforcement officers who have elected to proceed pursuant to Title 9.1, Chapter 5, sections §9.5 – 500 et seq. of the Code of Virginia, as amended, and Firefighter/EMT's who have elected to proceed pursuant to §9.1, Chapter 3, §9.1 – 300 et seq. in the resolution of their grievance.~~

### ~~30.23~~ **Definition of Grievance Coverage of Personnel**

~~All nonprobationary, permanent full-time and part-time employees are eligible to file grievances, as well as~~ volunteer members of a Prince George fire and/or EMS company identified in the Coordinated Fire and EMS system who are eligible to file grievances in accordance with § 42.1 *et seq.* of the Code of the County of Prince George, with the following exceptions:

- (1) Appointees of elected groups or employees of "constitutional" officers, unless agreed to by the constitutional officer;
- (2) Officials and employees who serve at the will or pleasure of an appointing authority;
- (3) Deputies to the County Administrator;

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<b>SUBJECT:</b> Employee Grievance Procedures	<b>POLICY NUMBER:</b> 30.1 through 30.8	<b>DATE ISSUED:</b> May 16, 2012	Page 2 of 13
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(4) Department heads;

(5) Employees whose terms of employment are limited by law;

(6) Temporary, limited term and seasonal employees;

(7) Law-enforcement officers, who have elected to proceed pursuant to Virginia Code § 9.1-500 *et seq.*, 1950 as amended.

~~A grievance shall be a complaint or dispute relative to an employee's employment involving (but not necessarily limited to):~~

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- ~~1. disciplinary actions, including dismissals, disciplinary demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;~~
- ~~2. concerns regarding the application of personnel policies, procedures, policies and regulations;~~
- ~~3. acts of retaliation for using the grievance procedure or of participation in the grievance of another county employee;~~
- ~~4. complaints of discrimination on the basis of race, color, creed, sex, age, political affiliation, disability, or national origin;~~
- ~~5. acts of retaliation because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, or has sought any change in the law before the Congress of the United States or the General Assembly, and~~
- ~~6. any other actions outlined in the County's Policy and Procedure Manual as a grievable matter.~~

~~Some complaints are not grievable under this procedure. They involve:~~

- ~~1. establishment and revision of wages or salaries, position classification or general benefits;~~
- ~~2. work activity accepted by the employee as a condition of employment, or work activity which may be reasonably expected to be a part of the job content;~~

<b>SUBJECT:</b> Employee Grievance Procedures	<b>POLICY NUMBER:</b> 30.1 through 30.8	<b>DATE ISSUED:</b> May 16, 2012	Page 3 of 13
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- ~~3. the contents of ordinances, statutes, or established personnel policies, procedures, policies and regulations;~~
- ~~4. failure to promote except where the employee can show established promotional policies or procedures were not followed or applied fairly;~~
- ~~5. the methods, means, and personnel by which such work activities are to be carried on;~~
- ~~6. except where such action effects an employee who has been reinstated within the previous six (6) months as the result of the final determination of a grievance, termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition;~~
- ~~7. the hiring, promotion, transfer, assignment and retention of employees within the local government; and~~
- ~~8. the relief of employees from duties of the County in emergencies. In any grievance brought under the exception to provisions (6) of this subsection, the action shall be upheld upon a showing by the local government that: (1) there was a valid business reason for the action, and (2) the employee was notified of the reason in writing prior to the effective date of the action.~~

### **30.34 Management RightsGrievable Matters**

A grievance is a complaint or dispute by an employee relating to:

- (1) disciplinary action (defined as written reprimand, reinstatement of probationary period, dismissal, disciplinary demotion, and suspension);
- (2) the discriminatory or unlawful application of personnel policies, procedures, rules and regulations;
- (3) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and
- (4) acts of retaliation as defined in Virginia Code § 15.2-1507(A)(1), 1950 as amended.

Under sState law, Prince George County retains the exclusive right to manage operations of County government and the delivery of services to residents. Accordingly, the following complaints or disputes are not grievable:

<b>SUBJECT:</b> Employee Grievance Procedures	<b>POLICY NUMBER:</b> 30.1 through 30.8	<b>DATE ISSUED:</b> May 16, 2012	Page 4 of 13
--	--	-------------------------------------	--------------

(1) establishment and revision of wages or salaries, position classifications or benefits;

(2) work activity related to a job description;

(3) the content of ordinances, statutes or personnel policies, procedures, rules and regulations;

(4) failure to promote;

(5) the methods, means and personnel by which work activities are to be carried out including oral or written counseling and directing of work activity;

(6) the termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition (except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance. In any grievance brought under this exception, the action shall be upheld upon a showing by the County that there was a valid reason for the action and the employee was notified of the reason in writing prior to the effective date of the action.);

(7) the hiring, transfer, assignment and retention of employees;

(8) the relief of employees from duties in emergencies; and

(9) mobilization of paid employees for emergency responses of any kind.

~~Nothing in this procedure is intended to circumscribe or modify the existing management right of the County to do the following:~~

- ~~1. direct the work of its employees as well as establish and revise wages, salaries, position classification and general employee benefits;~~
- ~~2. hire, promote, transfer, assign and retain employees within the agency;~~
- ~~3. maintain the efficiency of governmental operations;~~
- ~~4. relieve employees from duties of the agency in emergencies;~~
- ~~5. determine the methods, means, and personnel by which operations are to be carried on.~~

### **30.45 Grievability Determinations**

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<b>SUBJECT:</b> Employee Grievance Procedures	<b>POLICY NUMBER:</b> 30.1 through 30.8	<b>DATE ISSUED:</b> May 16, 2012	Page 5 of 13
--	--	-------------------------------------	--------------

Determinations regarding whether or not a matter is grievable shall be made by the County Administrator at the request of either the County or the grievant, upon submission of a Request for Determination of Grievability Form at any time prior to the grievance panel hearing. The County Administrator's determination shall be made within ten (10) calendar days after receipt of the Request for Determination of Grievability Form. The County Administrator will notify the grievant, the County Attorney, and the Director of Human Resources of the determination.

The determination of grievability may be made only after the grievance is reduced to writing, but before the day of the grievance panel hearing. However, once raised, the issue of grievability must be resolved before the grievance process may continue. If the issue is determined to be non-grievable, the grievance process is automatically concluded.

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The grievability determination of the County Administrator may be appealed by the grievant to the Prince George County Circuit Court for a hearing de novo. Proceedings for review of the grievability determination of the County Administrator shall be instituted by filing a notice of appeal with the County Administrator's office within ten (10) calendar days after the date of the County Administrator's decision and delivering a copy of the notice to the County Attorney and the Director of Human Resources. Within ten (10) calendar days, the County Administrator shall transmit to the Clerk of the Prince George County Circuit Court a record consisting of the following documents:

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- (1) A copy of the County Administrator's grievability determination
- (2) A copy of the notice of appeal
- (3) The exhibits

The failure of the County Administrator to transmit the record to the Clerk within the time allowed shall not prejudice the rights of the grievant. The Court, on motion of the grievant, may issue a writ of certiorari requiring the County Administrator to transmit the record on or before a certain date.

Within thirty (30) calendar days of receipt by the Clerk of the record, the Court, sitting without a jury, shall hear the appeal on the record transmitted by the County Administrator and such additional evidence as the Court may deem necessary to resolve any controversy as to the correctness of the record. The Court may affirm the determination of the County Administrator or may reverse or modify the determination. The decision of the court shall be rendered no later than the fifteenth (15th) calendar day from the date of the conclusion of the hearing. The decision of the Court is final and not appealable.

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~~Decisions regarding whether or not a matter is grievable, including the question of access to the procedure, shall be made by the County Administrator at the request of the County or grievant, and such decisions shall be made within ten (10) calendar days of such request. No county or~~

<b>SUBJECT:</b> Employee Grievance Procedures	<b>POLICY NUMBER:</b> 30.1 through 30.8	<b>DATE ISSUED:</b> May 16, 2012	Page 6 of 13
--	--	-------------------------------------	--------------

~~attorney for the Commonwealth shall be authorized to decide the issue of grievability. Such determination of grievability shall be made subsequent to the reduction of the grievance to writing but prior to the panel hearing.~~

~~Decisions of the County Administrator may be appealed by the grievant to the circuit court having jurisdiction in the locality in which the grievant is employed for a hearing de novo on the issue of grievability pursuant to Section 2.1-114, 5:1E. Proceedings for review of the decision of the County Administrator shall be instituted by filing a notice of appeal with the County Administrator within ten (10) calendar days after the date of the decision and giving a copy thereof to all other parties. Within ten (10) calendar days thereafter, the County Administrator shall transmit to the clerk of the court to which the appeal is taken a copy of the decision of the County Administrator, a copy of the notice of appeal, and the exhibits. The failure of the County Administrator to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the County Administrator to transmit the record on or before a certain date as provided in Section 2.1-114, 5:E, Code of Virginia, within thirty (30) days of receipt of such records by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the County Administrator and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court may affirm the decision of the County Administrator or may reverse or modify the decision. The decision of the court is final and not appealable.~~

~~The issue of grievability may occur at any step of the procedure prior to the panel hearing, but once raised, the issue must be resolved before further processing of the grievance. In any event, the issue of grievability must be resolved prior to the panel hearing or it shall be deemed to have been waived.~~

### **30.56 Policy Procedural Matters**

If a time period ends on a Saturday, Sunday or a County holiday, the time period will be extended to the next regular business/work day.

The only persons who may be present during Steps I through III are the grievant, the appropriate local government official at the level at which the grievance is being heard, and appropriate witnesses for each side during their testimony. Witnesses shall be present only while actually providing testimony. At Step IV, the grievant, at his option, may be represented by counsel. Likewise, the County may elect to be represented by counsel at Step IV.

For a grievance involving a volunteer, at Step II, the Chief and the Director shall both be present, unless the Chief is not able to be present. If the Chief is not able to be present, the reason shall be documented in writing. The failure



SUBJECT: Employee Grievance Procedures	POLICY NUMBER: 30.1 through 30.8	DATE ISSUED: May 16, 2012	Page 7 of 13
---	-------------------------------------	------------------------------	--------------

of the Chief to be present shall not constitute a procedural violation, nor shall it result in the grievant prevailing in the grievance.

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Once an employee reduces his/her grievance to writing, he/she must specify on the appropriate form the specific relief he/she expects to obtain through use of this procedure.

After the filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the grievance panel hearing, without just cause, shall result in a decision in favor of the other party on any grievable issue, provided that the party not in compliance fails to correct the noncompliance within five regular business/work days after receipt of written notice from the other party of the compliance violation. If written notice of a compliance violation is provided by the grievant, the notice shall be provided to the County Administrator with a copy to the Director of Human Resources and the County Attorney. Failure to assert a substantial procedural violation prior to the day of the grievance panel hearing, shall constitute an express waiver as to any procedural violation.

The County Administrator, or his designee, may require a written explanation and documentation of the basis for "just cause" extensions or exceptions. The County Administrator, or his designee, shall determine all compliance issues. Compliance determinations made by the County Administrator shall be subject to judicial review by the filing of a petition with the Circuit Court within 30 calendar days of the date of the compliance determination.

Timeframes may be extended by mutual agreement of the County and the grievant and shall be documented in writing.

~~All stages of the grievance beyond the first step shall be in writing on forms supplied by the County Administrator's Office. At the final management step, the grievant may be represented by legal counsel or other persons as provided in this procedure at the expense of the grievant. However, the purpose of the management steps is to hear from the grievant and witnesses as to why his/her grievance has merit and not to hear arguments of counsel.~~

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~~Once an employee reduces his/her grievance to writing, he/she must specify on the appropriate form the specific relief he/she expects to obtain through use of this procedure.~~

~~After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause will result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five (5) work days.~~

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SUBJECT: Employee Grievance Procedures	POLICY NUMBER: 30.1 through 30.8	DATE ISSUED: May 16, 2012	Page 8 of 13
---	-------------------------------------	------------------------------	--------------

~~In counting work days, days of vacation and holidays are excluded. All time periods listed in this procedure may be extended by mutual agreement by the parties to the agreement.~~

### 30.67 Procedure

#### Step I:

Within twenty (20) regular business/work days after the occurrence of or condition giving rise to the grievance, the employee shall explain the basis of the grievance affected ~~shall identify the grievance~~ verbally to the employee's immediate supervisor. Within two (2) regular business/work days of ~~such presentation~~ this conversation, the supervisor shall give his/her response to the employee with respect to the grievance, or shall advise the employee that additional time for such decision is needed, in which case a decision must be given the employee within an additional three (3) regular business/work days thereafter.

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If the supervisor is the same person for Steps I and II, these steps may be combined by mutual agreement of the grievant and the county, in writing and signed by both the grievant and the supervisor.

#### Step II:

If the grievance is not resolved to the satisfaction of the employee at Step I, the grievant may file a written grievance using Grievance Form A with his/her immediate supervisor not more than five (5) regular business/work days following completion of Step I. A copy of the written grievance is given to the Department Director by the grievant. This form reflects the employee's explanation of what has occurred. If additional information is necessary, addenda sheet may be attached to Form A.

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The employee's immediate supervisor and the Department Director will then meet with the grievant within two (2) regular business/work days of receipt of ~~the written statement~~ Form A. A written reply by the Department Director is made to the grievant within three (3) regular business/work days of this meeting on Form A.

#### Step III:

If the grievance is not resolved to the satisfaction of the employee at Step II, the grievant may file a written grievance not more than five (5) regular business/work days following completion of Step II with the County Administrator. A copy of the written grievance is given to the County Administrator by the grievant using Form BA. The employee's Department Director and the County Administrator will then meet with the grievant within two (2) regular business/work days of receipt of the written statement.

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SUBJECT: Employee Grievance Procedures	POLICY NUMBER: 30.1 through 30.8	DATE ISSUED: May 16, 2012	Page 9 of 13
---	-------------------------------------	------------------------------	--------------

The County Administrator shall conduct the hearing in a way that emphasizes determining the facts leading to the disciplinary action.

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The grievant's immediate Supervisor may also attend if the County Administrator determines that his/her testimony is necessary to fully understand the matter. A written reply by the County Administrator is made to the grievant within three (3) regular business/work days of this meeting on Form B.

**Step IV:**

If the response of the County Administrator ~~or the constitutional officer~~ does not resolve the grievance, the grievant may proceed with the grievance by requesting a panel hearing. This request is made in writing on Form CB to the County Administrator within five (5) regular business/work days of the grievant's receipt of a response from Step III. ~~A copy of the written statement is given to panel members by the County Administrator.~~

The grievance panel selects its chairman and ~~it~~ sets the time for the hearing which shall be held as soon as practicable, but no more than ten (10) regular business/work days following receipt of letter requesting a grievance panel hearing, ~~unless mutually agreed to in writing by the grievant and the County.~~ The grievance panel hearing shall be ~~conducted~~ ~~conduct of the panel hearing~~ is as follows:

(1) The County shall provide the grievance panel with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the grievance panel. The grievant and his attorney, at least 10 regular business/work days prior to the scheduled hearing, shall be allowed access to, and copies of, all relevant files intended to be used in the grievance proceeding.

(2) All documents, exhibits and lists of witnesses must be exchanged between the parties in advance of the hearing, except for demonstrative exhibits. In addition, those witnesses, documents or exhibits that are used in rebuttal are not required to be exchanged between the parties prior to the hearing.

(3) At the written request of either party, the hearing shall be private. At the hearing, only the grievant and his or her attorney(s) may be present throughout the hearing as well as the appropriate County representative and the attorney(s) for the County.

(4) At the beginning of the hearing, the chairperson shall explain the grievance panel's procedures for hearing the case. Then, each side may make a brief opening statement. The County shall present its

SUBJECT: Employee Grievance Procedures	POLICY NUMBER: 30.1 through 30.8	DATE ISSUED: May 16, 2012	Page 10 of 13
---	-------------------------------------	------------------------------	---------------

evidence first, followed by the grievant's evidence. The County shall be permitted to present rebuttal evidence. The purpose of the hearing is for the grievance panel to hear and consider relevant evidence. For that reason, there shall be no closing argument.

(5) All evidence must be presented at the hearing in the presence of the grievance panel and the parties.

(6) The majority decision of the grievance panel, acting within the scope of its authority, shall be final, subject to existing policies, procedures and law; the grievance panel does not have authority to formulate policies or procedures or to alter existing policies or procedures.

(7) The grievance panel's written decision shall be provided within three regular business/work days to all parties and shall include a summary or brief explanation. The written decision is not required to contain any findings of fact or explanation of the decision.

(8) The rules of evidence do not apply. Grievance panel hearings are not required to be tape recorded. Failure to make a timely objection to any evidentiary issue shall constitute a waiver.

(9) Exhibits, when offered, may be received in evidence by the grievance panel, and when so received, shall be marked and made part of the record; demonstrative exhibits shall be permitted.

(10) The parties may offer evidence and must produce such additional evidence as the grievance panel may deem necessary to arrive at an understanding and determination of the dispute. The grievance panel is the sole judge of relevancy and materiality of the evidence offered.

(11) The decision of the grievance panel shall be final and binding and shall be consistent with provisions of law and written policy. When the grievance involves a volunteer, the grievance panel may provide the grievant with retroactive volunteer credit for any time that the grievant was suspended from duty. There shall be no appeal of the decision of the grievance panel.

(12) The question of whether the relief granted by a grievance panel is consistent with written policy shall be determined by the County Administrator, or his designee, unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Commonwealth's Attorney.

1. The panel determines the propriety of attendants at the hearing of persons not having a direct interest in the hearing;

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- ~~2. The panel may at the beginning of the hearing ask for statements clarifying the issues involved;~~
- ~~3. Exhibits, when offered, may be received in evidence by the panel, and when so received, marked and made part of the record;~~
- ~~4. The grievant and supervisor, or their representatives, then present their claim and proofs and witnesses who submit to questions or other examination. The panel may, at its discretion, vary this procedure but must afford full and equal opportunity to all parties and witnesses for presentation of any materials or relevant proofs.~~
- ~~5. The parties may offer evidence and must produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel is the judge of relevancy and materiality of the evidence offered. All evidence must be taken in the presence of the panel and of the parties.~~
- ~~6. The majority decision of the panel is final in all its determination and shall be consistent with the provision of law and written policies.~~
- ~~7. The question of whether the relief granted by a panel is consistent with written policy shall be determined by the chief administrative officer or his/her designee unless such person has a direct involvement with the grievance, in which case the decision shall be made by the attorney for the Commonwealth of the jurisdiction in which the grievance is pending. Refer to S2.1-114, 5:1.D.4d of the Code of Virginia.~~
- ~~8. Either party may petition the court for an order requiring the implementation of the decision of the panel.~~

Implementation of final decisions:

Either party may petition the Prince George Circuit Court for an order requiring implementation of the grievance panel decision.

A final grievance panel decision which would result in the reinstatement of any employee of the Sheriff's Office who has been terminated, may be reviewed by the Prince George Circuit Court upon the petition of the County. The review of the Circuit Court shall be limited to the question of whether the decision of the grievance panel was consistent with provisions of law and written policy. The panel chairman must specifically inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies, the chairman declares the hearing closed.

SUBJECT: Employee Grievance Procedures	POLICY NUMBER: 30.1 through 30.8	DATE ISSUED: May 16, 2012	Page 12 of 13
---	-------------------------------------	------------------------------	---------------

~~The hearings may be reopened by the panel on its own motion or upon application of a party for good cause shown at any time before the award is made. Panels do not have the authority to formulate or to change policies or procedures; however, they may consider mitigating circumstances and modify County action concerning discipline. Panels do not have the authority to consider matters which the grievance procedure makes nongrievable. A panel by majority vote may uphold or reverse the action of the County, or in appropriate circumstances, may choose a modified remedy.~~

~~The decision is filed in writing by the panel chairman with the County Administrator not later than fifteen (15) work days after completion of the hearing. Copies of the decision are transmitted to the employee and to the employee's supervisor by the County Administrator.~~

**30.8 30.7 Grievance Panel; Members Appointed; Term; Compensation**

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The grievance panel is composed of three (3) members, each of whom is appointed by and serves at the pleasure of the Board of Supervisors for a three (3) year term. The terms of the grievance panel members are staggered with one member being appointed each year, ~~except for the initial appointments which are for terms of one, two and three years respectively.~~ Members are eligible to serve more than one term. ~~Such~~ The grievance panel shall not be composed of any persons having direct involvement with the grievance being heard by the grievance panel, or with the complaint or dispute giving rise to the grievance. ~~Managers-Supervisors~~ who are in a direct line of supervision of a grievant, and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as grievance panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of such an attorney shall serve as a grievance panel member.

~~In making appointments to the panel, consideration should be given to the appointment of persons who are familiar with labor management relations. The Board of Supervisors makes an effort to appoint to the panel one member from each of the following areas:~~

- ~~1. management of private business;~~
- ~~2. employee ranks of private business; and~~
- ~~3. a person with knowledge of and experience in mediation and conciliation of employee disputes.~~

**30.8 Pending**

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<b>SUBJECT:</b> Employee Grievance Procedures	<b>POLICY NUMBER:</b> 30.1 through 30.8	<b>DATE ISSUED:</b> May 16, 2012	Page 13 of 13
--	--	-------------------------------------	---------------

Amendments to the grievance procedure that have not been certified in accordance with State law at the time of initiation of a grievance shall not be effective for that grievance. However, all preexisting procedures of the grievance procedure shall control the process used for that grievance.

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This amended grievance procedure has been certified by the County Attorney and the County Administrator as required by Va. Code § 16.2-1507(A), and the certification has been filed with the Clerk for the Circuit Court of Prince George County on \_\_\_\_\_.

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