

<p>COUNTY OF PRINCE GEORGE PERSONNEL POLICIES</p> <p>Prince George, Virginia</p>	<p>POLICY NUMBER: 30.1 through 30.8</p>	<p>Page 1 of 8</p>
<p>SUBJECT:</p>	<p>SUPERSEDES: May 28, 2019 <u>November 23, 2021</u></p>	<p>DATE ISSUED: November 23, 2021</p>
<p>Employee Grievance Procedures</p>	<p>AUTHORIZATION: Adopted by the Board of Supervisors November 23, 2021; to become effective <u>November 23, 2021</u></p>	

30.1 Objective

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

30.2 Coverage of Personnel

All nonprobationary, permanent full-time and permanent 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;
- (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.

30.3 Grievable Matters

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

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- (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, age, disability, genetic information, national origin, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions including lactation, military status; and
- (4) acts of retaliation as defined in Virginia Code § 15.2-1507(A)(1), 1950 as amended.

Under state 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:

- (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

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

30.4 Grievability Determinations

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.

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:

- (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

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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.

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

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.

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30.6 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 verbally to the employee's immediate supervisor. Within two (2) regular business/work days of 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.

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 may be attached to Form A.

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 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 B. 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.

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 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 C to the County Administrator within five (5) regular business/work days of the grievant's receipt of a response from Step III.

The grievance panel selects its chairman and 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 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 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.

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(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.

(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.

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

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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.

30.7 Grievance Panel; Members Appointed; Term

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. Members are eligible to serve more than one term. 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. 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.

30.8 Pending

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.

This amended grievance procedure has been certified by the County Attorney and the County Administrator as required by Va. Code § 15.2-1507(A), and the certification has been filed with the Clerk for the Circuit Court of Prince George County on _____.