



FINANCIAL MANAGEMENT DEPARTMENT

501 Ouachita Avenue, Suite B4

Hot Springs, Arkansas 71901

MEMO

TO: Garland County Human Resources Committee

FROM: Valerie Dodge, Human Resources Director

RE: Special Meeting-Grievance Hearing

Date of Notice: July 21, 2017

A special meeting has been scheduled for **Monday, July 31, 2017 at 5:30 pm** in the County Courtroom for the purpose of holding a Grievance Hearing. A copy of the current Garland County Employee Handbook-Grievance Hearing Procedure is enclosed for your review.

A copy of the Grievance Request is also enclosed for your review, along with an agenda for the meeting.

SUSAN ASHMORE, CPA
Comptroller
501.651.7063
sashmore@garlandcounty.org

LANIE MARTIN
Finance Director
501.651.7773
ldmartin@garlandcounty.org

GAYLENE TANKERSLEY
Accounts Payable
501.622.3619
gtankersley@garlandcounty.org

VALERIE DODGE
Human Resources Director
501.651.7766
valerie@garlandcounty.org

MELISSA HORTON
Payroll Administrator
501.622.3615
mhorton@garlandcounty.org

GRIEVANCE HEARING PROCEDURE

CAVEAT: The purpose of this Grievance Hearing Procedure is to establish a required procedure to resolve applicant and employee grievances, and to thereby enable the county to voluntarily conform the conduct of county officials and county employees to the requirements of county policy. If the applicant or employee does not follow this affirmatively required county grievance hearing procedure, the county will raise waiver and estoppel as affirmative defenses to any claims against the county filed by the applicant via any administrative or judicial procedures otherwise available for redress of grievances.

A. AVAILABILITY OF PROPERTY RIGHT HEARINGS:

1. At-will employment may be terminated by either the County or the employee at any time without prior notice, without cause, and without any property right hearing.
2. Any claim that any employee has a constitutionally protected property right in employment, entitling the employee to continued employment until "just cause" for discipline or dismissal is proved by the County at a pre-deprivation hearing, must be timely asserted in writing by the affected employee in accordance with this Grievance Hearing Procedure, or the property right claim will be waived by the employee.

B. AVAILABILITY OF LIBERTY RIGHT HEARINGS:

1. Any claim of illegal county employment discrimination on the basis of race, color, religion, gender, sex, age, national origin, or disability or because the county is acting in a manner that is arbitrary, capricious, or unreasonable, in hiring, compensation, conditions of employment, discipline, or dismissal must be timely made in writing by the affected applicant or employee in accordance with this grievance hearing procedure.
2. Any claim that any employee treatment, discipline, or dismissal is unconstitutional punishment due to the employee's exercise of a constitutionally protected "liberty right" or other constitutionally protected activity of the employee must be timely made in writing by the affected employee in accordance with this grievance hearing procedure.
3. Any claim that any employee treatment, discipline, or dismissal is contrary to the public policy of Arkansas must be timely made in writing by the affected employee in accordance with this grievance hearing procedure.

C. AVAILABILITY OF NAME CLEARING HEARINGS:

1. Any claim that any employee's liberty interest in future employment has been damaged as a result of any "stigmatizing charge" publicly communicated by the county must be timely asserted by the affected employee in accordance with this grievance hearing procedure.

D. AVAILABILITY OF HEARINGS GENERALLY:

1. A grievance hearing requested by an applicant or employee is not required to be held unless it is timely requested in the manner required by this Employee Grievance Hearing Procedure and required by the constitution or by this policy.
2. Neither liberty rights nor property rights are created by this document.
3. The county may, in its discretion, hold a hearing prior to any decision or deprivation.

E. TIMELY REQUESTS FOR GRIEVANCE HEARINGS:

1. It is the applicant's or employee's duty to request a grievance hearing.
2. The applicant or employee must timely file a written grievance hearing request after any claimed deprivation of the applicant's liberty or employee's liberty or property, or any right to a hearing or to object to the deprivation shall be waived.
3. The grievance hearing request should state, in writing:
 - (a) the grievance for which a hearing is requested;
 - (b) the factual basis of the grievance; and
 - (c) the relief sought.
4. The written grievance hearing request shall be delivered to the County Grievance Committee in care of the County Judge no later than four-thirty o'clock (4:30) p.m. on the third full business day (weekends and holidays excluded) after any claimed deprivation for which a grievance hearing is requested.
5. Any dismissal decision shall automatically be a suspension with pay for three full business days (weekends and holidays excluded) during which time the employee subject to dismissal may request a pre-deprivation hearing, in which case the suspension with pay shall continue until the conclusion of the County Grievance Committee hearing. (In no event shall a suspension with pay status extend more than 14 days, unless the suspension with pay status is extended by decision of the County Grievance Committee. All accrued but unpaid leave time – e.g., vacation, comp. time, etc. – will automatically run concurrent with the period of suspension with pay unless the employee prevails in his or her grievance. Any discipline decision that will result in reduction or removal of pay or position shall automatically be deferred for three full business days (weekends and holidays excluded) during which time the employee subject to discipline may request a pre-deprivation hearing, in which case the deferral shall continue until the conclusion of the County Grievance Committee hearing.
6. The Grievance Committee shall respond in writing to all timely submitted Grievance Hearing Requests stating:

- (a) the time and place of the hearing, if the hearing request is granted, and
- (b) the reason for denial, if the hearing request is denied.

F. HEARING PROCEDURES:

1. **NOTICE:** After an employee requests a grievance hearing, the employee shall be notified of the date, time, and place of the hearing.
2. **SUSPENSION WITH PAY:** If it is determined that the grieving employee should continue to work until the hearing is concluded, the employee may be requested to perform duties for the benefit of the county with pay pending the outcome of the hearing.
3. **HEARING RECORD:** The hearing shall be reported by a court reporter (**not merely a tape recorder**) for transcription upon request by either party at the expense of the requesting party.
4. **PROCEDURAL ISSUES:** At the hearing, on the record, the parties shall suggest any desired hearing procedures and state any complaints regarding: a) the notice; b) the date, time, or place of the hearing; c) the opportunity to refute fairly the charges; and d) the impartiality of the decision maker(s).
5. **RULES OF PROCEDURE AND EVIDENCE:** Informal rules of procedure and evidence (Ark. Code Ann. 25-15-208) shall be followed:
 - (a) witnesses shall testify under oath;
 - (b) parties shall be allowed, at their own expense, to obtain and use legal counsel for representation;
 - (c) parties shall be allowed to obtain and use the presence of witnesses for examination, cross-examination, and rebuttal; and
 - (d) parties should be granted a reasonable continuance if requested prior to the hearing in writing and if reasonably necessary for stated reasons to prepare adequately for the hearing.
6. **PUBLICATION:** The County Grievance Committee shall hear the evidence offered by the parties, hear any argument desired by the parties, and vote without public discussion or deliberation. Only the decision and not the factual or legal reasons therefore, shall be announced publicly. The hearing shall be held in public if so required by the F.O.I.A.; however, the employee may, at any time, decline the hearing and accept the intended discipline or dismissal.
7. **CONFIRM IN WRITING:** After the hearing, the grieving applicant or employee shall be sent a letter stating the factual and legal basis found by the County Grievance Committee for any refusal or removal of pay or position.

G. HEARING ISSUES AND BURDENS OF PROOF:

1. Property Interest Hearings

- (a) Since this county employment policy affirmatively creates at-will employment, the employee has the burden of proving by a preponderance of the evidence that he or she has a property interest in his or her employment.
- (b) Where the employee meets his or her burden of proof, the supervisory official has the burden of proving "just cause" for the supervisory official's intended discipline or dismissal of the employee.

2. Liberty Interest Hearings

(a) Claim of Arbitrary Discrimination (Unequal Treatment)

1. The grieving employee has the burden of proving by a preponderance of the evidence that he or she is being treated differently than another person otherwise similarly situated with the employee.
2. Where the employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the reason for the difference in treatment is rationally related to the effectuation of a legitimate county objective.

(b) Claim of Unconstitutional Punishment

1. The employee has the burden of proving by a preponderance of the evidence that he or she has engaged in constitutionally protected conduct that was a substantial or motivating factor in any adverse employment decision, discipline, or dismissal.
2. Where the employee meets his or her burden of proof, the supervisory official has the burden of proving that the adverse employment decision, discipline, or dismissal would have occurred even in the absence of the constitutionally protected conduct.

(c) Claim of discrimination due to race, color, religion, gender, sex, age, or national origin

1. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she is being treated or effected differently than another person who, other than for race, color, religion, gender, sex, age, or national origin, is similarly situated with the applicant or the employee.
2. Where the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the proven inequality of treatment or effect is necessary to effectuate a compelling county objective.

(d) Claim of Discrimination Due to a Disability

1. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she is a qualified individual with a disability who, because of the disability, is being treated or effected differently than another person in regard to job

- (2) Job restructuring;
 - (3) Flexible or modified work schedules;
 - (4) Reassignments to other positions; and
 - (5) The acquisition or modifications of equipment or devices.
- (e) **“Undue hardship”**: an action requiring “significant difficulty or expense,” considering:
- (1) The overall size of the county with respect to the number of employees, number and type of facilities, and size of the budget;
 - (2) The type of operation maintained by the county including the composition and structure of the work force of that entity; and
 - (3) The nature and cost of the accommodation needed.
- (f) **“Qualified individual with a disability”**: an individual with a disability who, with or without reasonable accommodation, can perform the “essential functions: of the employment position held or desired.
- (g) **“Essential functions”**: job tasks that are fundamental but not marginal (not every job task is to be included in determining the essential functions).

(e) Claim of a Completely Arbitrary Decision

1. The grieving employee has the burden of proving by a preponderance of the evidence that the action taken against him or her is not rationally related to the effectuation of any conceivable legitimate governmental objective of the county.
2. Where the employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the action taken against the grieving employee is rationally related to the effectuation of a conceivable legitimate governmental objective of the county.

3. Name Clearing Hearings

- (a) The grieving applicant or employee has the burden of alleging that a “stigmatizing charge” has been publicly communicated by the county or a county official or county employee and requesting an opportunity to publicly clear his or her name.
- (b) Where the applicant or employee meets his or her burden of proof, the county shall provide the applicant or employee a public hearing opportunity to clear his or her name.

COUNTY GRIEVANCE COMMITTEE

- A. The County Grievance Committee for employees hired by the county judge shall be the quorum court, but the decision of the Grievance Committee shall only be advisory to the county judge. (Ark. Con., Am. 55, Section 3).
- B. The County Grievance Committee for employees not hired by the county judge shall be the quorum court (or its appointee), and the decision of the Grievance Committee shall be the decision of the County. (Ark. Con., Am. 55, Section 1).
- C. The purpose of the grievance hearing is to enable the county, through its Grievance Committee, to hear from both the employee and the employee's supervisory official and to thereafter determine whether or not an operational decision of the county official or employee violates the county policy. If so, the decision of the county official or employee is to be modified by the County Grievance Committee to conform that decision to county policy.
- D. The County Grievance Committee is not to substitute its operational judgment for that of an elected official if the decision of the county official or employee does not violate county policy.

RELEASE OF EMPLOYEE GRIEVANCE RECORDS

Public Access to employee grievance records is authorized only if approved by the effected employee or authorized by the Arkansas Freedom of Information Act.

7-12-17

I Gary W. Davis do hereby request a hearing for the wrongful termination in regards to sexual harassment that never occurred. I am looking for the reinstatement of my job and compensation for time lost.

Gary W. Davis
Name

7-12-17
Date

AGENDA

Human Resources/Grievance Committee
County Courthouse
Room 200, 5:30 p.m.
July 31, 2017

- I. Call to Order
- II. Hearing of Grievance Filed by County Employee
- III. Committee Action Relating to Grievance
- IV. Adjourn