

ARTICLE VIII. GRIEVANCE PROCEDURES*

***State law references:** Grievances, V.T.C.A., Local Government Code § 160.001 et seq.

Sec. 86-1001. Purpose of article.

The purpose of the grievance procedure is to resolve all grievances between the county and its employees covered under the civil service system grievance process as quickly as possible and at as low an administrative level as possible, so as to assure efficient work operations and maintain employee morale.

(Admin. Policy Manual, § A(12.00); Ord. No. 2001-1954, 10-9-2001; Ord. No. 2017-0770, 06-06-2017)

Sec. 86-1002. Eligibility.

The following civil service grievance procedure does not apply to a County employee whose job classification is coded as A or B under the County's job classification system. All category C or D regular, full-time employees, per Section 86-1, may process an employment grievance pursuant to these rules. All category C and D probationary civil service employee may file a grievance on defined items, except those relating to his/her performance rating or dismissal.

(Admin. Policy Manual, § A(12.01); Ord. No. 2001-1954, 10-9-2001; Ord. No. 2017-0770, 06-06-2017)

Sec. 86-1003(a). Civil Service Commission Jurisdiction Over Grievances.

After exhaustion of review steps available within a Department, the Civil Service Commission has jurisdiction to hear a grievance filed by an eligible employee (as set in forth in section 86-1002) that is based on one or more of the following:

- a) termination;
- b) demotion;
- c) suspension; or
- d) decrease in pay.

Admin. Policy Manual, § A(12.02); Ord. No. 2001-954, 10-9-2001; Ord. No. Ord. No. 2017-0770, 06-06-2017)

Sec. 86-1003(b). Application for Discretionary Review.

Any adverse employment action taken by management, other than those listed in Section 86-1003(a), are only appealable through the chain of command provided within the Department in which the employee works, unless an Application for Discretionary Review (“Application”) is granted by the Civil Service Commission. Such matters may include, but are not limited to: improper application of rules, regulations, and procedures; unfair treatment, including retaliation; discrimination because of race, religion, color, creed, gender, age, national origin, disability, sexual orientation, or political affiliation; improper application of fringe benefits or improper working conditions.

An applicant must provide, and the Civil Service Commission may only grant an Application for Discretionary Review, if an applicant: 1) files an Application in accordance with the deadlines in Section 86-1004(a); 2) certifies that the matter has proceeded through the chain of command and it was not resolved administratively by the Department (see sections 86-1004 through 86-1005, where applicable) and attaches any written determination of the Department’s actions received by him/her, if applicable; 3) attaches a completed formal grievance form, which includes the information set forth in Section 86-1004(b); 4) sets forth, in specific detail, how he or she has been actually harmed a tangible way, i.e., suffered some actual damages(s) (“actual damage” means a loss or injury that has actually occurred); and 5) seeks an appropriate remedy within the Civil Service Commission authority.

The Application will be submitted to the Commission by the Civil Service Secretary. The Secretary will provide a recommendation to the Commission, when submitting the Application, whether the Application should be granted or denied, based on the Secretary’s review of the Application.

The Commission will decide whether to grant the Application, by written submission, at a regularly scheduled Civil Service meeting. The Commission may consider the Secretary’s recommendation when deciding whether to grant or deny the grievance. If the Application is granted, the grievance shall be set for hearing with the Civil Service Commission in accordance with this article. If the Application is denied, the grievance shall be dismissed. The decision of the Commission, whether to grant or deny an Application, is wholly within the discretion of the Commission and is final, not subject to administrative appeal.

The grievant and the Department representative will receive written notification of the Commission’s decision from the Secretary.

(Admin. Policy Manual, § A(12.02); Ord. No. 2001-1954, 10-9-2001; Ord. No. 2011-0776, April 26, 2011; Ord. No. 2017-0770, 06-06-2017)

Sec. 86-1004. Time limits for filing and response.

- (a) To be considered, a grievance must be filed in writing within **seven calendar days** from its occurrence, or from the date of receipt of written notification of disciplinary action, exclusive of holidays, unless the employee was unable to do so due to an emergency (see Section 86-1007(i)(2), definition of “emergency”). Grievances under Sec. 86-1003(a) or grievance alleging harassment, retaliation, or discrimination because of race, religion, color, creed, gender, age, national origin, disability, sexual orientation, or political affiliation should be initially filed with the first level of

supervision above the employee's supervisor who has caused the action, with a copy to the employee's immediate supervisor who has caused the action, with a copy to the employee's immediate supervisor and the Human Resources/Civil Service Department. All other grievances should be initially filed with the employee's immediate supervisor.

The preceding time limits apply to Applications to the Civil Service Commission, which must be received in the same time limit that a grievance to the Civil Service Commission must be received.

- (b) A formal grievance form (exhibit AT) or Application **MUST** contain the following information:
- (1) The disciplinary action challenged or action grieved (see Section 86-1003(a) or section 86-1003(b), if an Application);
 - (2) The date and a brief explanation of the incident(s) causing the disciplinary action or the grieved action;
 - (3) The specific section or sections of 86-1003, under which the grievant is grieving;
 - (4) The factual basis for the grievance, setting forth in specific detail all the facts in support of why the action is not justified/unfair. **Conclusory allegations not supported by detailed facts are insufficient.**
 - (5) Certification that the grievant has proceeded through the chain of command and the action grieved is a final Department action;
 - (6) If an Application, a detailed statement explaining how the grievant has been actually harmed in a tangible way, i.e., suffered some actual damage(s);
 - (7) The relief/remedy sought;
 - (8) The signature of the aggrieved employee; and,
 - (9) An attestation that the statements in the grievance (and Application, if applicable) are true and correct and filed in good faith.

Section 86-1004(b)(1) through (9) are jurisdictional. Failure to provide the information in Section 86-1004(b)(1) through (9) may result in the Secretary of the Commission rejecting the grievance, per section 86-1007(f).

- (c) A copy of the grievance should be retained by the employee and a copy should be filed with the human resources/civil service department. All copies should note the date the grievance was received by the supervisor.
- (d) The supervisor shall then investigate the grievance and make a written determination within seven calendar days, exclusive of county holidays, from receipt of the grievance. The written determination shall inform the employee of the next management level and the filing time limit for an appeal.
- (e) If the employee is not satisfied with the determination of the grievance, the employee shall have seven calendar days, exclusive of county holidays, to make a written appeal to the next level of supervision.
- (f) The preceding time limits, seven calendar days exclusive of county holidays for investigation and determination, and seven calendar days exclusive of county holidays for appeal, shall be used consistently for each succeeding higher level of management

the grievance is filed with, unless there is a mutually agreed time extension between the aggrieved party and management for fact-finding purposes, emergencies, etc.

- (g) If the employee fails to meet the filing time limits, the grievance will be considered null and void.
- (h) If the supervisor fails to meet the time limits, the employee may then file with the next higher level of management without waiting for a determination.
- (i) In order to expedite the grievance process, if succeeding levels of management are aware of all facts contained in a grievance and concur with the preceding supervisor's determination, they may elect to allow the grievance to be forwarded to the next higher level of management by initiating their concurrence on the grievance.
- (j) Date and time of response by the supervisor and the employee must be noted on the grievance to assure verification of compliance with the time limits.

(Admin. Policy Manual, § A(12.03--12.12); (Ord. No. 2001-1954, 10-9-2001; Ord. No. 2017-0770, 06-6-2017)

Sec. 86-1005. Order of Appeals.

A grievance must be appealed through the chain of command in the following order:

- (1) Grievant's immediate supervisor; unless the grievant is directed against the immediate supervisor.
- (2) Elected official/department head or division head, unless the grievance is directed against the elected official/department head.
- (3) Civil Service Commission (or specifically designated board or panel appointed by the civil service commission). Only the Civil Service Commission may award back pay, with the consent of the Commissioners Court.

(Admin. Policy Manual, § A(12.13--12.22); Ord. No. 2001-1954, 10-9-2001; Ord. No. 2017-0770, 06-6-2017)

Sec. 86-1006(a). EEOC Complaints.

Nothing in this procedure shall preclude any employee from pursuing a discrimination complaint with the Equal Employment Opportunity Commission (EEOC) or the Texas Commission of Human rights (TCHR). Employees have the right to file charges of discrimination with the EEOC or the TCHR before, during, or after the filing of a grievance.

Ord. No. 2001-1954, 10-9-2001; Ord. No. 2017-0770, 06-6-2017)

Sec. 86-1006(b). Human Resources Report.

Nothing in the procedure shall preclude any employee from making a report of discrimination, harassment, or retaliation to the Dallas County Human Resources Department, regardless of whether the employee has any grievance or appeal right.

Note 1: All allegations of harassment because of race, religion, color, creed, gender,

age, national origin, disability, sexual orientation, transgender, gender identity, gender expression, veteran status, or political affiliation must be immediately reported to the immediate supervisor, elected official or department head, and/or the director of the county human resources/civil service department, regardless of whether it is grievable, pursuant to the County's harassment policy, Dallas County Code, Section 86-781.

Sec. 86-1007. Civil service commission rules of practice. (This section reflects recent court approved policy language: Court Order# 2011 1462—August 30, 2011.)

- (a) *Scope of rules.* These rules shall govern the review of an administrative action by the county civil service commission in all grievance proceedings, except as hereinafter stated.
- (b) *Construction of rules.* "He" "him" "his" or "their" are used to signify both male and female individuals.
- (c) *Definitions.*
 - Calendar days* means all days in a month, including weekends and holidays.
 - Commission* refers to the county civil service commission.
 - Grievant* refers to the employee or his representative.
 - Department* refers to the county department or office that took the action being grieved.
 - Secretary or secretary to the commission* refers to the individual responsible for scheduling and coordinating the civil service meetings. This individual is the director of human resources/civil service.
- (d) *Filing of grievance.* Grievance hearings scheduled before the commission shall be initiated by a grievance (or Application, if granted) filed with the secretary after exhaustion of appeals through the department's chain of command. (Please refer to sections 86-1001 through 86-1005 for additional information.) A grievance/application must be submitted on the form adopted by the Commission for this purpose and shall contain the information in Section 86-1004(b). Failure to include the information in 86-1004(b) may result in the grievance/application being dismissed for lack of jurisdiction. The Secretary or the Secretary's designee shall date stamp when the grievance (or Application) was received.
- (e) *Amendment of Grievance.* At any time before the deadline in Section 86-1004(a), and before the grievance is submitted to the Commission for decision, the grievant may file an amended formal grievance form (See Section 86-1004) or Application.
- (f) *Rejection of Grievance by Secretary.* The Secretary shall review all grievances to determine whether the employee has timely filed an appeal, whether the action appealed is grievable, and whether the employee has complied with the Section 86-1004(b) requirements. A grievance or (or Application) may be rejected by the Secretary of the Commission if it determines the Commission does not have jurisdiction over the grievance (or Application) because the grievant failed: 1) to comply with procedural deadlines; 2) to provide the information set forth in Section 86-1004(b); or 3) to plead a grievance which falls within sections 86-1003(a) or 86-1003(b). However, in the case of an action that is not final (i.e., has not proceeded through chain of command), the

grievance shall be stayed until such action becomes final. The Commission, the grievant, and the Department's representative will receive written notification of the determination, along with notice of appeal rights and the address to mail the appeal.

If a case is rejected by the Secretary, the grievant can appeal the Secretary's decision, to reject the grievance, **within fourteen calendar days** of the date written notification of the Secretary's decision is mailed **or within seven (7)** calendar days from the date a certified postal receipt was signed by the grievant or his or her agent, whichever is earlier. The scope of the appeal is limited to whether the grievant satisfied the procedural prerequisites or set forth a grievable grievance and will be determined by written submission of the grievance record. The Secretary shall provide the Commission with the grievance record, which consists of the Section 86-1004(b) formal grievance form (and Application, if applicable), with any attachments thereto, as well as the written notification of the Secretary rejecting the grievance.

The grievant has the burden of establishing jurisdiction in his/her Section 86-1004(b) formal grievance form submission. For good cause shown, the Commission may allow the grievant to supplement his/her Section 86-1004(b) formal grievance form (or Application). The request to supplement must be sworn and attached to the grievant's appeal of the Secretary's decision to reject the grievance. "Good Cause" herein means: 1) an emergency whereby the grievant was unable to provide the information in the Section 86-1004(b) formal grievance form (see Section 86-1007(i)(2), definition of "emergency"); or 2) the information supplemented was not known, and could not have reasonably been discovered, prior to the submission of the Section 86-1004(b) formal grievance form (or Application).

The Commission will decide whether to grant the supplementation, upon submission, when it decides the appeal of the Secretary's decision to reject the grievance. The Commission shall determine by vote whether to allow supplementation, if applicable, and whether to sustain or overturn the decision of the Secretary, in whole or in part. If the decision of the Secretary is overturned, the grievance shall be set for hearing with the Commission in accordance with this article. If the decision of the Secretary is sustained, the grievance shall be dismissed for lack of jurisdiction.

- (g) *Scheduling of Grievance Hearings.* Grievances are scheduled according to the date received, except grievances appealing terminations, which are given priority over all other types of pending grievances.
- (h) *Notification.* The grievant will be notified of the hearing date, time and location, at the last known address listed with Dallas County Human Resources or the Secretary. The grievant will receive a minimum of 14 calendar days prior notification of the scheduled hearing date, unless there is a mutual agreement for a lesser time period between the Secretary and the grievant. This time frame does not apply to postponements.

It is the duty of the grievant to keep his/her address current with the Secretary. If the grievant has no known representative and is not able to be contacted by phone and/or email, any notice that is returned "undeliverable" or "unclaimed" will cause the appeal to be forfeited if the grievant fails to appear at the scheduled hearing date.

(i) *Postponements.*

(1) Any first request for continuance of the hearing may be granted by the Secretary upon (i) a showing of good cause or (ii) the agreement of the parties, as evidenced by the written agreement of both parties. The Department and the grievant may be granted one postponement each.

(2) All other requests for continuance of the hearing may be granted by the Secretary if an emergency and made in writing, as soon as practicable. The requesting party must submit the request in writing within three working days of when the party had actual knowledge of the emergency, to the Secretary. The request must clearly outline the emergency that has created the need to request a postponement (attorney availability, illness, etc.). An emergency is a sudden, urgent, unexpected occurrence or occasion requiring immediate action by one party. An emergency includes unsafe weather conditions where the County Judge has suspended services, medical emergencies of a party or a dependent or immediate family member of a party. An emergency is not a scheduling conflict by either party, transportation issues, child care, unpreparedness or the sudden failure of a representative to appear.

(3) In the event either party to the grievance objects to the postponement on the basis of an emergency, the decision of whether or not to grant then continuance will be determined by the Commission at the scheduled hearing. At the scheduled hearing, the requesting party will present his/her request for postponement to the Commission for a final determination. If the decision is to postpone the hearing, the grievance will be heard at a later date.

(4) Waiver of Back Pay. In cases involving terminations or appeals requesting back pay, any motion for continuance made by or on behalf of the grievant must contain a waiver of back pay, if any is subsequently awarded, from the originally scheduled hearing date from which the grievant sought a continuance.

(j) *Dismissal of Grievance.* At any time before a decision is rendered, a grievance may be dismissed by:

(1) The Commission if it determines it does not have jurisdiction over the grievance, including for failure of the grievant to comply with procedural deadlines or plead a grievance which falls within sections 86-1003(a) **or** 86-1003(b);

(2) The Commission if the grievant is not present at the time of the hearing;

(3) The Commission if the matter has been rendered moot; or

(4) The grievant, who may withdraw the grievance at any time.

The dismissal or withdrawal shall be entered into the record.

(k) *Representation/Attendance.* The parties to the grievance must appear and present their position. The Department must be present at the hearing through the elected official, department head, or other designee. The grievant must be present at the hearing.

The grievant must notify the secretary if he/she has a representative or attorney and the representative's/attorney's name, address, telefax, email, and telephone number. Notification should occur at the time of filing the grievance, or as soon thereafter as possible. The grievant's representative may not appear without the grievant unless requesting an emergency continuance on behalf of the grievant.

Either the department's representative or attorney may present the Department's case, but both will not be allowed to participate in the presentation of information. The same rule will apply to the grievant, his representative, or attorney.

- (l) *Hearing materials.* The materials furnished for a hearing shall be directly related to the disciplinary action taken and shall include:
- (1) Notice of warning form and/or notice of separation form regarding the disciplinary action taken (dismissal, demotion, suspension, reprimand, warning);
 - (2) Copy of formal grievance filed;
 - (3) Department's response to grievance;
 - (4) Previous performance evaluation(s) for the grievant;
 - (5) Employment application of the grievant (if applicable).
 - (6) Any prior disciplinary actions taken against the grievant;
 - (7) Grievant's response/challenge to Department's action.

All documentation must be submitted to the secretary who will then distribute to the appropriate parties. Neither the grievant nor the affected department representative may submit documentation to the commission members prior to the scheduled hearing.

Documentation such as character letters will not be accepted by the civil service commission members.

- (m) *Omissions.* A party that fails to submit in writing any part of his/her documentation to the Secretary before the deadline date for submission of hearing materials may have the omitted portion entered into the record at the hearing, with Commission approval, for good cause shown.
- (n) *Quorum.* Two Commissioners constitute a quorum which allows a hearing to proceed. Each party to the grievance shall be informed when only two commissioners (quorum) will be in attendance for the hearing. Either party to the grievance may request to delay the hearing until all three commissioners are present.
- (o) *Burden of proof.* The Department has the burden of proving that any disciplinary action taken listed under Section 86-1003(a) was taken for good cause. The employee has the burden of proof on any other complaint about the actions of management.

(p) *Open meetings/The Rule.* The grievant shall be allowed to decide if the hearing will be open or closed to the public. If the grievant decides to have a closed hearing, the following persons are authorized to be present:

- (1) Commission members.
- (2) Secretary to the Commission.
- (3) Grievant.
- (4) Grievant's representative/attorney.
- (5) Human resources/civil service department's representative.
- (6) Department's attorney.
- (7) Department's representative.
- (8) Legal counsel for the commission.
- (9) Court reporter/recorder.

Either party may also invoke "The Rule," at the commencement of the proceedings, which means that all witnesses, excluding the department representative and the grievant, will not be allowed to remain in the hearing and no witness shall discuss their testimony with other witnesses.

(q) *Time.* There is no time limitation on the presentation of evidence at the grievance hearing; however, the Commission has the discretion to exercise reasonable controls over proceedings, including the time prescribed to each side. Evidence should be presented in the most efficient and expedient manner in conformity with these rules.

(r) *Witnesses Request/Subpoena/Oath.* The grievant, Department, or their representatives will be allowed to present pertinent evidence and call witnesses to testify on their behalf. Witnesses may voluntarily appear or be subpoenaed to appear at a grievance hearing.

The Chairman of the Commission upon the request of the grievant, the grievant's representative, the County's attorney, or the County's attorney's designee shall: 1) administer oaths; and 2) issue subpoenas and subpoenas duces tecum for the attendance of witnesses and for the production of documentary material. Documentary material may include any books, records, documents, papers, or accounts that the requester considers relevant to the case. No party will be permitted more than six (6) subpoenas for witnesses without showing good cause. A party seeking more than six (6) subpoenas, for a witness to testify, must provide a sworn declaration with the following:

1. The subject matter on which the witness is expected to testify;
2. Explanation as to why the witnesses' testimony is necessary to prove or refute allegations in the grievance or the Department's action made the basis of the grievance; and
3. Explanation as to why the witnesses' testimony would not be duplicative of the expected testimony of other witnesses called to testify.

The request to subpoena a witness or documents must be made in writing to the Secretary to the Civil Service Commission at least 15 days before the date of the scheduled hearing.

The request to subpoena a witness must be made in writing to the Secretary to the Civil Service Commission at least 15 days before the date of the scheduled hearing.

All witnesses appearing at a grievance hearing shall attend the proceeding until discharged by the commission or the party requesting the witness. Time away from the workplace to participate as a witness in a grievance hearing shall be paid leave for county employees. No action will be taken to prevent an employee from testifying on behalf of a grievant and no act of retaliation will be taken against any witness who testifies in a grievance hearing.

Subpoenaed witnesses who are unable to be present at the civil service commission meeting shall notify the secretary to the civil service commission as soon as possible before the scheduled hearing date.

A person or employee who fails to appear as subpoenaed commits a misdemeanor offense punishable by a fine up to \$1000, confinement in the county jail for not more than 30 days, or both.

An oath administered under this provision has the same force and effect as an oath administered by a magistrate in judicial capacity.

Note: Under the Texas Penal Code § 37.02, a person commits perjury if, with intent to deceive and with knowledge of the statement's meaning, he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath (Tex. Loc. Govt. Code Section 158.0095(c) provides, "An oath administered under this section has the same force and effect as an oath administered by a magistrate in the magistrate's judicial capacity.")

- (s) *Testimony by affidavit.* Generally, witnesses must be physically present and subject to examination and cross-examination. However, upon agreement of both parties or permission of the Commission for good cause shown, witness testimony by affidavit will be permitted. Because the affidavits will not be subject to cross examination, the weight given each affidavit will be within the discretion of the commission.
- (t) *Procedure.* Both parties will have an opportunity to provide an opening statement, present and cross-examine witnesses and make a closing argument. The party with the burden of proof will proceed first and present its witnesses first. If the Department terminated, demoted, suspended, or decreased an employees pay, it has the burden of proof and is required to present its witnesses first in order to justify the disciplinary action taken.
- (u) *Additional testimony.* If necessary for the administration of justice, the commission may permit additional evidence to be offered at any time prior to a decision being rendered.
- (v) *Commission to render decision.* The Commission may recess to deliberate in executive session. If an executive session is held, the Commission shall reconvene in open session and make a decision. Upon conclusion of the proceeding, the commission shall render its decision in writing.

- (w) *Decisions.* The decision of the commission will either (i) sustain the disciplinary action taken by the department; (ii) modify/reduce the disciplinary action taken by the department; or (iii) overturn the disciplinary action taken by the department and grant the relief sought by the grievant, in whole or in part. However, the Commission may not enhance the Department's initial disciplinary action. Category D employees cannot be awarded back pay or reinstatement beyond the termination date of the funding sources. In the event there is a split decision within the quorum, party with the burden of proof will not have met its burden of proof and the grievant shall prevail. Decisions pertaining to demotions, suspensions or terminations shall be given in writing.

Department heads and elected officials must comply with the Commission ruling.

- (x) *Back Speculative, or damages which have not occurred, are not sufficient Pay.* *Back Pay* means payments of all back wages, minus any amount paid at termination for compensatory time and/or vacation/sick balances, but shall not include pay for any overtime hours not actually worked by the employee. Actions overturned by the Commission that result in a back pay award may be adjusted to account for delays occasioned by the grievant or his representative/attorney, offsets for other earnings/income during the period of suspension or termination, or any other adjustment the Commission deems just.
- (y) *Appeal.* Action taken by the commission which results in a demotion, suspension or termination, may be appealed to a district court within 30 days after written notification of the commission's decision. The date of decision is the day that the Commission issues a Decision Letter.

(Admin. Policy Manual, § A(12.24--12.53); Ord. No. 2000-380, 2-22-2000; Ord. No. 2007-2466, 12-11-2007; Ord. No. 2011-1462, 8-30-11; Ord. No. 2017-0770; 06-06-2017)

Cross references: Civil service commission, § 86-51 et seq.

Secs. 86-1008--86-1040. Reserved.