

	<u>P - § 34</u>	<u>Policy Name:</u> Grievance	<u>Approved Date:</u>
	<u>Prepared By:</u> Human Resources		<u>Adopted:</u> January 3, 2007
	<u>Amended:</u> December 13, 2023		

A. PURPOSE

The Albemarle County grievance policy is established to provide eligible county employees an efficient and effective means by which to objectively resolve disputes.

B. ELIGIBILITY

All full and part time non-probationary county employees are eligible to file grievances, except temporary, limited term, and seasonal employees, county executives, department directors, and employees of constitutional officers.

C. DEFINITIONS

- a. **Adverse Employment Action** – any action by an employer that negatively impacts an employee's terms or conditions of employment
- b. **Grievance** - formal employment-related complaint or dispute of an adverse employment action
- c. **Grievant** – employee who submits a grievance claiming to have personally suffered an adverse employment action.
- d. **Hearing Officer** - Third party neutral designated by the Office of the Executive Secretary for the Virginia Supreme Court who manages and presides over the final step in the grievance resolution process.

D. ROLES AND RESPONSIBILITIES

- a. **Departmental Management** - upon receipt of a timely written grievance complaint, management must review the grievance and respond to the merits thereof, at their designated step in the procedure. Each level of management review shall have the authority to provide the employee with a remedy, in accordance with County policies.
- b. **Director of Human Resources**
 - i. Is responsible for determination of the officers and employees by position that are excluded from the grievance procedure.

- ii. Serves as impartial administrator of the grievance process. Attends or designates another Human Resource employee to attend Steps 2-4 of these procedures.
 - iii. The Human Resources Director (or their Designee) may not serve as Designee of the County Executive for the purposes of their role within this procedure.
- c. **Grievant** – endeavors to resolve the grievance in accordance with the requirements of this Grievance Policy.
- d. **Hearing Officer** – manages and conducts a Step 4 Formal Grievance Hearing. Determines whether a grievance filed by an employee is substantiated by facts and orders an appropriate remedy in accordance with law and County policy.

E. GRIEVANCE ELIGIBILITY

- a. The provisions in this policy apply to full and part-time non-probationary County employees, except as listed in paragraph b. Covered employees include:
 - i. Those employed by all local government departments, including the Department of Social Services;
 - ii. Law-enforcement officers electing to initiate and pursue a complaint under this grievance procedure.
 - iii. Partner agency employees, if defined as County employees by agreement.
- b. Employees in the following positions are not covered by this policy and are ineligible to pursue a grievance hereunder:
 - i. Appointees of the Board of Supervisors;
 - ii. Officials and employees who by law serve at the will or pleasure of the Board of Supervisors or the County Executive;
 - iii. Deputies and Chief officers to the County Executive;
 - iv. Agency heads;
 - v. Employees appointed by elected Constitutional Officers;
 - vi. Employees whose terms of employment are limited by law;
 - vii. Employees in temporary, limited term, on-call, or seasonal positions;
 - viii. Probationary employees;
 - ix. Law-enforcement officers as defined in Chapter 5 of Title 9.1 of the Virginia Code who are subject to such provisions and who have elected to proceed pursuant to § 9.1-500 et seq. of the Virginia Code, the Law Enforcement Officers Procedural Guarantees Act, in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of their grievance.
- c. The County Executive or designee thereof must determine the officers and employees excluded from this grievance policy and is responsible for maintaining an up-to-date list of the affected positions.

F. COVERED EMPLOYMENT ACTIONS

The following is a list of common grievable adverse employment actions and is not intended to be all inclusive.

- a. Disciplinary actions (letters of written reprimand, suspensions, disciplinary demotions, and terminations, provided that any such action results from formal discipline or determination of unsatisfactory job performance or behavior.
- b. The application of personnel policies, procedures, rules, and regulations, including the application of policies involving matters referred to in section G(b) of this policy.
- c. Acts of retaliation as a result of utilization of these grievance procedures or participation in the grievance of another covered employee.
- d. Complaints of discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, gender identity, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, military status, or any other characteristic protected by applicable federal, state, or local law.
- e. Acts of retaliation because the employee has complied with any law of the United States, the Commonwealth, or any applicable state or local law; has reported any violation of such law to a government authority; or has reported an incidence of fraud, abuse or gross mismanagement.
- f. For the purposes of clauses (c) and (e) of this section F, there shall be a rebuttable presumption that increasing the penalty that is subject of the grievance at any level shall be an act of retaliation.

G. EXEMPT EMPLOYMENT ACTION

The County retains the exclusive right to manage its governmental affairs and operations. Accordingly, complaints involving the following are nongrievable:

- a. Establishment and revision of wages or salaries, position classifications, or general benefits.
- b. The contents of ordinances, statutes, established personnel policies, administrative policies, departmental policies, procedures, rules, and regulations.
- c. Duties accepted by the employee as a condition of employment or duties that may be reasonably expected to be part of the job.
- d. The method, means and personnel by which such duties are to be carried out, including:
 - i. The provision of equipment, tools, and facilities.
 - ii. The scheduling and distribution of personnel.
 - iii. Training and career development.
- e. The hiring, promotion, transfer, assignment, and retention of employees within the County.
- f. Failure to promote, except where the employee can show that established promotional policies or procedures were not following or applied fairly in accordance with law and County policy.

- g. Employee performance evaluations, except when used in conjunction with merit pay initiatives.
- h. Except where such action affects an employee who has been reinstated within the previous six months as the result of a final determination of a grievance, termination, layoff, demotion, or suspension of duties due to lack of work, reduction in force, or job abolition. In any grievance brought under the exception noted in this clause (h), the employment action will be upheld if:
 - There was a valid business reason for the action, and
 - The employee was notified of the reason in writing prior to the effective date of the action.
- i. The relief of employees from job duties in emergencies.

H. PURSUANCE OF GRIEVANCE

A grievant must be personally and directly affected by an occurrence or condition before they shall be permitted to pursue a grievance. Thus, for example, no employee may grieve another employee's job performance unless such job performance directly and adversely affects the grievant's own terms and conditions of employment.

I. CONSOLIDATION OF GRIEVANCES

If more than one grievance arises from the same factual circumstances then, at any time before one of the grievances reaches a Step 4 hearing, the County Executive may consolidate those grievances. In that case, all time limits set forth in this procedure will, from that point on, be calculated from the date of the most recently begun grievance. The grievances will then be treated as a single grievance.

J. DETERMINATION OF GRIEVABILITY

A formal determination of grievability and access to these procedures may be requested of the County Executive or designee at any time prior to the Step 4 hearing, although it is preferred that such request be made prior to the formal meeting with the complainant's Department Head at Step 2. Such requests may be made by the Department Head, the Grievant, or Human Resources Representative in writing and must be signed by the party seeking the ruling. The County Attorney is not authorized to decide the question of grievability. The County Executive must make a written determination of grievability on all complaints within 10 calendar days of receipt of the request. A copy of the ruling must be sent to the grievant. Requests for determination of grievability may be made at any step of the grievance procedures as necessary and in accordance with this policy.

A Grievant may seek judicial review of the determination by appealing to the Albemarle County Circuit Court for a hearing on the issue of whether the grievance qualifies for an administrative hearing. Proceedings for review of the decision of the chief administrative officer or his designee shall be instituted by the grievant by filing a notice of appeal with the County Executive within 10 calendar days from the date of receipt of the decision and giving a copy thereof to all other parties. Within 10 calendar days thereafter, the County Executive or designee shall transmit to the Clerk of the Albemarle County Circuit Court: a copy of the County Executive's decision, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the Court shall also be furnished to the grievant. The failure of the County Executive or designee to transmit the

record shall not prejudice the rights of the grievant. The Court, on motion of the grievant, may issue a writ of certiorari requiring the County Executive to transmit the record on or before a certain date. The appeal proceedings shall then comply with the procedures contained in Virginia Code § 15.2-1507(9)(b), as amended.

K. REPRESENTATION DURING GRIEVANCE PROCEDURES

In Steps 1 and 2, the only persons who may be present are the grievant, the appropriate County official identified by the grievance step being heard, a representative from the Department of Human Resources, and any appropriate witnesses for each side. Witnesses shall only be present while actually providing testimony. A representative from the Department of Human Resources must be present at Steps 2, 3, and 4.

Employees who are necessary participants at a grievance hearing shall not lose pay nor be charged leave for time taken to participate in these proceedings. During Steps 1-3, meetings shall not be recorded and recording devices are not permitted during these meetings. At Steps 3 and 4, the grievant may, at their option and expense, have present legal representation of their choice. If represented by legal counsel, the County will also have the option of being represented by legal counsel. The grievant must provide the name, mailing address, e-mail address and telephone number of their representation or legal counsel to Human Resources at least 15 business days prior to the Formal Grievance Hearing (Step 4).

L. GRIEVANCE RESOLUTION PROCESS

- a. Grievances involving dismissals due to formal behavioral discipline or unsatisfactory job performance shall proceed directly to step 3, omitting the grievance resolution steps 1&2.
- b. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the Formal Grievance Hearing (Step 4), without just cause, shall 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 workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the County Executive or designee.
- c. The County Executive or designee, at his option, may require a clear written explanation of the basis for just cause extensions or exceptions. The County Executive or designee shall determine compliance issues. Compliance determinations made by the County Executive shall be subject to judicial review by filing a petition with the Albemarle County Circuit Court within 30 days of the compliance determination.
- d. The Director of Human Resources shall render all decisions related to compliance with nonsubstantial procedural requirements. Such decisions shall contain the reasons for such decision and shall be final.

M. GRIEVANCE RESOLUTION PROCEDURE:

a. STEP 1- GRIEVANCE MEETING W/ IMMEDIATE SUPERVISOR

The grievant must discuss, and attempt to resolve, their complaint(s) informally with their immediate supervisor within 20 business days of the incident being grieved, or within 20 business days of the time when the employee reasonably should have known of the incident. The supervisor must respond to the grievance in writing, within 10 business days of that discussion. If the grievance alleges discrimination, harassment, or retaliation by the immediate supervisor, then the grievant may present the grievance instead to the supervisor's supervisor.

b. STEP 2- GRIEVANCE MEETING W/ DEPARTMENT HEAD

If there are remaining unresolved adverse employment actions and the grievant is not satisfied with the Step 1 response, or if a response is not provided within the required time, then the grievant may complete and submit a formal Grievance Form. The Grievance Form must be delivered to the department head within 10 business days of receiving the supervisor's response and must be signed by both the grievant and the supervisor demonstrating the complaint(s) which was unable to be resolved at the previous step. On the grievance form and preceding the Step 2 meeting, the grievant must specify the relief they are requesting. The department head must provide a copy of the documented grievance to Human Resources and meet with the grievant within 5 business days of receipt of the completed grievance form. The only people who may attend that meeting are the department head, the grievant, any witnesses for the purpose of testimony, and a representative from the Department of Human Resources. Following that meeting, the department head must provide a written response to the grievant within 10 business days of the meeting. If the grievant's immediate supervisor is a department head, then Step 2 may choose to bypass this step and proceed directly to Step 3.

c. STEP 3- ORGANIZATIONAL LEADERSHIP REVIEW

If there are remaining unresolved adverse employment actions and the grievant is not satisfied with the Step 2 response, or if a response is not provided within the required time, then the grievant may sign the Grievance Form requesting a Step 3 review. A copy of the signed Grievance Form must be delivered to the Department of Human Resources and County Executive within 10 business days. The Grievance form must include the department head's response and must be signed by both the grievant and the supervisor or department head identifying the complaint(s) which was unable to be resolved during the previous steps. Once received, the County Executive or Designee must meet with the grievant within 10 business days of receipt of the completed grievance form. The only people who may attend that meeting are the County Executive or Designee, the grievant, a representative of the grievant's choice who may be legal counsel, any witnesses for the purpose of testimony, a representative from the Department of Human Resources, and the County's legal counsel if the grievant has legal representation present. Following that meeting, the County Executive or Designee must provide a written response to the grievant within 10 business days of the meeting.

d. STEP 4- FORMAL GRIEVANCE HEARING

If there are remaining unresolved adverse employment actions and the grievant is not satisfied with the Step 3 response, or if a response is not provided within the required time, then the grievant may sign and submit the Grievance Form petitioning to move to

Step 4. Grievances involving dismissals shall follow the step 4 protocols for the grievance hearing. A copy of the signed Grievance Form must be delivered to the Director of Human Resources within 10 business days of receiving the County Executive's or Designee's response or the deadline by which the County Executive or Designee was required to respond, whichever comes first. Within 10 business days, the County must request a hearing officer to be appointed by the Executive Secretary of the Supreme Court of Virginia, as provided for in Va. Code § 15.2-1507. The timing of the hearing date is within the discretion of the hearing officer.

1. Presentation of Facts –

- i. The hearing officer has no authority to formulate policies or procedures or to alter existing policies or procedures;
- ii. The hearing officer has the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing.
- iii. The hearing shall be private.
- iv. The hearings is not intended to be conducted like proceedings in courts. The rules of evidence do not necessarily apply.
- v. The County must provide the hearing officer with copies of the grievance record within 10 days of hearing officer's appointment and provide the grievant with a list of the documents furnished to the hearing officer. The grievant and their attorney, at least 10 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 if not previously provided by the County.
- vi. That documents, exhibits, and witness lists be exchanged between the parties or hearing officer at least two days in advance of the hearing.
- vii. The grievance record shall be admitted as a matter of record in the hearing.
- viii. The hearing officer has the authority to determine the admissibility of evidence without regard to the burden of proof and to determine the weight such evidence is given. The hearing officer has the authority to determine the order of presentation of evidence so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence; and
- ix. That all evidence be presented in the presence of the hearing officer and the parties, except by mutual consent of the parties.

2. Grievance Decision –

- i. The hearing officer does not formulate or alter existing policies or procedures.
- ii. The decision may either uphold or reverse the County Executive's or Designee's action, or may impose a lesser disciplinary sanction than that determined by the County Executive or his/her Designee.
- iii. The decision may not award attorney's fees to a grievant.
- iv. The hearing officer's decision is final, subject to compliance with County policy and law, and must be provided to both parties within 20 business days of the hearing or after receiving other evidence or information needed to render a final decision (i.e., a transcript of the hearing or legal briefs). The decision must summarize the grievance, make specific findings of fact, and state the reasons for the decision and the remedy granted (if applicable).
- v. The County Executive may, within 10 business days, notify the hearing officer and the grievant or their legal counsel that the decision is not consistent with County policy or law and that the County will not implement the decision.

3. Petition to the Court –

Either party may petition the Circuit Court of Albemarle County for an order directing the implementation of the decision. The Circuit Court's review is limited to determining whether the hearing officer's decision is consistent with County policy and law.

N. CERTIFICATION

The County Attorney and the County Executive must certify in writing that this Policy and all amendments hereto comply with Virginia Code § 15.2-1507, as amended. The County Attorney must file such certification with the Clerk of the Circuit Court for the County of Albemarle.