

AP 7365

- Refusal to subscribe to any oath or affirmation that is required by law in connection with District employment.
- Any willful act of conduct undertaken in bad faith, either during or outside of duty hours which is of such a nature that it causes discredit to the District, the employee's department or division.
- Inattention to duty, tardiness, indolence, carelessness, or negligence in the care and handling of District property.
- Violation of the rules and regulations published in any department.
- Mental or physical impairment that render the employee unable to perform the essential functions of the job with or without reasonable accommodation, or without presenting a direct threat to the health and safety of self or others.
- Acceptance from any source of a reward, gift, or other form of remuneration in addition to regular compensation to an employee for the performance of his/her/their official duties.
- ~~The 22nd of any Office (or) Employee of the District to testify under oath before Do a (s)4 (/)2~~

- Specific charges upon which the action is based;
- A factual summary of the facts upon which the charges are based;
- The written materials reports and documents upon which the disciplinary action is based;
- The employee's right to appeal.

Appeal and Request for Hearing: If a classified employee, having been issued the final notice of disciplinary action, wants to appeal the action, he/she/they shall within fourteen calendar days from the date of receipt of the notice, appeal to the Personnel Commission by filing a written answer to the charges and a request for hearing with the **Executive Director of Human Resources or designee**.

Time for Hearing: The Personnel Commission shall, within a reasonable time from the filing of the appeal, commence the hearing. The Personnel Commission may conduct the hearing itself, or it may secure the services of an experienced hearing officer or Administrative Law Judge, mutually selected by the District and the employee, to conduct a hearing and render a proposed decision for consideration by the Personnel Commission. However, in every case, the decision of the Board itself shall be final. The Personnel Commission may affirm, modify or revoke the discipline. Any employee, having filed an appeal with the Personnel Commission and having been notified of the time and place of the hearing, who fails to make an appearance before the Personnel Commission, may be deemed to have abandoned his/her/their appeal. In this event, the Personnel Commission may dismiss the appeal.

Record of Proceedings and Costs: All disciplinary appeal hearings may, at the discretion of either party or the Personnel Commission, be recorded by a court reporter. Any hearing which does not utilize a court reporter shall be recorded by audio device. If a court reporter is requested by either party, that party shall pay the cost of the court reporter.

Conduct of the Hearing:

- The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses but hearings shall be conducted in a manner most conducive to determination of the truth.
- Any relevant evidence may be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.
- Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence that shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
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- During examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.

Burden of Proof: In a disciplinary appeal the District has the burden of proof by preponderance of the evidence.

Proceed with Hearing or Request for Continuance: Each side should be asked if it is ready to proceed. If either side is not ready and wishes a continuance, good cause must be stated.

Testimony under Oath: All witnesses shall be sworn in for the record prior to offering testimony at the hearing. The chairperson will request the witnesses to raise their right hand and respond to the following:

“Do you swear that the testimony you are about to give at this hearing is the truth, the whole truth and nothing but the truth?”

Presentation of the Case: The hearing shall proceed in the following order unless the Personnel Commission, for special reason, directs otherwise:

- The party imposing discipline (District) shall be permitted to make an opening statement.
- The appealing party (employee) shall be permitted to make an opening statement.
- The District shall produce its evidence.
- The party appealing from such disciplinary action (employee) may then offer their evidence.
- The District followed by the appealing party (employee) may offer rebutting evidence.
- Closing arguments shall be permitted at the discretion of the Personnel Commission. The party with the burden of proof shall have the right to go first and to close the hearing by making the last argument. The Personnel Commission may place a time limit on closing arguments. The Board or the parties may request the submission of written briefs. After the request for submittal of written briefs, the Personnel Commission will determine whether to allow the parties to submit written briefs and determine the number of pages of briefs.

Procedure for the Parties: The District representative and the employee representative will address their remarks, including objections, to the Chair of the Personnel Commission. Objections may be ruled upon summarily or argument may be permitted. The Personnel Commission reserves the right to terminate argument at any time and issue a ruling regarding an objection or any other matter, and thereafter the representative shall continue with the presentation of their case.

Right to Control Proceedings: While the parties are generally free to present their case in the order that they prefer, the Personnel Commission reserves the right to control the proceedings, including, but not limited to, altering the order of witnesses, limiting

redundant or irrelevant testimony, or by the direct questioning of witnesses.

Hearing Demeanor and Behavior: All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries or members of the Personnel Commission.

Deliberation Upon the Case: The Personnel Commission should consider all oral and documentary evidence, the credibility of witnesses, and other appropriate factors in reaching their decision. The Personnel Commission may deliberate at the close of the hearing or at a later fixed date and time. In those cases where the Personnel Commission has received a proposed decision from a hearing officer or Administrative Law Judge, the proposed decision, the record of the hearing and all documentary evidence shall be available for review by the Personnel Commission when it deliberates.

Written Findings, Conclusion, and Decision: The Personnel Commission shall render its findings, conclusions and decision as soon after the conclusion of the hearing as possible. A finding must be made by the Personnel Commission on each material issue. The Personnel Commission may sustain or reject any or all of the charges filed against the employee. The Personnel Commission may sustain, reject or modify the disciplinary action invoked against the employee. In those cases where the Personnel Commission has received a proposed decision from a hearing officer or Administrative Law Judge, the Personnel Commission may adopt the proposed decision, modify the proposed decision or render a new decision. If the Personnel Commission recommends reinstatement of the terminated employee, the employee is only entitled to back pay minus the sum the employee has earned during the period of absence.

Decision of the Personnel Commission to be Final: The decision of the Personnel Commission in all cases shall be final.

Emergency Suspension: If an employee's conduct presents an immediate threat to the