

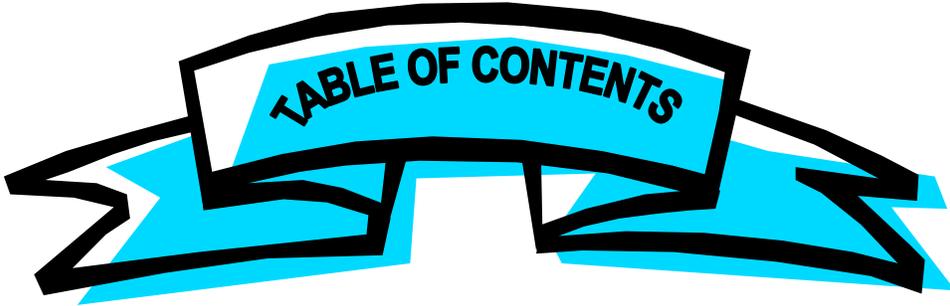


CIVIL SERVICE BOARD MANUAL OF PROCEDURES



For Conducting Hearings of Employee:

- Disciplinary Actions
- Unsatisfactory Service Ratings
- Grievances
- Civil Service Board Investigations



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PREFACE

The City of Miami's Charter provides for a merit-based system of employment, which maintains an effective career service, and employs those persons best qualified for the services they are to perform. These merit principles include:

- a. Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applications for initial appointment;
- b. Providing equitable and adequate compensation;
- c. Training employees, as needed, to assure high-quality performance;
- d. Retaining employees on the basis of the adequacy of their performance, and separating employees whose inadequate performance cannot be corrected;
- e. Assuring impartial treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed or handicap, and with proper regard for their privacy and constitutional rights as citizens; and
- f. Assuring that employees are protected against coercion for political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

To ensure this, a due process disciplinary system with a due process component has been established and included as Rule 14 of the Civil Service Rules and Regulations. Any classified employee may be fined, suspended, demoted, or dismissed by the City Manager or the department director, for cause, examples of which are contained within Civil Service Rule 14.2 Grounds for Dismissal, Suspension, and Demotion, subsections (a) through (w) and NOTE. Whenever such disciplinary action has been taken, a written statement of the reason(s) for such actions is furnished to the employee. [Rule 14.1]

Any employee who has completed the required probationary period may appeal such action and request a hearing before the Civil Service Board. The employee must forward a written request for an appeal hearing to the Executive Secretary of the Civil Service Board within 15 days of the effective date of the disciplinary action. These procedures were developed in accordance with Rule 14.4(i).

Civil Service Rule 14, DISMISSAL, SUSPENSION, DEMOTION AND RESIGNATIONS further states that the Civil Service Board shall schedule a hearing within 30 days after receipt of an employee's written request for such a hearing and shall transmit the findings of facts and any recommendations to the City Manager. The City Manager may sustain, reverse, or modify the demotion, dismissal, fine, or suspension. Such hearings shall be conducted in accordance with Civil Service Rules and Regulations.

NATURE OF THE APPEAL HEARING



The Civil Service Rules and Regulations allow the City Manager and/or a department director to discipline an employee for any cause which will promote the efficiency of the service. A number of such causes are listed in Civil Service Rule 14.2. Grounds for Dismissal, Suspension, and Demotion. Any other cause, which is justifiable as to promoting efficiency, is allowable under these rules.

Any permanent employee may appeal such action and request a hearing before the Civil Service Board. The employee must forward a written request for an appeal hearing to the Executive Secretary of the Civil Service Board within 15 days of the effective date of the disciplinary action.

After the initial action, the Civil Service Board performs the function of an impartial fact finder to ensure that the discipline was applied based upon “just cause”. The City administration has the authority, mandate, and responsibility to discipline employees and to preserve and protect the efficiency of the public service. The Civil Service Board’s role in the process is vital to the continued success of this system and substantial justice for all parties. [Rule 14.4(c)].

EXPEDITING THE HEARING

The administrative hearing system was created to provide swift justice in matters between the employer and its employees. These cases have been taken out of the courts so as not to clog the tribunal calendars. If an administrative hearing is delayed unreasonably in being scheduled or there are unjustifiably long lapses between continued sessions of hearings or the final decision is unreasonably withheld, disservice is done to the system of administrative justice and the very purposes of creating such tribunals may be thwarted.

Administrative hearings should proceed with reasonable dispatch to attain substantial justice for all parties.

If the hearing involves repetitious matters, a stipulation that one of such matters is typical of all, will expedite the hearing and do no injury to the party’s cause. However, caution must be exercised not to force stipulations.

Care should be given to the witnesses and their employers regarding having them appear and wait throughout the course of an appeal hearing to testify.

CONTINUANCE OF HEARING



The Civil Service Board shall schedule a hearing within 30 days of the receipt of the employee's request. The Board shall consider a request for a continuance in accordance with this policy for granting continuances.

Any employee who is dismissed from employment and is seeking a continuance of his/her appeal hearing under Rule 14 shall be required to complete and submit to the Civil Service Office, in advance of the scheduled hearing date, the Waiver of Pay and Emoluments Form for the duration of that continuance. Completion of the Waiver by the employee's attorney is also acceptable. Failure to timely submit that Waiver to the Civil Service Office may cause the Board to deny the continuance and proceed with the hearing as scheduled. Copies of the waivers will be sent to the City Attorney's Office.

In the event a continuance is granted due to a possible settlement, the parties shall submit, within 30 calendar days of the continuance, a joint stipulation of settlement to the Executive Secretary for submission to the Civil Service Board. Upon receipt of the written notice of settlement, the Board shall enter an order of dismissal. Should the parties fail to submit said notice within the required time period, the Executive Secretary shall reschedule the hearing.

In the event a continuance of an appeal hearing is requested on the basis that an employee has been convicted of a serious criminal offense and the conviction is currently under appeal, the Board shall enter an order of dismissal without prejudice. Should the party's conviction be overturned, he or she shall be allowed to reinstate the request for a hearing pursuant to Rule 14, 16 or 17.

"Serious criminal offense" is defined as, but not limited to, those offenses such as a capital offense, felony offense, violent misdemeanor offense, crime of moral turpitude, or criminal traffic violation offense.

NON-APPEARANCE AT HEARING

If the employee fails to appear at the appeal hearing, and notice has been verified, the Board may proceed with the hearing in accordance with Rule 14.7.

If the department director or City Manager does not appear and no evidence is offered in support of the charges made, the Civil Service Board will render judgment by default or may hear evidence offered by the removed employee and render judgment thereon. [Rule 14.7]

If the employee fails to appear at a grievance or investigation hearing, granted at his/her request, the Board may dismiss the case with or without prejudice.

AUTHORITY OF THE CIVIL SERVICE BOARD



Under these guidelines, the Board's Chairperson, subject to the approval of the Board and advice of the Board's Special Counsel shall:

1. Administer oaths or affirmations.
2. Rule upon offers of proof and objections and receive relevant evidence.
3. Regulate the course of the hearing.
4. Dispose of procedural requests or similar matters.

Subpoenas for witnesses for either side may be issued by the Civil Service Board and processed by the Executive Secretary of the Civil Service Board, who shall also arrange for the retention of a court reporter to attend the hearing.

REPRESENTATION OF PARTIES

Although the emphasis of administrative hearings is on the informal side, and legal counsel is not required, the representation of parties by attorneys is welcomed and encouraged. Parties have the right to appear in person without representation, if they so desire.

EXCHANGE OF INFORMATION

The parties to a Civil Service Board hearing shall disclose to each other, no less than 5 business days prior to the hearing, a list of all witnesses each party intends on calling to testify at the hearing by telephone.

All documents to be introduced at any hearing should be marked for identification prior to the commencement of the hearing. The party seeking to introduce the document should have eight (8) copies of each document it seeks to introduce (one for each Board member, one for the opposing party, one for itself, and one for the Record). Prior to the commencement of the Hearing, the Party with the burden of proof shall provide one set of all documents it will seek to introduce to the other Party, and six (6) sets to the Executive Secretary who will provide one set to each Board member. After that Party rests, the opposing party shall likewise provide one set of all documents it will seek to introduce, to the other Party.

FAILURE TO ABIDE BY THIS RULE MAY RESULT IN THE EXCLUSION OF WITNESSES OR DOCUMENTS.

THE RECORD

Civil Service Board hearings are open to the public. All hearings shall be recorded by a court reporter. This service will be arranged by the Civil Service Board's Executive Secretary. Additionally, the hearing will be recorded on audiotape or via other means by the Executive Secretary, and may be videotaped by the City's Office of Media Relations or aired on the City of Miami Television - Channel 9.

A record must be made at every hearing session of a case even if there are no appearances. If a party appears at the hearing to request a continuance, a record should be made of his/her appearance and a statement of his/her request. The history of every case must show what happened at each scheduled hearing and the reasons for the continuance or disposition of the case.

OPENING THE HEARING

Before opening the hearing, the chairperson should identify himself/herself by his/her official title and make a brief summary of the purposes of the hearing and procedure to be followed.

At the opening of the hearing, the Chairperson should ascertain the identity of the parties and their representatives. He/she should ensure that the name and official title of each person appearing before the Board is recorded in the minutes of the hearing.

CHARGING DOCUMENT

The charging document shall be introduced into the record as a Board exhibit. The actual charges will also be filed in the employee official personnel jacket. The Board Chairperson will ask the appellant if he or she agrees with the facts alleged in the charging document, and whether he or she agrees with the assessed penalty. The Board shall consider these responses in conducting the hearing and in their deliberations.

RESPONSIBILITY OF BOARD CHAIRPERSON

It is the responsibility of the Chairperson to conduct the hearing in such order and manner with such methods of proof and interrogation as he/she deems best suited to ascertain the substantial rights of the parties, affording all parties full opportunity to present such testimony, and to introduce such evidence as may be pertinent to the issues involved. He/she must exercise such control as is necessary for an orderly, effective, and reasonably expeditious procedure. Strict rules of evidence, as in courts of law, shall not apply. [Rule 14.4 (c)]

OPENING STATEMENTS

Each party may state his or her position in the case at the beginning, or prior to calling his/her witnesses.

OATHS AND AFFIRMATIONS

No testimony should be taken until an oath or affirmation has been administered. Oaths may be administered by the Chairperson or any Board member.

ORDER OF PROOF

The burden of proof need not be beyond a reasonable doubt, but must comprise a fair preponderance of the evidence.

The Department has the burden of proof in disciplinary action appeals and will put on its case first. The employee has the burden of proof for unsatisfactory service rating, grievances and investigations brought at his/her request, and he/she will first present his/her evidence. After the case is presented by the party with the burden of proof, the party who does not have the burden of proof will put on its case. The giving of testimony by each party and his/her witnesses is subject to appropriate cross-examination, as well as questions from Board Members.

It is within the discretion of the Chairperson to call or recall a witness as the demands of a case dictate. Orderly procedure requires parties and their witnesses to testify in sequence, but sometimes it is necessary to break the sequence to expedite the hearing or to accommodate a witness.

The Chairperson may require the attorney to point out precisely what he regards as incompetent, irrelevant, or immaterial and then rule thereon. He/she need not overrule or sustain the objections formally, but may state that he/she will allow the question or answer or exclude the question or answer or he may require that the objectionable question or answer be rephrased.

If any attorney offers an exhibit of evidence and its admissibility is questioned, the Chairperson may request the attorney to explain the materiality of the exhibit.

Exceptions to rulings of the Chairperson are not necessary.

After each side has presented his/her case, and before closing argument, rebuttal evidence will be permitted.

INTERROGATION

Questions should be relevant and material. Statements or arguments must be reserved for that portion of the hearing.

The Chairperson or other Board Members may question a witness.

The Chairperson and members of the Board should not interfere with the development of a case by making gratuitous comments, by averting to collateral or irrelevant matters or by breaking into testimony unnecessarily.

APPLICATION OF RULES OF EVIDENCE OR TECHNICAL PROCEDURE

The Board's Special Counsel may assist the Board with advice prior to evidentiary rulings. [Rule 14.4 (c)]

The goal of the Chairperson, with the assistance and guidance of the Board's Special Counsel, should be to steer a middle course between rigid, formal, technical procedure and careless informality, in order to afford substantial justice to all parties [Rule 14.4 (c)]. The proceedings shall be as informal as is compatible with the essential requirements of the law [Rule 14.4 (b)]. If a party objects to a line of questioning it may do so with a continuing objection for purposes of expediency.

Freedom from technicalities does not release the Chairperson from the necessity of exercising an intelligent judgment of what is relevant or material. The rules provide that the Board governs admission of evidence. [Rule 14.4 (c)] However, for purposes of expediency at hearing the Chairperson will rule on the admission of evidence subject to being overruled by the Board. In like manner, he/she controls the length and content of direct testimony, cross-examination, or argument. He/she must keep examination within reasonable bounds and within the issues.

Written statements, transcripts of oral statements and hearsay evidence may be admissible at the discretion of the Board. The appropriate weight of testimony and each item admitted into evidence will be given by the Board in its deliberations. The Board may admit any evidence it deems pertinent. [Rule 14.4 (e)]

CLARIFYING THE RECORD



The record should always indicate clearly who is talking. Persons referred to in testimony, as “he”, “you”, etc., should be identified on the record. The Chairperson should interrupt to determine to whom the party speaking is referring.

Whenever an exhibit is referred to in testimony, it should be designated by its exhibit marking. When any paper, form document, or other tangible evidence is referred to, it should be described briefly. The Chairperson should interrupt to make such identification.

If dates are material in a case, the day, month, and year should be given each time mentioned.

Whenever a proper name is given in testimony, the Chairperson should require it to be spelled out the first time mentioned. Addresses should be clearly recorded. If form numbers, code numbers, symbols, abbreviations, technical terms, etc., are used in the hearing, the Chairperson should obtain an explanation in language simple enough for all to understand.

The record should reflect the official job title of persons appearing as representatives or witnesses at a hearing. If such persons are referred to in testimony, the Chairperson should identify them by title the first time such reference is made.

EXHIBITS

Whatever papers, books or records pertinent to the case are offered in evidence, they should be accepted with broad latitude and marked by the Executive Secretary after consideration of any objections of

counsel or representatives. It still remains the function of the Board to give proper weight and consideration to the exhibits.

When an exhibit is accepted into evidence, it should be conspicuously marked by the Executive Secretary in such place upon the paper so that the marking will not obliterate any printing or writing thereon. The Executive Secretary should indicate in so marking the exhibit by whom it was offered, the date of the hearing and the initials of the court reporter. Such marking should be in ink. Abbreviations may be used.

All exhibits of The Department should be marked as "City Exhibit" with sequential numbering and all Employee exhibits should be marked "Exhibit" with sequential numbering as "Employee Exhibit".

Generally, all exhibits should be retained in the file. However, if it is necessary to return an exhibit; for example, because it is a record in use, a copy of the exhibit should be made and marked and the original returned to the party producing it. Exhibits should be retained until the case is completed and the time for possible appeal or judicial reviews has expired. If necessary, they can be returned thereafter to the parties producing them and appropriate record made of such return on the date thereof.

PROCEDURAL QUESTIONS

Where questions of the admission of evidence or other procedural questions arise during a hearing, a party or his representative should always be permitted to state on the record his position with respect to such questions and (with reasonable conciseness) argue in support of his position. Where testimony offered in behalf of a party is excluded, the party, or his counsel should, be permitted also to put on the record a concise statement of the substance and purpose of the excluded testimony.

FINAL ARGUMENT

At the conclusion of the presentation of evidence, the parties shall be permitted to make final arguments to the Board. The party with the burden of proof shall give the first closing argument. The other party will then give closing argument and the party with the burden of proof will have an opportunity for the final (rebuttal) argument.

CONCLUDING A HEARING

Upon the conclusion of a hearing, the Chairperson should close all discussion and comments except those of Board members. After due consideration of the evidence and other pertinent information, the Board shall render its findings to the employee and to the City Manager.

The hearing is conducted in two parts. The Board shall first decide whether or not the employee is guilty or not guilty of the charges.

If the employee is found guilty of any of the charges, the Board will proceed to the penalty phase of the hearing. The Board may hear additional testimony during the penalty phase and will review the employee's personnel file. After argument of the parties, the Board will decide an appropriate penalty. This decision is a recommendation to the City Manager who is free to accept or modify it in his sole discretion.

The court reporter will be notified if a transcript is requested by the Civil Service Board. Any other party who wants a copy may arrange with the reporter to purchase it.

REPORT OF FINDINGS OF FACT



It shall be the responsibility of the Board's Special Counsel to complete and submit Findings of Fact within a reasonable period of time to the Civil Service Office following an appeal hearing.

The Findings of Fact must be based upon substantial, competent evidence. A conclusion by itself is insufficient. The findings must be supported by facts in the record. These facts must be reported in the Findings of Fact which will support the final Judgment signed by the City Manager. If exhibits must be referred to in the findings, they should be described rather than indicating them only by identification numbers or letters. Dates recited should be complete as to month, day and year for clarity in the findings and for future reference and identification.

Upon receipt of the proposed Findings of Fact, the Executive Secretary shall forward a letter to the Employee or his/her Attorney, the City Attorney, and the Assistant City Attorney who represented the Department advising that the matter shall be included on the agenda of the next regularly scheduled meeting for the Civil Service Board's approval and subsequent submission to the City Manager. Following Board approval, the Executive Secretary shall submit to the City Manager, the Findings of Fact, a report of the hearing, a copy of the disciplinary letter and any other pertinent information. The City Manager shall then issue a Judgment sustaining, reversing, or modifying the action of the Department Director.

Upon receipt in the Civil Service Board office, a copy of the City Manager's judgment will be included in the agenda of the next regularly scheduled meeting and will serve as notification to the Board of the Manager's disposition of the matter.

RULE 13 UNSATISFACTORY SERVICE RATING HEARINGS

Rule 13 Unsatisfactory Service Rating hearings are conducted in essentially the same manner as appeals, with the exception of the burden of proof, which is upon the employee.

Whenever it shall appear from the reports of efficiency that the conduct and/or efficiency of any employee has fallen below an acceptable level, Civil Service Rules require that such an employee shall be called before the Board to show why he/she should not be removed. If no reason is shown satisfactory to the Board, the employee shall be removed, suspended, or reduced in grade, as the Board shall determine.

The Board's decision is **final** and is recorded in the permanent records of the department and Board. The Executive Secretary will notify the employee of the Board's decision in writing.

RULE 16 GRIEVANCE AND INVESTIGATION HEARINGS

The Board may decline a request for a hearing pursuant to Rule 16 on its discretion, and may base such a decision on any applicable labor agreement or other reason.

Rule 16 Grievance and Investigation hearings are conducted in essentially the same manner as appeals, with the exception of the burden of proof, which is upon the employee.

Other notable differences: Rule 16 hearings do not have a filing deadline. Rule 16.1 (Abuse of Power) investigation hearings will result in a report to the City Manager and will indicate if a Civil Service Rule violation is found. Rule 16.2 (Complaint by Employee) grievance hearings must include a stated Rule violation, may include a preliminary investigation and result in findings of fact and recommendations to the City Manager.

RULE 17 PROHIBITED PRACTICES HEARINGS

Rule 17 Prohibited Practices hearings are conducted in essentially the same manner as appeals, with the exception of the burden of proof, which is upon the employee.

Other notable differences: Rule 17 hearings do not have a filing deadline and the Board's decision is **final**.