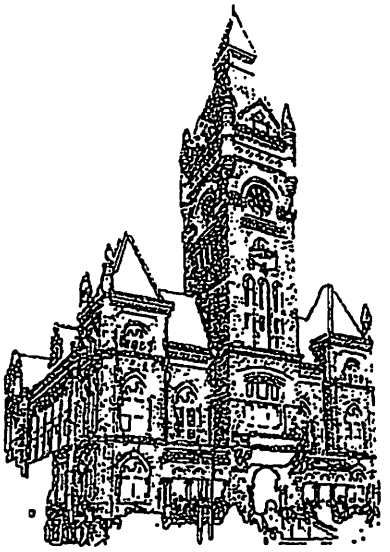
Butler County Hearing Rules

Alternative Dispute Resolution



1.0 General.

Hearings granted to employees due to furlough, resignation, removal, suspension, or from individuals alleging discrimination shall be public hearings. The County of Butler Department of Human Resources shall, within 60 days of receipt of the request for hearing, fix a date for said hearing. At least 10 business days' notice in advance of the date of the hearing shall be tendered in writing to the individual affected and to the County of Butler and others interested in the case, informing them of the date, time, and place of the hearing. Notice of the hearing shall be posted on a bulletin board or other similar location in or near the office of the County of Butler's Department of Human Resources. The Arbitrator may grant requests for continuances. The Arbitrator, on its own motion, may grant a continuance if the scheduled hearing lasts longer than two (2) hours.

2.0 Requests.

ADR Communication forms are centrally located and available to all non-union employees at the Personnel/Human Resources Department.

(a) Requests for hearings shall be:

(1) Made in writing consistent with the County of Butler's ADR Procedure.

(2) Personally signed by the individual appealing.

(3) Received or postmarked within five (5) business days of the date the employee receives notice of the personnel action or becomes aware that discrimination has occurred. The five days starts on the day the employee's respective authority (Supervisor/Department Head) receives notice of the personnel action. The notice must be written on the County's ADR Communication Form which are available in the Personnel Office on the fifth floor.

(b) The person appealing shall clearly and concisely state:
(1) Grounds of interest of the person in the subject matter.
(2) Facts relied upon.
(3) Relief sought.

(c) Appeals alleging discrimination which do not include specific facts relating to discrimination may be dismissed. Specific facts which should appear on the ADR Communication Form include:
(1) The acts complained of.
(2) How those acts differ from the way the appointing authority dealt with others similarly situated.
(3) When the acts occurred.
(4) When and how the appellant first became aware of the alleged discrimination.

(d) Acceptance of an amendment to an ADR Communication Form is strictly at the discretion of the Arbitrator.

(e) A probationary status employee does not have the same right of appeal as a regular status employee. To be granted an appeal hearing, a probationary status employee must allege that the personnel action was motivated by discrimination. It is not sufficient just to claim you are a victim of discrimination. The probationary status employee must allege specific facts which would support a conclusion that discrimination did occur as outlined in Section 2.0 (c). If the probationary status employee fails to allege specific facts that support the discrimination claim, then the request for an appeal hearing will be denied by the Arbitrator due to an insufficient allegation of discrimination.

(f) Appellants are NOT required to hire an attorney, but may do so. Appellants may represent themselves, but they cannot be represented by a non-legal person, such as friend, co-worker, or spouse. Appellants are responsible for securing their own attorney at their own cost. The appointing authority will be represented by an attorney.

(g) The County will provide interpreters for appellants who have limited English proficiency or who are deaf or hard of hearing and the County will incur the cost of such services.

(h) The attendance of the appellant and its parties is essential for the hearing to proceed in a meaningful manner. The goals of the arbitration program will be seriously undermined in the event a party were permitted to refuse to attend an arbitration hearing and then

demand a new trial. If necessary, the Arbitrator has the ability to impose "appropriate sanctions, including, but not limited to, the striking of any demand for a trial de novo" filed by a party who fails to participate in the arbitration process in such a "meaningful manner".

3.0 Form of hearing.

(a) The hearing shall be formal, but not all of the strict rules of evidence need be enforced. Evidence offered should be the best evidence available. Any document(s) which constitute reliable evidence or whose contents or meaning are in dispute should be brought to the hearing and entered into evidence. Whenever possible, the original document(s) should be available to be offered into evidence.

(1) A complete stenographic, electronic, or other exact record of the proceedings shall be made. The Arbitrator may prohibit the use of mechanical and electronic recording devices if the use of the devices will disrupt or otherwise interfere with the proceedings. A party desiring to have a recording and/or transcript made of the arbitration hearing shall make all necessary arrangements for such and shall bear all expenses so incurred and must notify all other parties involved.

4.0 Subpoenas.

(a) Procedure for requesting subpoenas.

(1) Subpoenas for the attendance of witnesses or for the production of documents will be issued only upon written application to the Arbitrator with a copy to the opposing party.

(2) Written application shall specify as clearly as possible the relevance of the testimony or documentary evidence sought. As to documentary evidence, the request must specify to the extent possible the documents desired and the facts to be provided thereby.

(3) Failure to adhere to the requirements of this subsection may result in refusal by the Arbitrator to issue the requested subpoenas.

(b) Service.

(1) A subpoena shall be served personally upon the witness.

(2) Subpoenas for the production of documents shall be served personally or by first-class mail upon the individual in possession of the documents, if known, or the

agency head, which may designate a knowledgeable alternate as custodian of the documents.

(3) Service of subpoenas for the attendance of witnesses shall be made at least forty-eight (48) hours prior to the hearing, unless the witness agrees to waive the forty-eight (48) hour requirement, Subpoenas for the production of documents shall be served no later than five (5) business days prior to the date of the hearing.

(4) Failure to adhere to the requirements of this subsection may result in a ruling by the Arbitrator denying the enforceability of the subpoena.

6.0 Depositions and discovery.

(a) *Depositions.* At the discretion of the Arbitrator, depositions – statements of witnesses under oath – may be transcribed and submitted in lieu of testimony at the hearing, where the witness will be unavailable to testify at hearing because of unavoidable absence from the jurisdiction, illness, or other compelling reasons. The cost of depositions shall be borne by the requesting party.

(b) *Discovery of documents.* At the discretion of the Arbitrator, relevant documents may be obtained from an opposing party prior to the hearing.

(1) Requests for discovery of documents shall be in writing and shall initially be served upon the opposing party or legal representative in sufficient time to allow completion of discovery prior to the hearing.

(2) If the parties are unable to agree upon a reasonable scope of discovery, requests for discovery may then be forwarded in writing to the Arbitrator, which may, at its discretion, issue appropriate subpoenas under this section.

7.0 Settlement

(a) Parties, at their discretion, may enter into agreements to settle or otherwise terminate a proceeding before the Arbitrator at any point in the process prior to adjudication. All parties shall notify the Arbitrator in writing in a timely manner of a settlement agreement. Upon receipt of notice from the appellant or the appellant's legal representative, an appeal shall be deemed withdrawn.

(b) Unless the Arbitrator is requested to review and approve the settlement, the Arbitrator will not be responsible for the enforcement of a settlement agreement.

8.0 Pre-hearing conferences.

(a) *Pre-hearing conference.* To facilitate the submission and consideration of issues and facts, the Arbitrator may schedule a pre-hearing conference at least ten days prior to the arbitration hearing and request the parties to participate in the proceeding. The conference may be conducted in person or by telephone, to consider the following:

(1) Simplification of the issues.

(2) Stipulations of fact and authenticity of documents.

(3) Admissibility and relevance of witness testimony.

(4) Admissibility and relevance of exhibits, which will be identified and exchanged at the conference. The Arbitrator shall return all exhibits to counsel at the conclusion of the arbitration hearing. Failure to timely submit such exhibits may be deemed failure to meaningfully participate in the process, as outlined in Section 2 (h).

(5) Subpoenas and all issues related to subpoenas.

(6) Offers of settlement or proposals for adjustment, if appropriate.

(7) Other matters that would facilitate the efficiency of the proceeding.

(b) *Pre-hearing conference memorandum.* No later than three (3) business days in advance of the pre-hearing conference, the parties will submit to the Arbitrator an original memorandum, plus two (2) copies, that contain the following:

(1) Caption identifying the parties and the appeal by its assigned appeal number.

(2) Statement of issues to be decided by the Arbitrator. If a party intends to move the Arbitrator to dismiss the appeal, that issue should be noted, but a Motion to Dismiss must be separately filed.

(3) Statement of stipulations, or facts not in dispute, that includes requested stipulations of fact and any agreements already reached by the parties regarding undisputed facts.

(4) Witness list with brief description of testimony of each witness listed to determine whether live testimony will be necessary and who the witnesses will be. Calling a witness whose name does not appear on the list may be permitted at the discretion of the Arbitrator.

(5) Exhibit list with brief description of exhibits and a brief explanation of the relevance of each exhibit listed.

(6) Estimate of time required to complete presentation of evidence to the Arbitrator.

(7) Requests for subpoenas may be included with the memorandum.

(8) At the hearing, the parties may be limited to those witnesses and exhibits set forth in the memorandum unless one (1) or more of the following apply:

(i) A supplemental memorandum is submitted to the Arbitrator at least one (1) business day prior to the hearing.

(ii) There has been proper notice to other parties and there is no showing of undue inconvenience or prejudice.

(iii) The parties have conferred and agree to the additional witnesses or exhibits, or both.

9.0 Procedure for hearings on furlough, resignation, removal, or suspension.

(a) The County of Butler bears the burden of proof and shall go forward to establish by a preponderance of the evidence the charge or charges on which the personnel action was based. If, at the conclusion of its presentation, the County of Butler has, in the opinion of the Arbitrator, established a prima facie case, the appellant shall then be afforded the opportunity of presenting a case.

(b) If, after due notice, the appellant fails to appear at the scheduled hearing, the County of Butler has no burden to go forward and the appeal may be dismissed without the presentation of evidence.

(c) While in each case the Arbitrator may adapt the procedures and conduct of the hearing in accordance with the requirements of justice and due process, generally the routine shall follow the following order:

(1) The Arbitrator shall open the hearing and shall enter as exhibits a copy of the document initiating the action taken by the County of Butler, the ADR Communication Form of the appellant, and evidence of proper notification to all parties in interest.

(2) The parties shall, subsequent to the presiding Arbitrator's introduction of documents, present any preliminary motions.

(3) The County of Butler shall call witnesses to testify after being sworn by the presiding Arbitrator.

(4) The County of Butler may, through witnesses or by stipulation, offer any other relevant evidence for introduction into the record.

(5) The County of Butler shall cite all relevant provisions of law and all relevant rules and regulations.

(6) The appellant may object to questions directed to witnesses and to the introduction of any evidence offered.

(7) The appellant shall be allowed reasonable opportunity to cross-examine witnesses.

(8) At the conclusion of the County of Butlers' case, the appellant may move to dismiss on the ground that no prima facie case has been established.

(9) If no motion to dismiss is made, if the motion is denied, or if the Arbitrator defers ruling on the motion, the appellant may present the defense by the testimony of witnesses, the introduction of relevant evidence, and the citation of relevant provisions of law, rules, or regulations.

(10) The County of Butler may object to questions directed to witnesses and to the introduction of any evidence offered.

(11) The County of Butler shall be allowed reasonable opportunity to cross-examine the witnesses.

(12) When all evidence has been introduced, the Arbitrator shall hear oral argument.

(13) The parties may submit briefs within a period of time fixed by the Arbitrator. Failure by either party to file its brief within the fixed time may lead to the refusal by the Arbitrator to consider the brief in making its decision.

(14) The record shall be considered as closed upon receipt of transcripts, depositions, and briefs and the hearing shall be deemed concluded at that time. The Arbitrator will determine the facts upon the evidence of record and decide relevant questions of law within twenty (20) business days after the closing of the record. The Arbitrator shall render a binding decision in writing to the County Commissioners within twenty business days of the hearing. The Arbitrator has the

authority to grant necessary relief based upon their binding decision in the context of granting back pay, retroactivity, or reinstatement when applicable.

(15) A copy of the adjudication in writing, containing findings and reasons, shall be prepared as a decision of the Arbitrator and shall be final. The Arbitrator's decisions are not subject to review or modification by the County Commissioners or County Staff.

(16) A copy of the adjudication will be sent to the County of Butler, to the Pennsylvania Department of Welfare, and to the appellant. Said adjudication will be final and binding. The County must provide the DPW: County Programs Section with a copy of each appeal upon submission and a copy of the final written decision.

10.0 Procedure for hearing on discrimination.

(a) The appellant bears the burden of proof and shall go forward to establish by a preponderance of the evidence the charge or charges of discrimination. If at the conclusion of this presentation, the appellant has, in the opinion of the Arbitrator, established a prima facie case, the County of Butler shall then be afforded the opportunity to reply to the charges.

(b) Apart from the order of going forward, the remainder of the procedure shall follow that prescribed in Section 9.0 (relating to procedure for hearings on furlough, resignation, removal, or suspension). If an appellant fails to attend the hearing, the appeal may be immediately dismissed for failure to prosecute.

DOCUMENTARY FILINGS

11.0 Praecipe of appearance.

(a) Legal representatives for the County of Butler or appellants in appeals or hearings held under these rules shall file a Notice of Appearance with the Arbitrator, prior to the time of the hearing, if possible.

12.0 Exhibits

(a) Parties presenting exhibits shall bring four (4) copies to the hearing. (One for Personnel Department, one for Arbitrator, one for file, and one for attorney to the Board)

13.0 Briefs.

(a) The parties will be notified of the procedure and schedule for the submission of briefs. Parties submitting briefs shall submit the original and four (4) copies to the Arbitrator at

the location specified by the Arbitrator. Briefs filed outside of the time period, sequence, or location specified will be considered only at the discretion of the Arbitrator.

14.0 Form of documents.

(a) *Typewritten.* Pleadings, submittals, briefs, or other hearing-related documents filed with the Arbitrator, if not printed, shall be typewritten on letter size paper, eight and one-half (8½) inches wide by eleven (11) inches long, with left hand margin not less than one and one-half (1½) inches wide and other margins not less than one (1) inch. The impression shall be on only one side of the paper unless there are more than four pages and shall be double spaced except that quotations in excess of five (5) lines shall be single spaced and indented not less than four (4) spaces.

(b) *Printed.* Printed documents shall be not less than ten (10) point type on unglazed paper eight and one-half (8½) inches wide by eleven (11) inches long, with inside margin not less than one (1) inch wide and with double spaced text and single spaced, indented quotations.

(c) *Binding.* Pleadings, submittals, briefs, and other hearing-related documents other than correspondence shall be bound on the left side only.

(d) *Paper color.* Pleadings, submittals, briefs, and other hearing-related documents other than correspondence shall be on white paper.

Dated: April 2017