



NEWPORT BEACH CIVIL SERVICE BOARD PROCEDURAL RULES FOR HEARINGS

Section 1: Scope of Rules.

The Newport Beach Civil Service Board (“Board”) has the responsibility to conduct hearings on appeals from certain disciplinary actions and on certain grievances filed by employees and/or their employee organizations. All such hearings shall be conducted in accordance with the following Procedural Rules (“Rules”). Each party or his/her representatives shall become familiar with and comply with all applicable Rules. In these Rules, unless otherwise indicated, a day means a calendar day. If a deadline falls on a day City administrative offices are not open for regular business (typically weekends and holidays), the deadline is advanced to the next earlier business day for a deadline preceding the triggering event and the next business day following for a deadline after a triggering event.

Section 2: Provision of Procedural Rules to Parties.

Once an appeal to the Board has been filed, or as soon thereafter as reasonably possible, the Secretary of the Board (“Secretary”) shall provide each party with a copy of these Rules.

Section 3: General Decorum.

- A. A hearing before the Board is a search for the truth. It is not a contest of dramatic ability or an oratorical contest. As such, the Board expects all parties and their representatives to act professionally, with courtesy and civility, at all times before, during and after a hearing. The Board may impose any sanction it deems appropriate against a party, or its representatives, for failure to comply with this section.
- B. The Board believes a party’s presentation is more effective where the party, or its representative, is well prepared and the presentation is made in a concise and efficient manner. The Board expects all parties and their representatives to present their cases in such a manner. The Board is committed to fairness. The procedures and limitations in these Rules are not intended to prevent a party from presenting its case. They are intended to help provide that the hearing stage of an appeal will be efficient, effective and focused on activities that are best suited to the hearing process.

- C. Adherence to the deadlines set out in these Rules and the efficient completion of a hearing is in the best interest of all involved. Unless good cause is shown, each party, or if the party is represented the lead person who is to have charge of the conduct of the hearing, shall be present at all hearings or conferences. The parties and their representatives must not schedule other activities which interfere with the appeal hearing. If unexpected events occur, an alternative representative should be available for all parties. Continuances of any hearing or conference will be granted only for good cause shown.

Section 4: Provision of Basic Charging Documents.

The Secretary shall provide each member of the Board with copies of the following documents at least seven (7) calendar days prior to the date of the hearing:

- A. In a disciplinary case:
1. The notice of intent to impose discipline, also referred to as a “Skelly” letter, including any attachments provided to the employee at the time of notice.
 2. The employee’s written response to the notice of intent to impose discipline and/or a transcript of the “Skelly” hearing, if a transcript exists.
 3. The final decision of the Department Director imposing discipline.
 4. All notices relating to the charges or discipline given to the employee by his/her supervisor or the Department Director.
 5. The appeal and/or request for a hearing.
- B. In a grievance proceeding:
1. The original grievance submitted by the grievant and/or the employee organization.
 2. Any response(s) submitted by the Department Director or City Manager.
 3. The final administrative decision on the grievance.
 4. The appeal and/or request for hearing submitted by the grievant.

Section 5: Pre-Hearing Procedure and Conferences.

- A. Within fourteen (14) days of filing an appeal to the Board, the parties, or their representatives, shall meet and confer and perform the following activities:
1. Exchange all documents and evidence that either party intends to rely upon or use during the hearing. Except documents and evidence to be used for impeachment or rebuttal, or for good cause shown, the failure to provide the required documents or evidence shall preclude the use of said documents or evidence at the hearing;
 2. Exchange a list of witnesses to be called at the hearing. For each witness listed, the party shall include a brief summary of the purpose of the witness' testimony and the anticipated witness' testimony. Except for witness(es) to be called for impeachment or rebuttal, or for good cause shown, the testimony of any witness not listed on the exchanged witness list shall be precluded;
 3. Make every effort to explore and eliminate all possibilities of settlement;
 4. Make every effort to stipulate to all facts, documents and evidence upon which the parties know there is no material dispute or which the parties have reason to know will be admitted into evidence during the hearing for the purpose of simplifying the issues to be presented during the hearing. No party shall withhold the party's consent from a stipulation without a good faith basis for doing so. The Board expects the parties will attempt to agree upon, and set out, as many uncontested facts, documents and evidence as possible;
 5. Determine whether the hearing will require a Court Reporter, an electronic recording or neither; and
 6. Formulate a time estimate for the length of the hearing.
- B. Within twenty-one (21) days of filing the appeal to the Board, the parties shall jointly prepare and file with the Secretary a Meet and Confer Compliance Statement setting out in detail the parties' compliance with the meet and confer process required under Section 5(A)(1-6) above. In addition to detailing the parties compliance with the requirements under Section 5(A)(1-6), the Meet and Confer Compliance Statement shall list each party's witnesses and documents, those facts and documents upon which the parties are willing to stipulate, and whether a Court Reporter or

an electronic recording will be required for the hearing and, if so, identifying the party or parties requesting it.

- C. For any appeal hearing estimated to take longer than five (5) hours, the Board Chair, or his or her designee, may schedule a pre-hearing conference and/or issue a Scheduling Order. The Board Chair, or his or her designee, will set the time and place for the pre-hearing conference and give reasonable notice. The pre-hearing conference may be conducted by telephone. Follow-up conferences may be scheduled and conducted as necessary. At the pre-hearing conference or pursuant to a Scheduling Order, the parties should be prepared to discuss means of streamlining the hearing, including, but not limited to:
1. Presentation of non-critical testimony by declaration;
 2. Stipulations as to the content of testimony, documents or evidence;
 3. Presentation of testimony on direct examination by declaration subject to cross-examination;
 4. Qualification of experts by admitted resumes; and
 5. Attempt to resolve any objections to the admission of any evidence, regardless of whether it is anticipated to be presented during the hearing.

Section 6: Pre-Hearing Briefs, Motions, Requests and Exhibits.

- A. Each party shall have the right to file a hearing brief and pre-hearing motions. The party shall serve on the other party and file an original and ten (10) copies of the hearing brief and/or pre-hearing motions with the Secretary at least fifteen (15) days before the hearing. The Secretary shall promptly distribute the hearing brief and/or the motions to each Member of the Board.
- B. Each party shall serve on the other party and file, with the Secretary, a list of any witnesses or expert witnesses the party intends to call. The party shall file the original and ten (10) copies of the witness list with the Secretary and serve a copy on the other party at least ten (10) days before the hearing. Expert witness lists shall include each expert's qualifications and a brief summary of the facts and opinions to which the expert is expected to testify. The Secretary shall promptly distribute the witness/expert witness list to each Member of the Board. Except for good cause shown, the testimony of any witness and the admission of any exhibit not listed on the parties' timely filed list shall be precluded.

C. Ten (10) days before the hearing, the parties shall submit to the Secretary ten (10) copies of the following:

1. A document, jointly prepared, setting forth all stipulations agreed upon.
2. Except for documents produced pursuant to subpoena, the parties shall prepare exhibit binder(s) that will contain all documents to be offered into evidence. All binder(s) shall be three ring binders that are indexed by exhibit number with tabs or dividers on the right side. If necessary, the binders may have multiple volumes; however, each volume must indicate on the spine of the binder the volume number and the exhibit numbers contained therein. Documents submitted on behalf of a Department Director (in discipline) or the City Manager (in a grievance) shall be marked numerically in sequence (City Exhibit "1", "2", etc.). Documents to be submitted by an employee or grievant (in discipline or a grievance) or an employee association (grievance) shall be marked alphabetically in sequence (Employee Exhibit "A", "B", etc.).
 - a. The first binder shall be jointly prepared and contain all exhibits offered by the parties that are the subject of a stipulation between the parties as being admissible evidence for the hearing. This first binder shall be clearly labeled as "Stipulated Evidence" to allow the Secretary to distribute it to all Board members for review prior to the commencement of the hearing.
 - b. The second binder shall contain all exhibits offered by a party that are not subject to a stipulation as admissible evidence for the hearing. Members of the Board shall not consider any exhibit in this second binder until admitted into evidence by the Board Chair. In addition to submitting this binder to the Secretary, each party shall serve a copy on the other party.

Section 7: Subpoenas.

The Board Chair shall issue subpoenas compelling the attendance of persons or the production of documents or tangible items provided good cause is shown by the party seeking the subpoena. All requests for subpoenas and supporting documentation shall be submitted to the Secretary at least ten (10) working days before the hearing. The Board Chair, or the Board's legal advisor, may authorize an attorney at law representing a party before the Board to sign and issue the subpoena, subject to limitations or reasonable procedures the Board Chair or legal advisor may set. The Board may issue subpoenas on its own motion at any

time during the pendency of the hearing. The party requesting the subpoena shall be responsible for service, including all costs thereof.

Section 8: Closed Hearing.

Any employee who appeals a disciplinary action shall have the right to a closed hearing or an open hearing. In the event the employee does not expressly waive the right to a closed hearing, the appeal proceedings shall be confidential. In such a case, the hearing room shall be cleared of all persons except members of the Board, the legal advisor to the Board, the parties and their representatives, including the Director of the involved Department or his or her designee, and the investigative case agent of the Department (if any), regardless of their status as a witness, the Human Resources Director, or designee, the Secretary, the City Attorney, a court reporter or person operating an electronic recording device (if any), and the witness then testifying.

Section 9: Burden of Proof.

- A. In a disciplinary appeal, the City has the burden of proving; **(1)** each fact necessary to establish the truth of the basis for the discipline against the employee and; **(2)** that the discipline imposed was not unreasonable, capricious or arbitrary in view of the offense, the circumstances surrounding the offense, and the past record of the employee. The employee has the burden of proving any substantive violation or omission of procedure and any defense he or she is asserting.
- B. In a hearing concerning a grievance, the grievant has the burden of proving each fact necessary to establish the merit of the grievance and the City has the burden of proving any defense it may be asserting.
- C. The burden of proof shall be by a preponderance of the evidence.
- D. At the conclusion of evidence by the party with the affirmative burden of proof, the opposing party may bring an oral motion to dismiss solely on the basis that the party with the affirmative burden of proof has failed to meet its burden of proof.

Section 10: Hearing Rules.

The following rules shall apply to all hearings:

- A. All hearing briefs, motions, stipulations to facts and exhibits will be carefully reviewed and considered by all Board members prior to the commencement of a hearing.

- B. The Board Chair controls the hearing. Any questions or comments to a Board Member or the Board's legal advisor are to be directed through the Board Chair. The Board Chair may set reasonable time limits for any aspect of the hearing, including the time allotted for a party's case, for the examination or cross examination of individual witnesses or for the number of witnesses testifying either in total or as to a particular issue.
- C. The parties are expected to be present, fully prepared and ready to immediately proceed at the time designated for the start of the hearing and throughout the hearing. The Board Chair may adopt reasonable procedures or may impose reasonable sanctions to address lack of preparation or unreasonable delay.
- D. Non-party witnesses shall be sequestered in all disciplinary hearings. After giving testimony, each witness shall be admonished not to discuss his/her testimony with anyone other than the parties or their representatives.
- E. Oral evidence shall be taken only on oath or affirmation. Oral testimony should be restricted to those matters not adequately addressed in documentary evidence. Oral testimony is not to be used for reading documentary evidence into the record. Witness questions are not to be used as a vehicle for presenting argument. The parties may highlight portions of the documentary evidence and make argument in the opening brief and closing argument. The Board Chair may restrict oral testimony to only those matters not established by stipulation of the parties or reflected in the exhibits admitted into evidence.
- F. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though outside the scope of direct examination, to impeach any witness, and to rebut any evidence. Except as provided in Subsection E, any party may call as a witness any person on the opposing party's witness list.
- G. The expert witness of any party shall first be examined by that party. An expert witness is a person whose special skill, knowledge, training or education is sufficient to qualify him/her as an expert on the subject to which his/her testimony relates. Only expert witnesses may provide opinion testimony, but they may do so only so long as the opinion testimony relates to the subject matter of the witness' expertise.
- H. All objections to questions or evidence are to be addressed to the Board Chair. A party, or its representative, must not use objections for the purpose of making a speech, recapitulating testimony, or attempting to guide a witness. When objecting, the party must state the objection and

state only that counsel objects and the legal ground of the objection. Speaking objections are strictly prohibited. If a party wishes to argue an objection further, the party must ask for permission from the Board Chair to do so.

- I. The hearing shall not be conducted in strict compliance with the rules of evidence. The Board Chair shall, with or without the advice of Counsel to the Board, make all evidentiary rulings and may admit any relevant evidence if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The Board Chair may consider, but shall not be bound by, any statutory or decisional law, which might make improper the admission of the evidence in civil proceedings.
- J. Hearsay evidence is admissible and may be used for the purpose of supplementing or explaining other evidence. Hearsay evidence shall not be sufficient to support any finding unless the hearsay evidence would be admissible over objection in civil proceedings.
- K. The rules of privilege shall be effective only to the extent required by the laws of the State of California.
- L. Documents shall be admitted into evidence subject only to proof of authenticity. The contents of documents shall be considered evidence of the matter stated so long as the sources of information and the method and time of preparation of the document are such as to indicate its trustworthiness.
- M. Except for good cause shown, the Board Chair shall exclude the testimony of any person not identified on a party's witness list and shall exclude any tangible evidence not exchanged with the opposing party in compliance with these Rules or identified on a party's exhibit list.
- N. It shall be the responsibility of each party utilizing electronic devices for the presentation of testimony or evidence to ensure that the equipment necessary for the presentation is available prior to the commencement of the hearing. If audio or visual presentations are to be utilized, it shall be the responsibility of the party offering them to ensure that they are both clear and audible. Failure to provide the equipment necessary for the presentation of the evidence or failure to ensure an audible and clear copy of the audio or visual presentation may result in the preclusion of said evidence at the time of the hearing.
- N. If the hearing is being transcribed by a Court Reporter or electronically recorded, any party requesting copies or transcripts of the same shall be responsible for the costs thereof.

Section 11: Sanctions.

Except for good cause shown, the Board Chair shall exclude the testimony of any witness and/or the presentation of any evidence based upon the failure of any party to comply with these Rules. The Board Chair may establish a different or less stringent sanction if the circumstances justify such a modified imposition.

Section 12: Closing Statements.

The Board Chair shall declare the evidentiary record closed and shall offer the parties an opportunity to make closing statements after each party has presented its evidence. Closing statements shall be limited to ten (10) minutes unless the Board Chair allots additional time due to the length of the hearing or the complexity of the issues. The party with the burden of proof shall give its closing statement first followed by the closing statement of the other party. The party with the burden of proof shall have the right to make a reply limited to five (5) minutes. The Board Chair may, upon a showing of good cause, modify the time allotted for closing statements or the order in which those statements are presented.

Section 13: Deliberations and Decision.

The Board Chair shall declare the hearing closed upon completion of closing statements. The Board shall, at that time, or at a subsequent meeting, deliberate on and decide the matter. In the case of a disciplinary hearing, the deliberation shall be conducted in closed session and in full compliance with the Brown Act. The closed session shall be attended only by members of the Board and the legal advisor. The Board shall direct its legal advisor to draft proposed findings and a decision consistent with the tentative decision. Once deliberations have been completed and a tentative decision has been reached, the Board Chair shall announce on the record that the matter will be calendared at a specific date for consideration of proposed written findings and decision. In the case of disciplinary proceedings, the legal advisor shall transmit the proposed findings and decision directly to Board Members through confidential correspondence. At the date and time set for consideration of the proposed findings and decision, the Board Chair shall announce the matter and the Board shall then take appropriate action with respect to the proposed findings and decision. The Board Chair shall sign the findings and decision approved by the Board and the Secretary shall transmit copies to the parties.

Section 14: Confidentiality/Disciplinary Proceedings.

The original findings and decision of the Board shall become part of the employee's personnel record. The disciplinary proceedings, including all testimony, exhibits, and the findings and decision, shall be confidential unless the employee has expressly waived confidentiality under Section 8 above. In such a

case, the findings and decision shall be disclosed only to the City Manager, the Human Resources Director, the Department Director, the City Attorney and supervisors of the employee. Information relevant to implementation of the decision shall be disclosed only to the extent necessary to do so. The disciplinary proceedings, including all testimony, exhibits and the findings and decision shall be open and available to the public where the employee has elected to waive the confidentiality of the hearing process pursuant to Section 8 above.

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