



# 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 Civil Service Board is established in Section 36 of the City of Miami Charter. This Board consists of five members: two who are elected by City employees, and three who are appointed by the City Commission, who serve a term of two years. Members may serve up to four (4) terms, as stipulated in the City Code. The Board is charged with carrying out the provisions of Section 36, in providing 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.

The City of Miami aims to provide the people in the city with a competent, honest and productive workforce by creating and supporting merit system principles. These 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 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, religion, sexual orientation, 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.

This Manual of Procedures is developed in accordance with the Civil Service Rules and pursuant to Rule 14.4. The purpose behind the Manual is to provide a fair, open and meaningful process by which to conduct hearings before the Board.

## AUTHORITY OF THE CIVIL SERVICE BOARD



Under these guidelines, the Board's Chair, 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.

## RULE 14 - THE APPEAL HEARING



The Board endeavors to improve the relationship between the employer and the employee, and should have an objective framework to assess the efficiency of civil servants. To ensure this, a 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. Any other cause which is justifiable as to promoting efficiency is allowable under these rules. 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 and is permanent in said classification, 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.

Civil Service Rule 14, DISMISSAL, SUSPENSION, DEMOTION AND RESIGNATIONS further states that the Civil Service Board shall proceed to hear an appeal 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 will sustain, reverse, or modify the demotion, dismissal, fine, or suspension. Such hearings shall be conducted in accordance with Civil Service Rules and Regulations.

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.

The parties should be judicious in only requiring the testimony of witnesses who have information about the principle matters of the case. Care should be given to the witnesses and their employers regarding having them appear and wait throughout the course of a 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.

Settlement Agreement: 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.

Criminal Conviction: In the event a continuance of an appeal or grievance hearing is requested on the basis that an employee has been convicted of a criminal offense, the Board shall determine whether to conduct the hearing in accordance with Rule 14.7, or to enter an order of “dismissed without prejudice”. Should the party’s conviction be overturned prior to the conduct of the hearing, he or she shall be allowed to reinstate the request for a hearing in writing.

## NON-APPEARANCE AT HEARING

The Board requires that Appellants be present at their hearing to respond to any questions that the Board may have. They may also be called by the opposing party to testify. As with any subpoena issued by the Board, 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 City official/representative 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 disciplined 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.

## 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 legal representation, if they so desire.

## EXCHANGE OF INFORMATION

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 ten (10) copies of each document it seeks to introduce.

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 eight (8) sets to the Executive Secretary. Following review of documents, consideration of objections and respective ruling by the Board on admission or removal, the Executive Secretary will provide the documents to the members, special counsel, witnesses and the file. After that Party rests, the opposing party shall likewise provide the indicated copies of documents it will seek to introduce, and ruling and distribution will be as mentioned.

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

## THE RECORD

Civil Service Board hearings are open to the public. Effective October 1, 2009, the Board no longer uses court reporters to record its hearings. The Board will record hearings using a digital audio recording device, and the meeting may be recorded by the City's Office of Communications and/or aired to the public on the City's website, and on the City of Miami Television Channel. A copy of the recording (DVD) may be obtained by submitting a request to the Office of Communications and paying the required fee.

The Executive Secretary will maintain a record 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 Chair 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. For the edification of all parties, the Chair may ask the Executive Secretary to read the charging document or request for hearing into the record, or may provide a synopsis of the matter being heard.

At the opening of the hearing, the Chair should ascertain the identity of the parties and their legal counsel, if any. The Chair 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 may be read into the record; however, as a public record, the actual charges will be filed in the employee's official personnel file. The Chair may ask the appellant if he or she agrees with the facts as presented, and whether he or she agrees with the assessed penalty prior to opening statements. The Board shall consider these responses in conducting the hearing and in their deliberation.

## RESPONSIBILITY OF BOARD CHAIR

It is the responsibility of the Chair 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. The Chair may ask if any facts may be stipulated to by the respective counsel.

## OATHS AND AFFIRMATIONS

No testimony should be taken until an oath or affirmation has been administered. Oaths may be administered by the Chair or any Board member, in the absence of the Chair.

## ORDER OF PROOF

As an administrative hearing, the burden of proof need not be beyond a reasonable doubt, but must comprise a fair preponderance of the evidence.

The City 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 person 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 any witnesses is subject to appropriate cross-examination, as well as questions from Board Members.

Witnesses:

Witnesses may be called to testify by either side or by the Board. It is within the discretion of the Chair 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.

Objections:

The Chair may require the party to point out precisely what is regarded 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/she may require that the objectionable question or answer be rephrased.

If any attorney offers an exhibit of evidence and its admissibility is questioned, the Chair may request the attorney to explain the materiality of the exhibit. Exceptions to rulings of the Chair are not necessary.

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

## INTERROGATION

Appellants and other employees of the City may be required to testify [Rule 14.4(f)]. Questions should be relevant and material. The parties must question the witness; statements or arguments must be reserved for that portion of the hearing.

The Chair or other Board Members may question a witness regarding their testimony. The Chair 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 Chair, 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 Chair 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 Chair 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 Executive Secretary will prepare the record of the hearing as part of the meeting Minutes. 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 Chair should interrupt as needed 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 Chair 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 Chair 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 Chair 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 Chair 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 should be marked with sequential numbering and include the submitter's name and date.

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 or they will be disposed of in accordance with FSS 119.021.

## PROCEDURAL QUESTIONS

Where questions of the admission of evidence or other procedural questions arise during a hearing, a party 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. With respect to matters of this character, there should be discussion "off the record" only if all parties concur.

## 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 Chair should close all discussion and comments except those of Board members. After due consideration of the evidence, testimony, advice of Special Counsel 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. In an Appeal hearing, Board shall first decide whether or not the employee is guilty or not guilty of the charges. The vote of the Board will be conducted in accordance with Robert's Rules of Order, Newly Revised.

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, in accordance with Rule 14.

## REPORT OF FINDINGS OF FACT

It is 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 and Recommendations (Findings) must be based upon substantial, competent evidence, and supported by evidence in the record. A conclusion by itself is insufficient. These facts must be reported in the Findings of Fact and Recommendations 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, the Executive Secretary shall forward a copy to the Employee or his/her 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 Final 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

Under Civil Service 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. The Board requires that employees be present to respond to any questions that the Board may have.

*Rule 13.2 - 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 the Board. The Executive Secretary will notify the employee and the Director of Human Resources of the Board's decision in writing.

## RULE 16 - GRIEVANCE AND INVESTIGATION HEARINGS

Civil Service Rule 16 – Grievances and Abuses, allows the Board to conduct Investigation and Grievance Hearings. The Board may decline a request for a hearing pursuant to Rule 16, based on the provisions of the Rules, applicable labor agreement, jurisdiction, or other reason. In any investigation conducted by the Board, it shall have the power to subpoena and require the attendance of witnesses and the production thereby of reports and papers pertinent to the investigation. The Board may also conduct Whistleblower Hearings, pursuant to Rule 16.1 and the provisions of Florida Statutes Section 112.3187 (Whistleblower Act).

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/grievant, who will present their evidence first. The Board requires that Grievants be present to respond to any questions that the Board may have.

Other notable differences: Rule 16 hearings do not have a filing deadline, although it is HIGHLY suggested that a request for hearing under Rule 16 be made as soon as possible, and in sufficient time as to adequately address the perceived violation or have an appropriate remedy recommended by the Board.

Rule 16.1 (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 (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, for imposition of a remedy,

if any. Whistleblower investigation hearings will result in a report detailing the Board's Findings of Fact and Recommendations to the City Manager and City Attorney.