

**RULES OF PROCEDURES
SANTA CLARA COUNTY PERSONNEL BOARD**

Under the authority of the Santa Clara County Charter, and the Santa Clara County Code, the following shall be the Rules of Procedures for the Santa Clara County Personnel Board, amended and revised August 30, 2022.

SECTION 1 - PURPOSE

1.0 - The following rules are promulgated to govern the proceedings of the Personnel Board of the County of Santa Clara.

SECTION 2 - DEFINITION

2.0 - Unless otherwise provided, the word "Board" as used in these rules shall mean the Personnel Board, and the word "Director" shall mean the Director of Personnel. "Member" shall mean a member of the Personnel Board.

SECTION 3 - POWERS

3.0 - The Personnel Board shall be constituted and empowered as provided in the County Charter, and shall exercise additional powers which are incidental and necessary to the exercise of those powers granted by the Charter.

SECTION 4 - PROCEDURE

4.0 - Except as otherwise provided by law, all business other than disciplinary hearings before the Personnel Board shall be conducted in accordance with the parliamentary rules of procedure as described in "Robert's Rules of Order," a copy of which is on file in the Office of the Clerk of the Board of Supervisors. These rules may be suspended by a vote of four members, except as those rules which protect a minority of one member.

SECTION 5 - TIME AND PLACE OF MEETINGS

5.0 - The Personnel Board shall convene one business meeting each month at the County Administration Campus at 9:00a.m. The Personnel Board shall convene additional meetings each month that are necessary to discharge their responsibilities and are noticed pursuant to state law.

5.1 - Prior to the regular meeting day, should the Director or the Board Secretary notify the Chairperson that there is no business needing the attention of the Board, and upon approval of the Chairperson, the Director or Board Secretary shall so notify each member and such action shall be considered as a fulfillment of regular meeting requirements.

5.2 - Special meetings may be called by the Chairperson or by any two members of the Board by issuing such public notice as required by law.

5.3 - Meetings falling on a holiday: should any regular meeting day fall upon a holiday, that meeting shall be held on a day designated by the Chairperson, and the Board Secretary will issue such notices as required by law. The agenda pending for the meeting shall be automatically continued to such meeting day.

SECTION 6 - FILING MATTERS WITH BOARD

6.1 - Communications, requests for hearings, appeal notices, and other disciplinary correspondence relative to Personnel Board hearings or matters, shall be filed with the Board Secretary. Said communications and requests shall be done in writing, and the substance of such requests and the action taken shall be incorporated in the minutes of the meeting wherein the matter was considered.

6.2 - The Board Secretary shall be the filing and point of processing of all correspondence, transcripts, motions, letters, findings of fact, requests for continuances, and other related Board action (documentation shall be submitted in 6 copies). Upon receipt, the Board Secretary shall date stamp and log said material. Once logged, the material shall be distributed to the proper department (i.e. Labor Relations, Personnel, Personnel Board, or other concerned party).

6.3 - All pending matters shall be logged and maintained within the Clerk of the Board's Office. Only material being considered, heard, or acted upon in a meeting/hearing shall be forwarded/mailed to the full Personnel Board. All urgent and necessary material will be mailed to the Chairperson, outside necessary material needed by the full Board.

SECTION 7 - VOTING

All acts of the Board shall be accomplished by a roll call vote if requested by any member in attendance. No act shall be valid without the concurrence of three members (a majority of the entire membership) unless as otherwise provided by law. The Chairperson may, subject to ratification by the Board, delegate investigatory or pre-hearing matters to any person, and may designate hearing officers as provided herein.

SECTION 8 - MINUTES

The names of members present, the place of meeting, all official acts of the Board, and, when requested, a member's dissent with his or her reasons shall be recorded in the minutes of each meeting.

The minutes shall be written and submitted for approval at the next regular meeting of the Board.

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SECTION 9 - CHAIRPERSON

9.0 - As soon as practicable, following the first day of July of every year, the Board shall organize by electing one of its members to serve as Chairperson.

9.1 - Secretary - the Clerk of the Board of Supervisors shall be ex-officio secretary to the Personnel Board.

SECTION 10 - HEARINGS

10.1 - Setting of Hearings

The Board shall schedule an appeal hearing within a reasonable time from the date the appellant files with the Director an answer to charges made and a request for a hearing in accordance with the County Charter. Subject to the provisions of 10.2, hearing dates shall be established by the Chairperson in accordance with the following priorities:

First Priority: Dismissals and Demotions or other actions where there is a continuing loss of pay or service, with the oldest heard first.

Second Priority: Suspensions not heard by a hearing officer, provided that such suspensions shall be heard as a first priority in instances in which the appellant has a pending dismissal appeal.

Notwithstanding the above priorities, for the period beginning February 1, 1998 and ending December 31, 1998 hearing dates for suspensions may be scheduled at the discretion of the Personnel Board while first priority items are pending.

10.1.1 - Dismissal with Suspension Appeals Pending - In any instance in which an appeal of a dismissal has been filed and the appellant has a hearing pending on one or more suspension appeals in accordance with a procedure agreed by the Board of Supervisors and a recognized employee organization, the hearing of the dismissal shall not be scheduled until the suspension appeal has been concluded.

10.1.2 - Hearing Dismissal Appeal in order with Pending Suspension appeal - Notwithstanding the provisions of Rule 10.1.1, a dismissal appeal will be heard in regular order upon written agreement by the parties and filed with the Board Secretary that any pending suspension appeal need not be heard prior to the hearing of the dismissal appeal.

10.2 - Continuances - With the approval of the Chairperson, hearings may be continued by stipulation of the parties. All stipulations, including the reasons for the continuances and any conditions upon which the stipulation is based, shall be confirmed in writing. If there is not a stipulation regarding a continuance, a party may apply to the Chairperson for a continuance only if the party has made a reasonable effort to notify the other party or representative of that party. A continuance may be granted only if there is good cause and shall be confirmed in writing. Except in cases of extreme emergency, requests for continuances made within five working days before the scheduled hearing date should not be granted.

In any case where there has been a continuance, the Board may consider the facts surrounding the continuance to determine whether back pay, if any, should be awarded for the period of the continuance.

10.3. - Disqualifying Board Member - Any party seeking to disqualify a member of the Board from participating in a disciplinary hearing for any reason must file a motion to disqualify the member no less than 7 calendar days prior to the date of hearing. The motion must state the grounds upon which the party seeks to disqualify the member, and it must be accompanied by one or more declarations under penalty of perjury which set forth the facts upon which the motion is based. The member who is the subject of the motion shall be notified by the Board Secretary upon receipt of the motion, and he/she may submit a declaration in response to the motion. In the event that the moving party neither knew of the facts giving rise to prejudice, nor has reason to know of such facts within 7 days of the hearing date, a motion may be filed up to the commencement of the hearing. In such an instance, the motion must be accompanied by a statement of when the facts giving rise to prejudice became known to the moving party, and why they could not have been discovered with the exercise of due diligence prior to that time.

Any party filing a motion for disqualification on the grounds of bias shall have the burden of showing actual prejudice against such party in the matter scheduled for hearing. Those members who are not the subject of the motion shall rule on the basis of the declarations submitted on any oral arguments of the parties.

10.4 - Pre-Hearing Conference - Prior to the time set for hearing, but after the time required for written charges and answer, the Chairperson may request the parties to attend an informal conference for the purpose of ascertaining the areas of disagreement, the number of witnesses to be called, the type and quantity of documentary evidence to be introduced, the length of time estimated to be needed for the hearing, and whether or not the matter can be settled. This conference shall not constitute a hearing on the issues, but shall be solely for the purpose of expediting such hearing.

Conduct of Board Hearings:

10.5.1 - The hearing shall be public, except as otherwise provided by law, may be conducted informally, and the rules of evidence need not apply.

10.5.2 - Each party may be represented by counsel (representation by counsel is not a requirement). If represented by counsel, each counsel shall be on record with the Board Secretary for correspondence and other material relating to the hearing.

The Board shall schedule each hearing date under these rules, and all concerned parties shall adhere to the start times of each hearing. Failure to attend a hearing as scheduled may cause a default proceeding to occur.

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10.5.3 - Each appellant may testify on his/her own behalf, may call witnesses and cross-examine opposing witnesses on matters relative to the charges, and may make a closing argument. The Chairperson may issue up to six subpoenas per side to require the attendance of witnesses and the production of records, documents, and other evidence at the hearing.

Any relevant evidence of the sort that responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, is admissible; however, privileged matter, hearsay, irrelevant and repetitious evidence may be excluded by the Chairperson. The Board or Officer invoking the disciplinary action shall first present evidence relative to charges, following which the employee shall present evidence in regard thereto. Thereafter, the Officer or Board invoking the disciplinary action and employee may each make a closing argument which may be limited by the Chairperson. The Chairperson may call and examine any witness, may determine the number and order of witnesses, and may conclude the hearing at any time after both parties have presented evidence and argument.

10.5.4 - Each counsel or appellant presenting evidence to the board shall provide copies sufficient for the entire Board membership and Court Reporter. Any party submitting evidence to the board shall have all exhibits pre-marked for identification purposes and submitted to the Board prior to presenting their case-in-chief. Exhibits jointly stipulated upon shall be marked "Joint Exhibit (Number)"; items presented by the County shall be marked "County (Number)"; and items presented by Appellant shall be marked "Appellant (Alpha)." However, additional exhibits introduced may be admitted, subject to objection and opinion of Chair.

10.5.5 - Proposed Findings of Fact - At the conclusion of the hearing, each party shall submit a statement of proposed findings of fact to the Board. The Board shall review all proposed findings and may add to, modify, or delete such proposed findings in whole or in part.

Alternatively, the parties may enter into a stipulation on the record prior to the commencement of the hearing that the prevailing party shall prepare proposed findings after notification of the Board's intended decision. Such a stipulation shall specify the time within which proposed findings are to be submitted, and the Board shall have until its next regularly scheduled hearing date either to adopt or to modify the proposed findings.

10.6 - Dismissal or Default - An employee or their representative of record may withdraw a request for hearing or dismiss any appeal by submitting to the Director or Chairperson or department head a written statement withdrawing or dismissing the matter. Upon the filing of such written statement with the Board Secretary, the matter is automatically dismissed with prejudice, and no hearing by the Board will be permitted.

The Board may enter a default judgment and dismiss a case based upon the failure of the defaulting party to respond to the Board or to participate in pre-hearing conferences after notice that their failure to do so will result in the Board entering a default judgment against them.

When the Board enters a default judgment, the Board Secretary or their designee shall mail via regular U.S mail (Certified, Registered, or any other form of tracked mail is not required) notice of default to the employee at their last address as stated in the Employee Services Agency personnel records. An employee seeking relief from default judgment must file a written request for relief from the default within 30 calendar days from the mailing of the notice. If the employee fails to do so, their appeal shall be dismissed with prejudice.

10.7 - Decision of Personnel Board - The Board may sustain or reject the discipline imposed, or may independently determine the appropriate amount of discipline consistent with the Charter not to exceed the amount initially imposed by the department.

At the conclusion of the hearing, the Personnel Board shall make written findings as to each charge, and shall set forth in writing its conclusions based upon such findings. A reporter's transcript of findings may constitute written findings and conclusions. Such findings and conclusions shall be distributed in the manner prescribed by the Charter of Santa Clara County. If the Personnel Board desires to include recommendations with such findings and conclusions, it may, after making the findings and conclusions and prior to distribution thereof, convene for such purpose. At such meeting it may seek and consider any evidence, which in its sole discretion it deems to be relevant thereto.

Such recommendations, if any, as are agreed upon by three members of the Board, should be distributed in the same manner and at the same time prescribed for the findings and conclusions.

10.7.1 - Assuring Majority Vote Decisions: Before the beginning of a disciplinary hearing involving a decision to terminate an employee from County service where less than five Board members are present, the Board shall:

- i. For matters involving termination from County service with appeal pending for less than six months:
 - a. Upon the request of either party to the hearing or on the Board's own initiative, continue the matter to a date when all five members are present; or, in the absence of a request or decision by the Board not to proceed,
 - b. Proceed with the understanding that if the Board members hearing the matter fail to reach a three-vote majority decision, the appeal will be reheard by a full five member board.
- ii. For matters involving termination from County service with appeal pending six months or more:
 - a. Continue the matter to a date when all five members are present; or
 - b. Proceed with the understanding that if the Board members hearing the matter fail to reach a three-vote majority decision, the appeal will be reheard by a full five member board.

- iii. In all matters, provide the parties an opportunity to argue to the Board whether to continue the hearing or to proceed.

The Board retains the sole discretion to decide whether to proceed with a hearing involving an appeal of a decision to suspend or otherwise impose discipline that does not involve termination from County service where less than five Board members are present.

10.8 - Hearing Officer - As an alternate to a hearing before the Board, a hearing may be held before a hearing officer pursuant to any agreement between the parties as provided where there is an agreement between a recognized employee organization and the County. If there is no applicable agreement, and with the consent of the employee and the Director, an alternate procedure may be provided. Hearings before a hearing officer are governed by applicable agreements or by these rules and such other rules as are promulgated by this Board.

10.8.1 - Expedited Suspension Hearing Process - The Chairperson is authorized to schedule hearings as outlined in Section 10.1 and 10.8 of these rules.

When in the opinion of the Chairperson it is necessary to expedite the hearing of existing suspension/demotion cases, the Chairperson may create 'Hearing Panels,' consisting of at least two members of the Board. Each panel will be considered a Hearing officer as outlined in Section 12 of these rules. Each panel shall be subordinate to the Board, and make findings and recommendations to the Board in accordance with these rules.

The Chairperson may establish up to two half-day (four hour) sessions for the consideration of cases involving suspensions/demotions in addition to the regularly scheduled termination hearing calendar, subject to staffing and Board considerations. Whenever possible, staff advocates will be utilized for presentation of these cases. In order to remain in date-order of scheduling, no suspension/demotion case utilizing this expedited process shall be scheduled unless the date of such appeal predates any pending termination appeal as outlined in Section 10 of these rules."

10.9 - Distribution of Rules of Procedure - A copy of these rules shall be mailed to the employee following receipt of a request for a hearing. The Board Secretary shall keep a record of such mailing. Failure of an employee to receive these rules shall not affect the merits of any case but may constitute cause for a short continuance.

SECTION 11 - REPRESENTATION UNITS

11.1 - At such time as a challenge or dispute over representation units is filed with the Board, the Office of Labor Relations shall promptly notify each party to the dispute. Within thirty days of said notification, each such party shall provide a written statement to the Board Secretary of (1) the decision it wants the Board to adopt, and (2) the justification for its position. At the conclusion of the aforementioned 30-day period, the Board may schedule the challenge or dispute for hearing.

11.2 - All challenges and disputes over representation units filed with the Board shall be placed on lists established separately according to the parties to the dispute and in date order of receipt on each such list. The Board shall exercise its discretion in scheduling challenges and disputes for hearing from said lists, taking into account such factors as the number of employees involved and the date of the challenge or dispute. The Board encourages the parties to any dispute over representation units to settle such disputes by mutual agreement under Section A25-371 of the County Code, and it also shall take into account the likelihood of such agreement in scheduling hearings.

11.3 - At hearings of representation unit challenges and disputes, one representative for each party shall provide a written statement in accordance with Section 1.1, shall be allotted thirty minutes to summarize and expand upon its position, and shall be given such additional time as is necessary to respond to questions from members of the Board.

SECTION 12 - HEARING OFFICER PROCEDURES

12.0 - General: A hearing shall be held in accordance with these rules and regulations by an independent third party who is to act as hearing officer for the Personnel Board in designated cases. After a hearing, to be held in accordance with these rules, a written decision is to be rendered by the hearing officer setting forth proposed findings of facts, conclusions and a recommended disposition to be forwarded to the Personnel Board, the Appointing Authority and/or representative, and the affected employee and/or representative for further consideration in accordance with these rules.

12.1 - Conduct of Hearing: The following procedure shall govern the sequence of the hearing before hearing officer, unless otherwise determined for good cause, to modify the same:

- i. The appointing authority and the employee may elect to make a brief opening statement concerning the charges. The employee may elect to reserve an opening statement until the beginning of his/her case.
- ii. The appointing authority shall proceed with its case first and shall present such oral and documentary evidence as it believes relevant to the case.
- iii. At the close of the appointing authority's case, the employee may present his/her case concerning the charges, having the right to introduce oral and documentary evidence relevant thereto.
- iv. Testimony received shall be under oath.
- v. Any witness is subject to examination and cross-examination by parties to the case.
- vi. Both parties may present rebuttal evidence at the discretion of the hearing officer.
- vii. The conduct of the proceedings, the examination of witnesses, and arguments of the parties shall be within the discretion and control of the hearing officer, who shall take such steps as deemed necessary to insure that the proceedings are orderly.

- viii. The hearing itself shall be open to the public. Upon request of either party, the hearing officer has the power to exclude witnesses from the hearing when they are not testifying, provided neither of the parties may be so excluded.
- ix. At the close of the presentation of evidence, the parties may argue the case to the hearing officer and submit such authorities as they determine to be relevant. After the close of such argument, the case shall be taken under submission by the hearing officer.

12.2 - Burden of Proof: the employee shall be regarded as innocent of the charges against him/her until the contrary is established by a preponderance of the evidence in accordance with the rules for conduct of civil proceedings under the laws of this state. The appointing authority has the burden of proof by a preponderance of the evidence. If the preponderance of evidence is persuasive of the charges being true, the hearing officer shall so find this burden of proof exists, and must be met by the appointing authority even in the event the employee fails to appear at the time, date and place set for the hearing.

12.3 - Evidence: The strict rules of evidence applicable to the conduct of civil trials in this state do not apply in these proceedings. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any evidence which is admissible under the laws of the State of California in a civil trial shall be admitted by the hearing officer in these proceedings.

Further, any relevant evidence shall be admitted if the hearing officer determines that it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objections in civil actions.

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions. Irrelevant and unduly repetitive evidence may be excluded by the hearing officer at his/her discretion. The rules of privilege applicable in this state shall be effective in these proceedings and recognized by the hearing officer and shall apply to the full extent that they otherwise apply in civil proceedings in this state. No evidence other than that received by the hearing officer at the hearing shall be considered by the hearing officer.

12.4 - Right to Representation: The employee may at any time during the course of the proceedings be represented by a person of his/her choice.

12.5 - Record of Proceedings: The proceedings shall be recorded by a certified court reporter as is customary in civil proceedings in this state. Said proceedings shall be recorded but shall not be transcribed unless ordered by the Personnel Board. The cost of transcription shall be paid by the County. The official record of the proceedings before the hearing officer shall be taken down and transcribed by the reporter. If the record is transcribed, a copy of same shall be served on each party and the record may be corrected thereafter by ten days notice of request for correction in writing to the hearing officer who shall hold a hearing thereon and

consider correction, all in accordance with the rules applicable to correction of records which apply in civil proceedings under the laws of this state.

Upon proceedings to correct the record, the hearing officer may use any of his/her notes, recall, or other information or evidence provided by the parties as determined to be relevant and useful for the purposes of correcting the record.

12.6 - Decision: Within ten days after submission of the case, the hearing officer shall render a decision in writing, which shall set forth specific findings as to the truth or falsity of the charges alleged. The decision shall further set forth any facts in mitigation or aggravation of the charges as shown by evidence received at the hearing. The decision shall further set forth the conclusions as to whether or not the charges as found constitute grounds for disciplinary action under the County Merit Systems Rules. The decision shall recommend disposition of the discipline imposed. The written decision of the hearing officer shall be delivered to the Personnel Board, appointing authority, and the employee promptly.

12.7 - Consideration of the Decision and Discipline to be Imposed - Hearing: After receipt of the hearing officer's decision, the Personnel Board shall hold a hearing to consider said decision. The appointing authority and the employee shall be notified in writing at least five days in advance of said hearing of the time, date and place on which said consideration shall occur. Copies of the decision shall be delivered to the members of the Personnel Board at least five days prior to the hearing. Upon consideration of the decision the Personnel Board may adopt, revise, modify or reject the hearing officer's decision, provided that the Personnel Board may not revise, modify or reverse the decision of the hearing officer unless it has ordered, paid for and reviewed the official record of the proceedings held before the hearing officer, and made independent determinations concerning the charges based on their views as to the charges under the evidentiary rules and pertinent proof rules set forth herein.

The Personnel Board shall adopt the decision without further hearings or proceedings unless it determines to review the record of proceedings held before the hearing officer. The Personnel Board may determine to review the record only if it is persuaded that through fraud, prejudice of the hearing officer or legally sufficient surprise, mistake or inadvertence which could not have been prevented with due diligence, that the moving party did not obtain a fair hearing.

SECTION 13 - AMENDMENT TO RULES

13.0 - Proposed amendments to these rules can be submitted by any member. All proposed changes must be submitted in writing and given to the Board within thirty days prior to the Board vote. A copy of the proposed amendment shall be forwarded to the Board Secretary for distribution to all concerned parties in accordance with Section 6 of the Personnel Board Rules of Procedures and shall be agendaized prior to the Personnel Board business meeting. Where possible, a copy of any proposed amendments will be attached to the Personnel Board business meeting agenda.

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All changes shall be forwarded to the concerned parties. Written and or comments may be submitted to the Board prior to action on the proposed amendment by the Personnel Board.

A majority vote of the Board of Supervisors is required to amend these Rules of Procedure.

Approved as to form and legality:



 Aaron Bloom, Lead Deputy County Counsel

Date	Revision
Revised: April 6, 1988	
May 20, 1988	
March 31, 1989	- Section 11.0 Amended
November 17, 1989	- Section 10.0 Amended
January 5, 1990	- Section 10.1.1 Amended
January 26, 1990	- Section 10.1.2 Amended - Titles/Renumbering Amended
June 28, 1991	- Section 12.0 - Annexed - Hearing Officer Procedure - Renumbering/Indexing Amended
August 30, 1991	- Section 10.5 Amended - Section 10.8.1 Added Renumbering Amended
September 27, 1991	- Section 6.0 Amended - Renumbering/Indexing Amended
January 3, 1992	- Section 13.0 Added
February 26, 1993	- Section 10.8.1 Revised
March 18, 1997	- Section 10.1 Revised - Section 5.0 Revised - Section 10.5.4 - Underscoring Removed
January 13, 1998	- Section 10.1 Revised
October 16, 2007	- Section 10.5.1 and 10.5.3 Revised
September 28, 2010	- Section 10.7.1 Added
August 30, 2022	- Section 5.0 Amended - Section 10.6 Amended
June 6, 2023	- Section 10.7.1 Amended

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