

CHAPTER 14

GRIEVANCE PROCEDURES AND DISCIPLINARY APPEALS

(Presented November 26, 1996; Revised January 19, 2011; August 27, 2012; March 13, 2013.)

The City of Rome is committed to the fair and consistent treatment of employees and offers a remedy for work-related complaints. The grievance procedure provides a way for employees to express their complaints about policies, procedures, and their working conditions without jeopardizing their jobs, and to obtain a fair hearing through progressively higher levels of management. An informal process must be followed before the formal grievance process may begin.

14.01 GENERAL GOALS OF THE GRIEVANCE PROCESS

- To resolve grievances at the lowest possible level
- To provide due process for matters which are policy or work-related but do not involve disciplinary matters
- To encourage appropriate review of current policies, procedures, and practices in order to find ways to improve management of the departments and the employees

The following are the classifications of grievances:

A. Informal Grievance

1. All communication is verbal;
2. Handling is rapid and conducted through discussion;
3. No written record will result from this process.

B. Formal Grievance

1. All grievances and appeals shall be submitted in written form
2. Handling of grievances is governed by procedure and progressive levels of management (14.03)
3. Final document created from the process shall be maintained in the Human Resources Department

These procedures are designed to provide the employee with the maximum opportunity to have his/her complaints heard. The informal grievance procedure shall in no way affect the employee's right to pursue the formal grievance procedure if he/she decides to do so.

14.02 INFORMAL GRIEVANCE PROCEDURE

- A. When an employee has a problem or grievance, the matter is to be discussed with the employee's immediate supervisor.

City of Rome Personnel Policy Manual

- B. If the employee and the immediate supervisor are unable to resolve the problem, the employee should discuss it with the next supervisory level person in the established chain of command;
- C. Should it be necessary, the final step in this procedure, will be to bring the nature of the grievance to the attention of the Department Director or Fire Deputy Chief/Police Major. The Department Director or Fire Deputy Chief/Police Major may discuss the grievance with the employee privately but has the right to request the supervisor's presence at any time during their discussion.
- D. If the grievance relates to an elected official, the immediate supervisor will make the issue known to the City Manager. The City Manager, in consultation with the City Attorney and the Mayor (or Mayor Pro Tem) may determine whether the complaint may be informally resolved between the complainant and the elected official.

If the employee has followed the informal grievance procedure and the complaint is still unresolved, the employee has the right to file a formal written grievance.

14.03 FORMAL GRIEVANCE PROCEDURE

(NOTE: THIS PROCESS WILL BE REPEATED AT EVERY SUPERVISORY LEVEL THROUGH THAT OF CHIEF, PUBLIC SERVICES MANAGER, DIVISION DIRECTOR OR ASSISTANT CITY MANAGER.)

- A. The employee will present the grievance in writing using the Grievance Process form, (available at the Human Resources Department) to his/her supervisor. The supervisor receiving the grievance will offer to review the complaint with the employee, using the Grievance Process Form, and respond in writing within five (5) business days from the time the grievance is received. The Grievance Process form will be returned to the Human Resources director, or his/her designee, who will contact the employee for his/her review of the decision rendered.
- B. If the grievance remains unsettled, then the employee may appeal the decision through the established chain of command. The employee's appeal is made in writing to each supervisory level through use of the Grievance Process form. The appeal must be made within five (5) business days of the previous decision. The supervisor receiving the grievance will review the complaint with the employee and respond in writing within five (5) business days using the Grievance Process Form. If at any point during the grievance process, new facts are introduced by the employee, the grievance will be returned to the previous supervisor. The Grievance Process form will be returned to the Human Resources Director, or his/her designee, who will contact the employee for his/her review of the decision rendered.
- C. If the grievance remains unsettled, the employee may ask for an Administrative Hearing. (Employees of Human Resources Department and City Clerk's Office may appeal to the Assistant City Manager.) The appeal must be made within five (5) business days* of the previous decision. At the employee's request, the Division

City of Rome Personnel Policy Manual

Director, Assistant City Manager, Public Services Manager (Revised: January 2, 2007) or Chief will conduct an administrative hearing. The hearing will be held within fifteen (15) business days* from the time the hearing is requested. At the administrative hearing, the supervisor will interview all parties involved. The Human Resources Director, or his/her designee, will be present to ensure compliance with established policies and procedures and will make a permanent record of the proceedings. If no hearing is requested by the employee, the supervisor will respond in writing using the Grievance Process form within five (5) business days from the date the appeal is received. The Grievance Process form will be returned to the Human Resources Director or his/her designee, who will contact the employee for his/her review of the decision rendered.

- D. If the grievance is still unresolved, the employee may appeal the decision to the City Manager. The employee's appeal must be submitted in writing using the Grievance Process form within five (5) business days* of the decision issued in the previous step. The City Manager will review the record established throughout the grievance process and will respond in writing using the Grievance Process form. The Grievance Process form will be returned to the Human Resources Director or his/her designee who will contact the employee with his/her review of the decision rendered.

In all cases, the decision of the City Manager is final.

*Note: The following formal grievance procedure applies to all time limits and deadlines in this chapter. Should circumstances exist on the part of the employee which during any part of the grievance process, prevents the employee from complying with the established time limits, arrangements will be made by the Human Resources Director, or his/her designee, to extend the time limit for making the next level of appeal. The employee should notify the Human Resources Director, or his/her designee immediately when such a circumstance arises. Failure to make proper notification and to seek appropriate accommodation may cause the grievance to be closed. To assure timely handling of the grievance, if such circumstances exist on the part of the supervisor, provision for the time limit to be extended will be made, or the grievance will be passed on to the next level of supervision, whichever is deemed appropriate by the Human Resources Director, or his/her designee. Failure to notify the Human Resources Director, or his/her designee, of circumstances which prevent compliance with the established time limits will automatically cause the grievance to be passed to the next level of supervision.

14.031. Grievance as to elected officials.

- A. If the Employee grievance relates to an elected official and it is not resolved informally as provided above, then the employee may file the Grievance Process Form (available at the Human Resources Department) with the City Clerk.
- B. All grievances against elected officials shall be filed with the city clerk; provided, however, to discourage the filing of grievances solely for political purposes, complaints will not be accepted against a person seeking election as a member,

whether currently serving as a member or not, from the date qualifying opens for the elected office at issue through the date the election results for that office are certified. The time for filing complaints will not run during this period. Properly filed complaints will be accepted and processed after the election results have been certified.

14.032. Appointment of hearing officer, service of grievance, burden of proof.

- (a) All grievances filed hereunder shall be heard before a hearing officer who:
 - (1) Shall be a competent attorney at law of good standing in his or her profession,
 - (2) Shall have at least five years' experience in the practice of law, and
 - (3) Shall not maintain an office within a ten-mile radius of the city.

The city clerk shall maintain a listing of no less than five qualified attorneys to serve as a hearing officer pursuant to this section. Upon receipt of a proper grievance complaint, the city clerk shall draw names randomly from the listing of qualified hearing officers and appoint the first one who is available to serve in the matter. Once a hearing officer is appointed, no employee or elected official shall communicate with or otherwise contact the hearing officer, except as authorized herein, unless such employee is the complainant or the elected official charged in the grievance; however, no party to a complaint shall engage in ex parte communications with the hearing officer.

(b) Original pleadings shall be filed with the city clerk and the city clerk shall cause the grievance to be served on the member charged as soon as practicable, but in no event later than seven calendar days after receipt of a written grievance. Service may be by personal service, by certified mail, return receipt requested, statutory overnight delivery, or by email.

14.033. Hearing.

(a) The member charged in the grievance shall have 15 days to file an answer to the complaint; provided, however, the member charged shall have no obligation to file an answer to any complaint.

(b) Upon the expiration of the 15-day answer period, the hearing officer shall review the complaint and answer, if any, to determine:

- (1) Whether the complaint is in conformity of the requirements of section 14.031 above; or
- (2) Whether, upon consideration of the complaint and answer, the complaint is unjustified, frivolous, patently unfounded.

(c) If the complaint fails based upon the requirements of the foregoing subsection (b) of this section, the complaint shall be dismissed stating the basis for said dismissal. If the dismissal is based upon the failure to comply with subsection 14.031, the complaining party shall have 15 days to re-file the complaint correcting the defect. If the corrected complaint is not filed within said 15-day period, the grievance will be deemed to be withdrawn.

(d) Upon a determination that the complaint should not be dismissed pursuant to the foregoing subsection (c), the hearing officer shall be empowered to collect evidence and

City of Rome Personnel Policy Manual

information concerning any grievance and to add the findings and results of its investigations to the file containing such complaint. In furtherance of this investigation, the hearing officer may:

- (1) First, seek such further information from the complainant or the member charged through inquiry or written questions; provided, however the member charged shall have no obligation to answer any inquiries; and make a further determination as to whether the complaint demonstrates facts sufficient to invoke disciplinary jurisdiction as set forth in this article in accordance with subsection (b) of this section. If it is determined that the complaint should not be dismissed pursuant to this subsection, then the provisions of subsection (d)(2) of this section shall apply; or
 - (2) Conduct a hearing in accordance with the procedures of a non-jury hearing in Superior Court regarding the allegations set forth in the complaint. At any hearing, the member who is the subject of inquiry shall have the right to:
 - a. Representation by counsel at the member's own expense at all stages of these proceedings;
 - b. Written notice of the hearing at least ten calendar days before the first hearing;
 - c. Hear and examine the evidence and witnesses;
 - d. Not testify; and
 - e. Submit evidence and call witnesses to oppose or mitigate the allegations. In all hearings held under this section, the rules of evidence applicable in civil cases shall apply.
- (e) The complainant shall also have the right to be represented by counsel at their own expense at all states of these proceedings.
- (f) All investigations under this section shall be completed within 45 days of the filing of the complaint. Should the investigation not be completed in said period, the grievance will be deemed dismissed. Within seven days of the completion of the investigation, the hearing officer shall:
- (1) Dismiss the complaint on the grounds that it is unjustified, frivolous, patently unfounded, or that it fails to state facts sufficient to invoke the disciplinary jurisdiction of the city commission; or
 - (2) Prepare a report of findings and recommendations to the City Commission.
 - (3) Should the hearing officer determine to submit a report in the matter, the report shall consist of:
 - a. A written finding of facts;
 - b. A recommendation regarding the resolution of the grievance.
 - (4) The hearing officer's written determination of findings and recommendations shall be delivered to the city clerk who shall provide a copy to the city manager and the

mayor and commission and serve a copy on the complainant and member charged by personal service, by certified mail, return receipt requested, by statutory overnight delivery, or email.

14.034

All employees and elected officials of the City shall work in good faith to implement the recommendation of the hearing officer to resolve the grievance.

14.035. Right to appeal.

(a) Any member or complainant adversely affected by the findings or recommendations of the hearing officer may obtain judicial review of such decision as provided in this section.

(b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the county superior court within 30 days after the final action on a complaint pursuant to this article. The filing of such application shall act as supersedeas.

(c) The City attorney shall be authorized to represent the City to uphold the decision of the hearing officer upon appeal.

14.04 DISCIPLINARY APPEALS

The disciplinary appeals process provides employees the opportunity to appeal disciplinary action including suspension, demotion, and termination or any other adverse action that results in financial loss to employee. At any time during the appeals process, the employee may, at his/her own expense, have legal counsel present.

Exclusion

Verbal counseling and Written Advisories related to verbal reprimand or counseling are not to be made a part of the employee's personnel file. Supervisors maintain these documents in their own files and make them part of the employee's personnel file only when they must be used to document more severe disciplinary action. Verbal counseling and written advisories are not, therefore, eligible for appeal. Written reprimands are made a part of the employee's personnel file but are not eligible for appeal through the appeals process. However, at the employee's annual evaluation or within twelve months from the time of reprimand, the employee may request, in writing, that his/her reprimand be removed from his/her file. Providing significant progress has been made toward correcting the problem which caused the disciplinary action and provided no other disciplinary action has occurred during that time, the Department Director may grant the request with the exception of any document associated to lost time or money.

14.05 APPEAL OF SUSPENSION, DEMOTION, OR TERMINATION

- A. When disciplinary action is to be taken, the employee shall be advised by his/her supervisor in writing and in person of both the charges and the proposed disciplinary action. The employee will be given twenty-four (24) hours to evaluate his/her situation, and he/she may respond to the charges and discipline to the supervisor taking official action. The employee may either accept the discipline or appeal through the process outlined below. The employee will be given the opportunity to discuss the matter with his/her supervisor within the twenty-four-hour period.
- B. Following the employee's notification to his/her supervisor of his/her intent to file an appeal, the employee will present the appeal in writing using the Disciplinary Appeals form, which is available at the Human Resources Department, to his/her immediate supervisor within five (5) business days*. The supervisor receiving the appeal will review the disciplinary action with the employee and respond in writing using the Appeals form.

NOTE: The employee must present all facts on his/her behalf in the initial phase of the appeal. If new facts are introduced at any step beyond the initial review with the immediate supervisor, the appeal will automatically be returned to the previous supervisor.

The supervisor may uphold, reduce, or reverse the disciplinary action. The disciplinary action cannot be increased by the supervisor. The appeals form will be returned to the Human Resources Director, or his/her designee, who will contact the employee with his/her review of the decision rendered.

- C. The employee may appeal the decision of his/her immediate supervisor through the established chain of command. The employee's appeal is made in writing to each supervisory level using the Appeals form. The appeal must be made within five (5) business days* of the previous decision. The supervisor receiving the appeal will review the disciplinary action with the employee and respond in writing within five (5) business days * using the Appeals form. The supervisor may uphold, reduce, or reverse the disciplinary action taken. The appeals form will be returned to the Human Resources Director or his/her designee, who will contact the employee for his/her review of the decision rendered.

(NOTE: THIS STEP IS TO BE REPEATED AT EVERY SUPERVISORY LEVEL THROUGH THAT OF CHIEF, PUBLIC SERVICES MANAGER, DIVISION DIRECTOR OR ASSISTANT CITY MANAGER.)

- D. The employee may appeal the decision of the Chief, Public Services Manager, or Assistant City Manager to the Disciplinary Appeals Panel. The Disciplinary Appeals Panel will consist of:

City of Rome Personnel Policy Manual

Two (2) members from the list of Executive Directors listed below:

Assistant City manager
City Clerk
Finance Director
Public Works Division Director
Water/Sewer Division Director
Fire Chief
Police Chief

One (1) member from the following Assistant/Deputy Directors listed below:
(Revised July 15, 2004):

Deputy City Clerk
Assistant Finance Director
Assistant Public Works Division Director
Assistant Water/Sewer Division Director
Deputy Fire Chief
Deputy Police Chief

NOTE: Every effort will be made to utilize the schedule noted above but there may be scheduling issues that prevent Assistant/Deputy Directors from serving on the Disciplinary Appeals Panel. At no time will there be less than two (2) Executive Directors on the Disciplinary Appeals Panel. Also note that every effort will be made to include one chief/assistant chief when the appeal process is submitted by a public safety employee.

The Human Resources Director will designate the three members who will serve as the Disciplinary Appeals Panel and designate the Panel Chairperson from the list of Executive Directors. If the appeal involves the Human Resources Director, then the Assistant City Manager shall designate the panel members. An Assistant Director/ Deputy Chief cannot serve as Chairperson on the Appeals Panel nor there be two representatives from the same Division/Department on the same Appeals Panel. None of the panel members chosen shall be the Director of the Division in which the appealing employee works.

The appeal is made in writing using the Appeals Form and must be received within five (5) business days* of the previous decision. The Disciplinary Appeals Panel will hold an administrative hearing. The hearing will be scheduled as soon as possible following receipt of the appeal. At the administrative hearing, the Disciplinary Appeals Panel will interview all parties involved. Employees, or their legal representative, may call witnesses. (It is the responsibility of the employee to contact his/her witness to advise them of the time to report to the hearing). City employees called as witnesses who are working at the time the hearing is held will be excused from work to testify. The employee filing the appeal is to provide the Human Resources Director with a list of

City of Rome Personnel Policy Manual

witnesses who must be excused from work to testify. The employee filing the appeal is to provide the Human Resources Director with a list of witnesses who must be excused to appear at the hearing. During the hearing, the employee, or his/her legal representative, may cross-examine witnesses, present evidence, and make a closing statement. The Human Resources Director, or his/her designee, will be present to ensure compliance with established policies and procedures. All hearings will be videotaped for the purpose of creating a permanent record of the proceedings. The Disciplinary Appeals Panel will respond in writing within (5) business days following the day the hearing is held using the Appeals form. The Appeals Panel may uphold, reduce, or reverse the disciplinary action. The disciplinary action cannot be increased. The Appeals form will be returned to the Human Resources Director who will contact the employee or his/her review of the decision rendered.

The City Manager's decision shall be final in all cases except those of Fire Department and Police Department sworn personnel.

- E. **Fire Department and Police Department sworn employees:** The final appellate review source for suspension of four days or more (two shifts for 24/48-hr fire personnel), demotions, and terminations is the Civil Service Board of Appeals. The employee's appeal must be in writing using the Appeals form and must be submitted to the Board within five (5) business days* of receipt of the decision of the City Manager. The Civil Service Board of Appeals will review the record of all previous proceedings and respond to the employee in writing using the Disciplinary Appeals form within five (5) business days following the Board's review of the appeal. No hearing is held at this level of appeal and no new evidence may be introduced. The Civil Service Board of Appeals may uphold, reduce, or reverse the disciplinary action. The disciplinary action cannot be increased. The Appeals form will be returned to the Human Resources Director who will contact the employee for his/her review of the decision rendered.

The Civil Service Board of Appeals is the highest level of appeals.

- * Should circumstances exist on the part of the employee which, during any part of the appeals process, prevent the employee from complying with the established time limits, arrangements will be made by the Human Resources Director, or his/her designee, to extend the time limit for making the next level of appeal. The employee should notify the Human Resources Director immediately when such a circumstance arises. Failure to make proper notification and to seek appropriate accommodation may cause the grievance to be closed. If such circumstances exist on the part of the supervisor, provision for the time limit to be extended will be made, or the grievance will be passed to the next level of supervision, whichever is deemed appropriate by the Human Resources Director in order to assure timely handling of the appeal. Failure to notify the Human Resources Director of circumstances which prevent compliance with

City of Rome Personnel Policy Manual

the established time limits will automatically cause the appeal to be passed to the next level of supervision.

14.06 Civil Service Board of Appeals

A. Purpose

The Civil Service Board of Appeals Serves as the final appeal for sworn employees of the Fire and Police Departments who have been suspended for four days or more (2 shifts for Fire personnel), demoted, or terminated from City service. The Board's responsibility is to assess the acceptability of the disciplinary action based upon review of the total record of the appeal file, personnel policies and any applicable state/federal law or regulation, and action taken in similar cases. The Board is also responsible for assuring that proper procedure has been followed relative to the appeal process. The Board may uphold, reduce, or reverse the disciplinary action. The Board may not increase the discipline.

B. Board of Composition and Appointment/Election Policy

The Board shall consist of three members:

One (1) Member – Appointed by the City Commission (must be a City Resident).

One (1) Member – Elected by the Fire and Police Departments sworn personnel (must be a resident of Floyd County).

One (1) Member – appointed by the other two Board members (must be a resident of the City of Rome).

The term of office for all members shall be six (6) years. Members shall be eligible for reappointment or re-election.

Members nominated for appointment or election to the Board shall not be, nor have been, employed by the City of Rome. The City's nepotism policy, as it pertains to the Fire and Police Departments, is also applicable to nominees for appointment or election to the Board. Should a relative of a Board member become employed in a sworn position in the Fire or Police Department after the Board member's election or appointment, the Board member will be replaced through a new appointment or election process to fill the unexpired term.

Prior to appointment/election, the City Commission or Fire Department and Police Department sworn personnel shall nominate candidates. Those nominated will be contacted by the Human Resources Director to determine the candidate's eligibility to serve on the Board. If the candidate consents to be considered for the Board

City of Rome Personnel Policy Manual

position, he/she will be provided a questionnaire to complete to substantiate the candidate's eligibility. The Human Resources Director will be responsible for verifying eligibility.

The eligibility list of candidates nominated by the City Commission will be presented to the City Manager who will present the eligible candidate(s) to the City Commission. The City Commission will then select the City's representative for the Board.

Candidates certified as eligible for the elected position will be placed on a ballot. The ballots will then be distributed to employees of the Fire and Police Departments, and the election process will begin. Employees will cast their ballots and place them in an election box located within their department. The Human Resources Director will be responsible for collecting and counting the ballots along with a representative from each department who will be selected by the Human Resources Director. The Human Resources Director and the chosen representatives will certify the election results. Should a candidate receive a majority of the votes, that candidate will automatically be elected to the Board. If no candidate receives a majority of the votes, there will be a run-off election between the two (2) candidates who received the most votes. The winner of the run-off will then serve on the board. The previously stated election certification process will be followed for run-off elections.

C. Procedure for Appeal to the Civil Service Board of Appeals

Employees who are eligible to appeal to the Civil Service Board of Appeals and whose situation remains unresolved following review by the City Manager will return the Appeals form to the Human Resources Director. The Human Resources Director will then contact the Board Members and schedule a time for the Board to convene within five (5) working days from the receipt of the appeal and review the appeal.

Prior to the convening of the Board, the Human Resources Director will provide copies of the complete written record of the appeal to the Board members and will make available to the Board Members any audio or video records made of the administrative hearing (such may be reviewed at the Board members' convenience in the Human Resources Department).

The Board is solely an appellate body. The Board only reviews the written disciplinary appeal process information, the audio or video records made of the administrative hearing, and the City Manager's findings. Therefore, the Board does not hear testimony nor review new evidence.

At the time the Board convenes, a minimum of two members must be present for a decision to be rendered. If at least two members are not present, the review will be rescheduled.

City of Rome Personnel Policy Manual

The Human Resources Director, or his/her designee, shall serve as secretary to the Board and shall prepare all correspondence for the Board. The Human Resources Director shall also be responsible for contacting the employee filing the appeal and providing the employee with a copy of the Board's decision.

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