

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 17 Resolution# 09-294 Council District:

For Meeting of June 1, 2008
(Adoption Date)

A RESOLUTION APPROVING AMENDMENTS TO SECTION 1102 OF THE CITY OF LAS CRUCES PERSONNEL MANUAL, *EMPLOYEE GRIEVANCE*, TO PROVIDE FOR APPEALS TO A HEARING OFFICER WITH ASSOCIATED DUTIES AND PROCEDURES, AND TO MAKE STYLISTIC CHANGES.

PURPOSE(S) OF ACTION: To amend Section 1102 of the City of Las Cruces Personnel Manual ("Personnel Manual") to provide for appeals to a hearing officer with associated duties and procedures, and to make stylistic changes to the section.

Name of Drafter: Monica Campbell <i>MC</i>		Department: Legal		Phone: 541-2128	
Department	Signature	Phone	Department	Signature	Phone
Originating Department			Budget	<i>[Signature]</i>	541-2107
			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: A review of the current personnel appeals procedure determined that it was in the best interests of the City to streamline the process in order to avoid lengthy or costly hearings and in order to provide for applicable due process.

The amendments to the Personnel Manual will:

- Outline the procedures, deadlines, and forms required for an appeal to the Personnel Appeals Hearing Officer.
- Allow both the employee and the City to be represented by counsel.
- Allow the decision of the hearing officer to be rejected by the City Manager only after a full record review.
- Provide for an appeal of the decision of the hearing officer, or the city manager's rejection of the hearing officer's decision, to the district court.
- Provide a method of determining the number of Hearing Officers needed by the City, the selection procedure, and the requirements of a Hearing Officer.

(Continue on additional sheets as required)

Concurrent with presentation of this resolution, an ordinance amending the Las Cruces Municipal Code, Section 2-736 and Sections 22-154 through 22-157, will be presented for adoption by the City Council.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution.
2. Exhibit "A": City of Las Cruces Personnel Manual, Section 1102, in legislative format.
3. Exhibit "B": City of Las Cruces Personnel Manual, Section 1102 as amended.

OPTIONS / ALTERNATIVES:

1. Approve the resolution. Approval means that the amendments to the Personnel Manual will, among other items, outline the procedures, deadlines, and forms required for an appeal to the Personnel Appeals Hearing Officer; provide a method of determining the number of Hearing Officers needed by the City, and state the selection procedure and requirements of a Hearing Officer.
2. Do not approve the resolution. This action means that no changes will be made to the Personnel Manual, and the personnel appeals hearing process will continue as it currently stands.
3. Modify the resolution and provide further direction to staff.

(Continue on additional sheets as required)

RESOLUTION NO. 09- 294

A RESOLUTION APPROVING AMENDMENTS TO SECTION 1102 OF THE CITY OF LAS CRUCES PERSONNEL MANUAL, *EMPLOYEE GRIEVANCE*, TO PROVIDE FOR APPEALS TO A HEARING OFFICER WITH ASSOCIATED DUTIES AND PROCEDURES, AND TO MAKE STYLISTIC CHANGES.

The City Council is informed that:

WHEREAS, a review of the current personnel appeals procedure determined that it was in the best interests of the City to streamline the process in order to avoid lengthy or costly hearings; and

WHEREAS, amendments to Section 1102 of the City of Las Cruces Personnel Manual will, among other things, outline the procedures, deadlines, and forms required for an appeal to the Personnel Appeals Hearing Officer; and, provide a method of determining the number of Hearing Officers needed by the City, the selection procedure and requirements; and

WHEREAS, it is in the best interests of the City to streamline the personnel appeals process.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT the amendments to the City of Las Cruces Personnel Manual, Section 1102, *Employee Grievance*, are hereby approved.

(II)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED on this _____ day of _____, 2009.

Mayor

ATTEST:

City Clerk

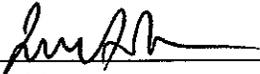
{SEAL}

Moved by: _____

Seconded by: _____

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:



City Attorney

1102. EMPLOYEE GRIEVANCE.

1. The word grievance means a formal, written statement from an eligible employee concerning actions taken by the City on one of the following items: loss of pay, written reprimand, suspension, and termination. Demotions, reclassifications, transfers, reassignments, and changes in shift rotations may not be grieved by an employee unless they are a direct consequence of a disciplinary action to that employee. Performance reviews and promotions cannot be grieved.

2. The wording eligible employee means any regular full-time and regular part-time employee. Discharge of an employee shall not preclude access to the grievance procedure.

A. The City Manager shall not have access to the grievance procedure.

B. Executive employees shall have recourse to the grievance procedure, but may only grieve terminations and disciplinary actions which result in loss of pay. Executive employees include Department Directors, the City Attorney and Assistant City Manager.

C. Executive employees and any other employees who report directly to the City Manager shall follow the grievance procedures as outlined in this section.

3. Before an employee files a formal written grievance, the employee and his/her immediate supervisor must make a good faith effort to resolve the issue, except in situations where a special hearing officer was appointed to conduct the Loudermill hearing. A good faith effort shall consist of a face-to-face meeting between the employee and his/her immediate supervisor to discuss the issue and resolution. The filing of a formal, written grievance shall not preclude continuing a good faith effort to resolve the grievance. The good faith effort does not extend the time limit(s) included in the grievance procedure.

4. When a special hearing officer ~~was~~ has been appointed to conduct the Loudermill hearing, the employee may bypass the "good faith effort" of a face-to-face meeting with the immediate supervisor and the filing of a formal written grievance with the employee's Department Director. Under these circumstances, the employee may file ~~their~~ a formal written grievance directly with the City Clerk's Office within (7) seven business days following the event on which the grievance is based.

5. Within (7) seven business days following the event on which the grievance is based, an eligible employee may file a formal written grievance with the Department Director. The good faith efforts shall have taken place in order for the formal written grievance to proceed.

A. The grievance must be filed on forms available at the Human Resources Department, City Clerk's Office, EEO/Training Office, and the Department Director's Office.

B. The grievance must be specific and refer to an issue that can be grieved. The contents of a formal written grievance and settlement desired cannot be changed after it is submitted.

C. A copy of the grievance shall be immediately forwarded by the Department Director to the Human Resources Director, the EEO Officer, and the immediate supervisor of the employee.

6. Within (7) seven business days after receipt of the formal grievance and after reviewing all the facts pertaining to the grievance, the Department Director or his/her designee shall provide a written response to the employee who filed the grievance.

7. If the Department Director does not respond to the employee grievance within (7) seven business days, the grievance will be automatically appealed to the Personnel Appeals ~~Board~~ Hearing Officer.

8. If the decision of the Department Director is not satisfactory to the employee who has filed a grievance, the employee may, within (7) seven business days of receipt of this decision, appeal that decision in writing to the Personnel Appeals ~~Board~~ Hearing Officer.

A. The employee's written appeal to the Personnel Appeals ~~Board~~ Hearing Officer shall be filed with the City Clerk or his/her designee.

B. The appeal to the Personnel Appeals ~~Board~~ Hearing Officer must include a copy of the original City of Las Cruces Employee Grievance Form (and all pertinent attachments provided by grieving party and/or Department Director).

C. The appeal must not contain any changes, deletions or addendums to the initial grievance, settlement desired and/or reply.

9. Should the Department Director's response to the Grieving Party indicate that the issue cannot be grieved under City procedures and the Grieving Party nonetheless files an appeal with the City Clerk, the following shall apply:

A. This appeal will be forwarded to the Personnel Appeals ~~Board Chairperson~~ Hearing Officer ~~or his/her designee for review~~. Within (15) fifteen business days, the ~~Chairperson~~ Hearing Officer will issue a decision as to whether the Personnel Appeals ~~Board~~

Hearing Officer will accept the appeal for a hearing. The decision of the ~~Chairperson~~ Hearing Officer or his/her designee shall be based on the provisions outlined in this section.

B. An affirmative decision will allow the appeal to proceed. A denial will end the internal administrative remedies.

10. The established grievance procedure shall be followed except for:

A. All collective bargaining units will follow the grievance procedures in their negotiated contracts.

11. Within (15) fifteen business days from the filing of the employee's appeal, the City Clerk or his/her designee, with the concurrence of the ~~Chairperson of the Personnel Appeals Board~~ Hearing Officer, shall schedule a hearing on the grievance before the Personnel Appeals Board Hearing Officer. Posting of the notice shall be prepared by the City Clerk or his/her designee at least (7) seven days prior to the hearing. The notice shall also be distributed to the Grieving Party, ~~Chairperson of the Personnel Appeals Board and Board members~~ Hearing Officer, the immediate supervisor of the Grieving Party, his/her Department Director, the Human Resources Director, EEO Officer, City Attorney, and City Manager.

12. The hearing shall be closed to the public, unless the grieving party requests otherwise.

13. The following shall constitute the conditions of representation during a hearing before the Personnel Appeals Board Hearing Officer:

A. The employee who has filed a grievance will may represent himself/herself before the Personnel Appeals Board Hearing Officer. The Grieving Party may be represented by an attorney or in the alternative have (1) one observer of his/her choice present at the hearing.

B. The immediate supervisor of the employee who has filed a grievance will represent the City in grievance hearings before the Personnel Appeals Board Hearing Officer. One (1) next level supervisor may serve as an observer during the hearing. If the employee is represented by an attorney, the City may be represented by an attorney.

C. Observers for the Grieving Party and the City will not participate in any manner during the hearing before the Personnel Appeals Board Hearing Officer. Failure to adhere to this requirement and/or for being disruptive, may force the exclusion of the observer(s) from the hearing. The Personnel Appeals Board Hearing Officer shall make the determination on

excluding an observer. The Grieving Party and the immediate supervisor are responsible for providing the observer(s) with any information and documents. The observer(s) shall be identified and his/her name(s) provided to the Personnel Appeals-Board Hearing Officer (7) seven business days prior to the hearing.

D. If the Grieving Party is the City Attorney, or a staff Attorney, the City will be represented by an attorney of its choice. If the Grieving Party is a Department Director, the City Manager will represent the City.

14. Neither the City, nor the Grieving Party, nor their attorney or observer(s) shall have any ~~direct~~ ex-parte contact either orally or in writing with ~~any member of the Personnel Appeals-Board~~ Hearing Officer prior to the hearing, ~~and or~~ or after the hearing, until the written decision of the ~~Board~~ Hearing Officer is made public.

A. It shall be the responsibility of the City Clerk or his/her designee to schedule or reschedule a hearing, accept the witness list and name(s) of observer(s).

B. It shall be the responsibility of the Grieving Party and the City to provide any other information, documentation or copies requested by the ~~Chairperson of the Personnel Appeals-Board~~ Hearing Officer.

C. All pertinent documents shall be provided to the City Clerk or his/her designee at least (7) seven business days prior to the scheduled hearing.

D. The Personnel Appeals-Board Hearing Officer shall use its his/her discretion as to whether to accept a document(s) not submitted in a timely manner.

15. The City ~~shall provide an employee who will~~ make an audio recording of the proceedings. A grieving party desiring a complete verbatim transcript shall provide for such a report at his/her expense.

16. The Personnel Appeals-Board Hearing Officer shall have authority to call for the attendance of a reasonable number of pertinent witnesses and the production of documents, to swear witnesses, to examine witnesses, including the employee and his/her supervisor, and to hear all evidence properly brought before ~~it~~ the Hearing Officer.

A. All pertinent witness lists shall be provided to the City Clerk or his/her designee at least (7) seven business days prior to the scheduled hearing.

B. The Personnel Appeals ~~Board~~ Hearing Officer shall use its ~~his/her~~ discretion as to whether to accept a witness(es) whose name was not submitted in a timely manner.

C. The formal rules of evidence shall not control this proceeding. To allow for the orderly calling of witnesses and to avoid down time, the Personnel Appeals ~~Board~~ Hearing Officer may request City management to have witnesses available according to a mutually agreed upon schedule.

D. The burden of persuasion and of going forward with the evidence initially rests with the City. The standard of proof in a grievance hearing is the "preponderance of the evidence."

17. Any City employee who is called as a witness before the Personnel Appeals ~~Board~~ Hearing Officer is required to attend the hearing. Failure to appear after receiving a written notice may result in disciplinary action.

18. The EEO Officer, ~~Human Resources Director~~, City Attorney and their respective staff shall be exempt from being called as a witness for either the Grieving Party or the City except by direct order of the ~~City Manager~~ Hearing Officer.

19. The Personnel Appeals ~~Board~~ Hearing Officer shall have no authority to modify job classifications or related wage rates as set forth in Section 22-49 and Section 22-50 of the Personnel Ordinance, nor shall it have the authority to change the intent of any personnel policy or grievance procedure.

20. The Personnel Appeals ~~Board~~ Hearing Officer shall have no authority to grant back pay to any employee for any period prior to the date of the event upon which the grievance is based.

21. A decision or recommendation of the Personnel Appeals ~~Board~~ Hearing Officer in any particular case shall not affect retroactively, or in the future, any other employee grievance.

~~21-22.~~ The decision or recommendation of the Personnel Appeals ~~Board~~ Hearing Officer shall be based upon the evidence presented at the hearing. Furthermore, the decision or recommendation shall be specific and pertinent to the grievance issue.

A. Within (15) fifteen business days from the date of the hearing, the Personnel Appeals ~~Board~~ Hearing Officer ~~through its Chairperson or his/her designee shall, at an~~

~~open meeting~~, render its his/her decision or recommendation. ~~which may then be publicly posted on the City Clerk's Office bulletin board.~~

B. Should the ~~Personnel Appeals Board~~ Hearing Officer want to comment on issues that were not contained in the grieving party's grievance appeal, but were discovered during the hearing, ~~it~~ he/she may do so by submitting a supplemental comment report to the City Manager for his/her review. The supplemental comment report is not considered as or made a part of the grievance decision or recommendation.

C. The Personnel Appeals Board Hearing Officer shall immediately send a copy of the decision/recommendation to the City Manager, City Attorney, the Department Director, the EEO Officer, the Human Resources Director, and the grieving party.

D. The City Manager, after a whole record review, must approve or reject, in writing, the recommendation of the Personnel Appeals Board Hearing Officer which deals with the termination of an employee. A grievance recommendation relating to a termination that is rejected by the City Manager, after a whole record review, shall end the internal administrative remedies.

E. ~~A~~ Decisions rendered by the Personnel Appeals Board Hearing Officer on the grievance issues of loss of pay, written reprimand, suspension ~~OR~~ or demotions, reclassifications, transfers, reassignments, ~~and~~ changes in shift rotations, and the City Manager's rejection of the Personnel Appeals Hearing Officer's recommendation, resulting from a disciplinary action shall be final and binding on all parties, unless appealed as set forth in this section.

~~22.~~ 23. Any grievance not filed pursuant to the provisions of this procedure within (7) seven business days of the event on which such a grievance is based, shall be deemed to have been waived and no relief shall be granted thereon.

24. The employee or the City may appeal the decision of the Personnel Appeals Hearing Officer or the City Manager's rejection of the Personnel Appeals Hearing Officer's recommendation to the District Court within 30 days after the date of the decision by following the Rules of Civil Procedure for the District Courts. The decision or rejection shall be affirmed unless the decision or rejection is found to be:

A. Arbitrary or capricious and unsupported by substantial evidence;

B. In violation of applicable constitutional provisions or otherwise illegal; or

C. In excess of the statutory authority or jurisdiction of the Personnel Appeals Hearing Officer.

25. Personnel Appeals Hearing Officer.

A. The City Manager shall determine how many Personnel Appeals Hearing Officers are required for the efficient operation of the disciplinary appeal procedure and initiate the selection procedure prescribed in the procurement code.

B. A Personnel Appeals Hearing Officer shall be an attorney licensed to practice in New Mexico who is experienced in employment law. Personnel Appeals Hearing Officers shall be subject to the Code of Judicial Conduct, Rules 21-001, et seq., NMRA 1998, and as it might be subsequently amended, as it applies to probate, part-time magistrate judges and municipal judges.

C. A Personnel Appeals Hearing Officer shall provide services under a contract with the City and shall not be considered an employee of the City for any purpose. The term of a contract shall be no more than two years. The contract may provide for part-time services. The contract may not be terminated by the City for any reason except violation of the Code of Judicial Conduct. In the event the City does not have a contract with any Hearing Officer, the parties may agree to a Hearing Officer to hear a specific case.

D. No person shall attempt to influence a Personnel Appeals Hearing Officer's findings and conclusions pursuant to this article except during a hearing or in the presence of a representative of the opposing party.

1102. EMPLOYEE GRIEVANCE.

1. The word grievance means a formal, written statement from an eligible employee concerning actions taken by the City on one of the following items: loss of pay, written reprimand, suspension, and termination. Demotions, reclassifications, transfers, reassignments, and changes in shift rotations may not be grieved by an employee unless they are a direct consequence of a disciplinary action to that employee. Performance reviews and promotions cannot be grieved.

2. The wording eligible employee means any regular full-time and regular part-time employee. Discharge of an employee shall not preclude access to the grievance procedure.

A. The City Manager shall not have access to the grievance procedure.

B. Executive employees shall have recourse to the grievance procedure, but may only grieve terminations and disciplinary actions which result in loss of pay. Executive employees include Department Directors, the City Attorney and Assistant City Manager.

C. Executive employees and any other employees who report directly to the City Manager shall follow the grievance procedures as outlined in this section.

3. Before an employee files a formal written grievance, the employee and his/her immediate supervisor must make a good faith effort to resolve the issue, except in situations where a special hearing officer was appointed to conduct the Loudermill hearing. A good faith effort shall consist of a face-to-face meeting between the employee and his/her immediate supervisor to discuss the issue and resolution. The filing of a formal, written grievance shall not preclude continuing a good faith effort to resolve the grievance. The good faith effort does not extend the time limit(s) included in the grievance procedure.

4. When a special hearing officer has been appointed to conduct the Loudermill hearing, the employee may bypass the "good faith effort" of a face-to-face meeting with the immediate supervisor and the filing of a formal written grievance with the employee's Department Director. Under these circumstances, the employee may file a formal written grievance directly with the City Clerk's Office within (7) seven business days following the event on which the grievance is based.

5. Within (7) seven business days following the event on which the grievance is based, an eligible employee may file a formal written grievance with the Department Director. The good faith efforts shall have taken place in order for the formal written grievance to proceed.

A. The grievance must be filed on forms available at the Human Resources Department, City Clerk's Office, EEO/Training Office, and the Department Director's Office.

B. The grievance must be specific and refer to an issue that can be grieved. The contents of a formal written grievance and settlement desired cannot be changed after it is submitted.

C. A copy of the grievance shall be immediately forwarded by the Department Director to the Human Resources Director, the EEO Officer, and the immediate supervisor of the employee.

6. Within (7) seven business days after receipt of the formal grievance and after reviewing all the facts pertaining to the grievance, the Department Director or his/her designee shall provide a written response to the employee who filed the grievance.

7. If the Department Director does not respond to the employee grievance within (7) seven business days, the grievance will be automatically appealed to the Personnel Appeals Hearing Officer.

8. If the decision of the Department Director is not satisfactory to the employee who has filed a grievance, the employee may, within (7) seven business days of receipt of this decision, appeal that decision in writing to the Personnel Appeals Hearing Officer.

A. The employee's written appeal to the Personnel Appeals Hearing Officer shall be filed with the City Clerk or his/her designee.

B. The appeal to the Personnel Appeals Hearing Officer must include a copy of the original City of Las Cruces Employee Grievance Form (and all pertinent attachments provided by grieving party and/or Department Director).

C. The appeal must not contain any changes, deletions or addendums to the initial grievance, settlement desired and/or reply.

9. Should the Department Director's response to the Grieving Party indicate that the issue cannot be grieved under City procedures and the Grieving Party nonetheless files an appeal with the City Clerk, the following shall apply:

A. This appeal will be forwarded to the Personnel Appeals Hearing Officer. Within (15) fifteen business days, the Hearing Officer will issue a decision as to whether the Personnel Appeals Hearing Officer will accept the appeal for a hearing. The decision of the Hearing Officer shall be based on the provisions outlined in this section.

B. An affirmative decision will allow the appeal to proceed. A denial will end the internal administrative remedies.

10. The established grievance procedure shall be followed except for:

A. All collective bargaining units will follow the grievance procedures in their negotiated contracts.

11. Within (15) fifteen business days from the filing of the employee's appeal, the City Clerk or his/her designee, with the concurrence of the Personnel Appeals Hearing Officer, shall schedule a hearing on the grievance before the Personnel Appeals Hearing Officer. Posting of the notice shall be prepared by the City Clerk or his/her designee at least (7) seven days prior to the hearing. The notice shall also be distributed to the Grieving Party, Personnel Appeals Hearing Officer, the immediate supervisor of the Grieving Party, his/her Department Director, the Human Resources Director, EEO Officer, City Attorney, and City Manager.

12. The hearing shall be closed to the public, unless the grieving party requests otherwise.

13. The following shall constitute the conditions of representation during a hearing before the Personnel Appeals Hearing Officer:

A. The employee who has filed a grievance may represent himself/herself before the Personnel Appeals Hearing Officer. The Grieving Party may be represented by an attorney or in the alternative have (1) one observer of his/her choice present at the hearing.

B. The immediate supervisor of the employee who has filed a grievance will represent the City in grievance hearings before the Personnel Appeals Hearing Officer. One (1) next level supervisor may serve as an observer during the hearing. If the employee is represented by an attorney, the City may be represented by an attorney.

C. Observers for the Grieving Party and the City will not participate in any manner during the hearing before the Personnel Appeals Hearing Officer. Failure to adhere to this requirement and/or for being disruptive, may force the exclusion of the observer(s) from the hearing. The Personnel Appeals Hearing Officer shall make the determination on excluding an observer. The Grieving Party and the immediate supervisor are responsible for providing the observer(s) with any information and documents. The observer(s) shall be identified and his/her name(s) provided to the Personnel Appeals Hearing Officer (7) seven business days prior to the hearing.

D. If the Grieving Party is the City Attorney, or a staff Attorney, the City will be represented by an attorney of its choice. If the Grieving Party is a Department Director, the City Manager will represent the City.

14. Neither the City, nor the Grieving Party, nor their attorney or observer(s) shall have any ex-parte contact either orally or in writing with the Personnel Appeals Hearing Officer prior to the hearing or after the hearing, until the written decision of the Hearing Officer is made public.

A. It shall be the responsibility of the City Clerk or his/her designee to schedule or reschedule a hearing, accept the witness list and name(s) of observer(s).

B. It shall be the responsibility of the Grieving Party and the City to provide any other information, documentation or copies requested by the Personnel Appeals Hearing Officer.

C. All pertinent documents shall be provided to the City Clerk or his/her designee at least (7) seven business days prior to the scheduled hearing.

D. The Personnel Appeals Hearing Officer shall use his/her discretion as to whether to accept a document(s) not submitted in a timely manner.

15. The City will make an audio recording of the proceedings. A grieving party desiring a complete verbatim transcript shall provide for such a report at his/her expense.

16. The Personnel Appeals Hearing Officer shall have authority to call for the attendance of a reasonable number of pertinent witnesses and the production of documents, to swear witnesses, to examine witnesses, including the employee and his/her supervisor, and to hear all evidence properly brought before the Hearing Officer.

A. All pertinent witness lists shall be provided to the City Clerk or his/her designee at least (7) seven business days prior to the scheduled hearing.

B. The Personnel Appeals Hearing Officer shall use his/her discretion as to whether to accept a witness(es) whose name was not submitted in a timely manner.

C. The formal rules of evidence shall not control this proceeding. To allow for the orderly calling of witnesses and to avoid down time, the Personnel Appeals Hearing Officer may request City management to have witnesses available according to a mutually agreed upon schedule.

D. The burden of persuasion and of going forward with the evidence initially rests with the City. The standard of proof in a grievance hearing is the "preponderance of the evidence."

17. Any City employee who is called as a witness before the Personnel Appeals Hearing Officer is required to attend the hearing. Failure to appear after receiving a written notice may result in disciplinary action.

18. The EEO Officer, City Attorney and their respective staff shall be exempt from being called as a witness for either the Grieving Party or the City except by direct order of the Hearing Officer.

19. The Personnel Appeals Hearing Officer shall have no authority to modify job classifications or related wage rates as set forth in Section 22-49 and Section 22-50 of the Personnel Ordinance, nor shall it have the authority to change the intent of any personnel policy or grievance procedure.

20. The Personnel Appeals Hearing Officer shall have no authority to grant back pay to any employee for any period prior to the date of the event upon which the grievance is based.

21. A decision or recommendation of the Personnel Appeals Hearing Officer in any particular case shall not affect retroactively, or in the future, any other employee grievance.

22. The decision or recommendation of the Personnel Appeals Hearing Officer shall be based upon the evidence presented at the hearing. Furthermore, the decision or recommendation shall be specific and pertinent to the grievance issue.

A. Within (15) fifteen business days from the date of the hearing, the Personnel Appeals Hearing Officer shall render his/her decision or recommendation.

B. Should the Personnel Appeals Hearing Officer want to comment on issues that were not contained in the grieving party's grievance appeal, but were discovered during the hearing, he/she may do so by submitting a supplemental comment report to the City Manager for his/her review. The supplemental comment report is not considered as or made a part of the grievance decision or recommendation.

C. The Personnel Appeals Hearing Officer shall immediately send a copy of the decision/recommendation to the City Manager, City Attorney, the Department Director, the EEO Officer, the Human Resources Director, and the Grieving Party.

D. The City Manager, after a whole record review, must approve or reject, in writing, the recommendation of the Personnel Appeals Hearing Officer which deals with the termination of an employee. A grievance recommendation relating to a termination that is rejected by the City Manager, after a whole record review, shall end the internal administrative remedies.

E. A decision rendered by the Personnel Appeals Hearing Officer on the grievance issues of loss of pay, written reprimand, suspension or demotions, reclassifications, transfers, reassignments, changes in shift rotations, and the City Manager's rejection of the Personnel Appeals Hearing Officer's recommendation, shall be final and binding on all parties, unless appealed as set forth in this section.

23. Any grievance not filed pursuant to the provisions of this procedure within (7) seven business days of the event on which such a grievance is based, shall be deemed to have been waived and no relief shall be granted thereon.

24. The employee or the City may appeal the decision of the Personnel Appeals Hearing Officer or the City Manager's rejection of the Personnel Appeals Hearing Officer's recommendation to the District Court within 30 days after the date of the decision by following the Rules of Civil Procedure for the District Courts. The decision or rejection shall be affirmed unless the decision or rejection is found to be:

- A. Arbitrary or capricious and unsupported by substantial evidence;
- B. In violation of applicable constitutional provisions or otherwise illegal; or
- C. In excess of the statutory authority or jurisdiction of the Personnel Appeals Hearing Officer.

25. Personnel Appeals Hearing Officer.

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B. A Personnel Appeals Hearing Officer shall be an attorney licensed to practice in New Mexico who is experienced in employment law. Personnel Appeals Hearing Officers shall be subject to the Code of Judicial Conduct, Rules 21-001, et seq., NMRA 1998, and as it might be subsequently amended, as it applies to probate, part-time magistrate judges and municipal judges.

C. A Personnel Appeals Hearing Officer shall provide services under a contract with the City and shall not be considered an employee of the City for any purpose. The term of a contract shall be no more than two years. The contract may provide for part-time services. The contract may not be terminated by the City for any reason except violation of the Code of Judicial Conduct. In the event the City does not have a contract with any Hearing Officer, the parties may agree to a Hearing Officer to hear a specific case.

D. No person shall attempt to influence a Personnel Appeals Hearing Officer's findings and conclusions pursuant to this article except during a hearing or in the presence of a representative of the opposing party.