Hillsborough County Employee Discipline Appeal Process

Effective October 1, 2019, Chapter 2019-183, Laws of Florida requires any agency or authority previously covered by the Hillsborough County Civil Service Act (Chapters 2000-445, 2007-301, and 2014-230, Laws of Florida) must provide a fair, neutral, and impartial system for administering employee discipline of a suspension, involuntary demotion, or dismissal and appeals of such discipline.

Chapter 2019-183, Laws of Florida requires the system for administering employee discipline and appeals to be uniform for all Hillsborough County agencies previously covered under Civil Service and to provide a tenured employee with substantially similar protections and rights as set forth in Sections 11 and 12 of the prior acts (Chapters 2000-445, 2007-301, and 2014-230, Laws of Florida).

In accordance with Chapter 2019-183, Laws of Florida, the Hillsborough County Employee Discipline Appeal Process is the uniform system for the administration of appeals of employee discipline. **This system was modeled after Sections 11 and 12 of the prior acts, Civil Service Rule 15, and other Civil Service Rules adopted to carry out the prior acts, ensuring substantially similar employee protections and rights are in place while offering a more streamlined appeals process.**

It is every tenured employee's right to have fair access to the Hillsborough County Employee Discipline Appeal Process. To that end, no tenured employee will face retaliation, coercion, or any other form of reprisal for utilizing this process.

Nothing in these rules and procedures will preclude the parties involved in a disciplinary appeal process to settle the disputes in question using formal or informal alternative dispute resolution methods.

Any revisions or modifications to the Hillsborough County Employee Discipline Appeal Process must be approved by all covered agencies.

This Hillsborough County Employee Discipline Appeal Process is divided into two sections:

1. Definitions
2. Employee Discipline and Appeal Hearing Procedures

Questions about this discipline appeal process should be directed to the Appeal Intake Office at (813) 274-1626.

Section 1: Definitions

Appeal Hearing - An evidentiary hearing in which testimony is received from interested persons and evidence is provided in support of or in opposition to specific charges related to the disciplinary actions of a suspension, involuntary demotion, or dismissal of an employee.

Appeal Intake Office - The office that handles the intake of appeals for all appointing authorities; coordinates notices to all parties; schedules appeal hearings; and provides information to employees regarding appeals of discipline.

Appeals Referee - An individual with labor and employment experience who presides over an appeal hearing and serves as a fair, neutral and impartial decision maker.

Appointing Authority - The employer, which includes any agency within the county previously covered under Sections 11 and 12 of the Civil Service Act, including the County Administrator, Clerk of Circuit Court (Clerk of Court & Comptroller), Supervisor of Elections, Property Appraiser, Tax Collector, Sheriff, Environmental Protection Commission, Aviation Authority, Port Authority, Planning Commission, Board of County Commissioners, Legislative Delegation, Expressway Authority, Soil and Water Conservation District, Sports Authority, Children's Board, County Attorney, Arts Council, Victim Assistance, and any other agency not expressly exempt as well as the Court Administrator (Administrative Office of the Courts for positions which are funded by the county and were classified as of January 1, 1998).

This discipline and appeal process is not applicable to the Public Transportation Commission, Civil Service Board, and any other agency that is no longer in existence as of (or before) October 1, 2019.

Demotion - A disciplinary action resulting in the move of an employee from one position to another position with a reduction in pay or a move to a lower pay grade; applies to involuntary demotions as a result of discipline only.

Dismissal - A disciplinary action resulting in the discharge of an employee from service by an appointing authority.

Initial Probationary Period - An initial evaluation period, as determined by the appointing authority but not to exceed 12 months, during which an employee remains in the same position and may be dismissed without appeal rights. Upon satisfactory completion of this period, the employee will be granted such rights.

Just Cause - Just cause, as applied herein, is the basis for disciplining a tenured employee.[i]

Non-Tenured Employee - An employee who may be suspended, involuntarily demoted, or dismissed for any reason without the right to appeal. The following types of employees, as determined by the appointing authorities, are considered non-tenured with respect to disciplinary appeal rights:

- At-will (unclassified) employees;

- Employees serving in an initial probationary period;
- Part-time, temporary and substitute employees;
- Employees in senior management or director level positions responsible for the administration of a department or division and/or those with a high level of responsibility for program development and oversight, formulation of policies, or day to day operations and decision making;
- Assistants of executives such as the county attorney, executive officers, board members, and elected officials or those appointed by the governor;
- Elected officials and those appointed by the governor;
- Board or commission members; and
- Professionals including but not limited to physicians, attorneys, and information technology professionals.

Pre-Disciplinary Hearing - A due process opportunity during an informal hearing held by the appointing authority before a demotion, suspension, or dismissal is finalized by an appointing authority.

Suspension - A disciplinary action resulting in the removal of an employee from service for a temporary period of time.

Tenured Employee (classified employee) - An employee who is entitled to disciplinary appeal rights after satisfactorily completing the initial probationary period.

Section 2: Employee Discipline and Appeal Hearing Procedures

A. Suspension; Demotion; Dismissal

(1) Any non-tenured employee may be suspended, demoted, or dismissed for any reason.

(2) As part of its progressive discipline procedure, an appointing authority may suspend, demote, or dismiss any tenured employee following written notice to the employee of the intended action, detailing the reasons, and providing an opportunity to respond at an informal pre-disciplinary hearing scheduled for that purpose. The hearing must be scheduled no sooner than five business days after the date of notice of intent to discipline unless the employee waives this time and requests an earlier hearing. If the final decision is to discipline, the appointing authority must provide written notice to the employee as soon as possible following the hearing using the ***Notice of Discipline Form*** (Attachment 1).

(3) **Reasons for Dismissals, Suspension, or Involuntary Demotions for Just Cause**[ii]

Tenured employees may be suspended, involuntarily demoted, or dismissed for just cause. Just cause may include but is not limited to situations where the employee, during the scope of employment or, when applicable, in any other capacity or under circumstances that adversely affect an appointing authority's interest has:

a. Violated an operational or administrative policy or procedure of the appointing authority.

b. Exhibited incompetence or continued rendering of unsatisfactory service after instruction and/or counseling.

c. Failed to maintain competence or legal capacity to perform the duties required of the classification/position.

d. Demonstrated a gross neglect of duty or failure to perform assigned duties.

e. Committed an act of insubordination.

f. Violated a lawful regulation or order or failed to obey the orders or direction made and given by a superior.

g. Committed harassment (including sexual harassment) or actions which, although do not amount to a cause of action for harassment, are inappropriate actions of a sexual, hostile, abusive or interfering nature towards another employee, customer, vendor, citizen, or any other person as a result of employment.

h. Failed to acquire or maintain a valid license, registration, or certification, as required by Federal or State law, or applicable appointing authority, when such license, registration or certification is required for the position.

i. Improperly used or possessed, sold, distributed, dispensed, or manufactured a controlled substance or an illegal drug while at work on appointing authority or county property, in a business vehicle or other vehicle used to perform job duties, or while off the premises performing work for the appointing authority.

j. Indulged in an intoxicating beverage, a hallucinogen, or a controlled stimulant or depressant drug while on duty or preceding duty so that such indulgence can be discerned on the job.

k. Engaged in a physical fight at the work site or engaged in a verbally abusive and/or intimidating confrontation with a peer, supervisor, employee, or a member of the public.

l. Negligently operated an appointing authority vehicle or other vehicle used for appointing authority business.

m. Violated, or failed to enforce, safety practices including the performance of unsafe acts, failure to wear and/or use safety equipment, or failure to comply with safety rules.

n. Failed to immediately report a work-related personal injury or damage to property or equipment.

o. Used or threatened to use, or attempted to use, bribery, personal or political influence of his or her position for personal gain.

p. In connection with official duties, accepted compensation other than that specifically authorized by the appointing authority.

q. Misappropriated appointing authority funds, appropriated appointing authority property, services or personnel for his/her personal use, or illegally disposed of appointing authority property.

r. Damaged appointing authority or county property through negligence.

s. Made false claims or misrepresentations on behalf of oneself or another in an attempt to obtain appointing authority provided benefits, workers compensation benefits, or other payments or credits.

t. Been absent without leave, failed to give proper notice of absence, or failed to report after a leave of absence has expired.

u. Failed to maintain a satisfactory attendance record.

v. Committed or been convicted, or entered a plea of guilty or nolo contendere, to an act which constitutes a felony or a misdemeanor having specific relevance to the position duties.

w. Falsified or omitted information as part of the qualifying application for employment and/or promotion, any document used by the appointing authority for the purpose of personal gain or reward.

x. Violated established security procedures during the qualifying examination process or obtained information, through unauthorized or

illegal means which provides an unfair advantage on any qualifying examination.

y. Without approval, modified, used or accessed data, communication systems, programs or supplies used or intended to be used in appointing authority computers, computer systems, communication systems or network.

z. Exhibited actions or conduct prejudicial to good order, or detrimental to the interest of appointing authority.

aa. Engaged in activities while not on duty, including but not limited to activities in other employment or elected office, which are inconsistent with or create a conflict of interest with the requirements of performing or serving in the position. If discipline is imposed without the appointing authority providing prior notice to the employee that it considers an action to be inconsistent with or to create a conflict of interest with performance or service in the position, and the activities are not otherwise improper, unlawful, or a violation of these rules, the appointing authority must demonstrate that immediate discipline is justified by compelling circumstances.

bb. Disrupted, disturbed or in any way interfered with an agency investigation; includes but not limited to: making false statements or allegations which were investigated or part of an investigation, taking or destroying documents relevant to an investigation, knowingly spreading false information concerning an investigation, inappropriately influencing or attempting to influence witnesses in an investigation and refusing/failing to cooperate with management or investigators during a workplace investigation.

cc. Knowingly made a false statement or misrepresentation in a matter of official appointing authority business.

dd. Refused to repay or enter into a reasonable repayment agreement for any monies paid to the employee in error or monies paid on behalf of the employee as a result of an administrative error or while the employee was in a leave status to which the employee was not entitled.

ee. Any other substantiated cause that is in the best interest of the appointing authority.

(4) Any employee may be suspended immediately, with or without pay and without the benefit of advanced written notice, upon determination by the appointing authority that such suspension is in the best interest of the county. The appointing authority must provide written notice to the employee as soon as possible and give the employee the opportunity to be heard as required in Section 2A(2).

(5) Any tenured employee who has satisfactorily completed his/her initial probationary period and is thereafter suspended, demoted, or dismissed from employment may request a hearing to appeal that disciplinary action by making

a written request to the appeal intake office within 10 calendar days after the official date of receipt of the final notice to discipline using the ***Employee Discipline Appeal Request Form*** (Attachment 2). The request for an appeal hearing must state clearly and simply the reason(s) the employee believes the disciplinary action was not justified and must be received by the appeal intake office within the 10-day limit. The appeal intake office must send a copy to the affected appointing authority within two business days after receipt.

(6) The County will utilize an independent service (such as the American Arbitration Association) to compile a list of individuals with labor and employment experience including expertise in resolving employment disputes within an established geographic region. The appointing authorities will not have any input into which individuals are placed on the list. The independent service will determine who will be placed on the list. Upon request of the appeal intake office, the independent service will assign an individual from this list to serve as an appeals referee. Individuals will be selected by the independent service on a rotating basis with consideration of availability. The cost of the services for the appeals referees will be borne by Hillsborough County.

B. Appeal Hearing Procedure

(1) **Basis for Appeal**

After a pre-disciplinary hearing, if the final decision of the appointing authority is to suspend, involuntarily demote, or dismiss a tenured employee, the appointing authority must provide written notice to the employee as soon as possible following the hearing. This notice must be issued to the employee using the ***Notice of Discipline Form***. This form must include the action being taken, the factual basis for imposing the action, the effective date or dates of the action, and the specific appointing authority rule(s), policy(ies), or procedure(s) which the appointing authority claims have been violated. The ***Notice of Discipline Form*** is the document which forms the basis for an appeal by a tenured employee.

(2) **Request for Appeal and Timeframes**

a. The request for an appeal hearing must be received by the appeal intake office within 10 calendar days following the employee's official date of receipt of the ***Notice of Discipline Form*** from the appointing authority. The official date of receipt is the date notice was hand-delivered to the employee in person or the date delivered by mail or delivery service based on proof of delivery (signature not required).

b. Should any deadline, including the deadline to request an appeal, fall on a Saturday, Sunday, or a designated Hillsborough County holiday, the deadline will be extended until the end of the next business day of the appeal intake office.

c. Any deadlines set forth herein (except the 10-calendar day deadline for an employee to file an appeal) may be extended by the appeal intake

office with mutual agreement of the parties or by order of the appeals referee, once appointed.

d. The request for an appeal hearing must be submitted to the appeal intake office using the ***Employee Discipline Appeal Request Form***. This form can be submitted electronically, in person or via mail. All sections of the form must be completed, and the form must be received by the intake office within the 10-calendar day deadline. If mailed, postmark date is not considered when determining if an appeal is filed timely.

e. Within two business days from the receipt of the employee's request for an appeal hearing, the appeal intake office will notify the appointing authority such request has been received. Once notified that an appeal request has been received, the appointing authority is required to submit a copy of the ***Notice of Discipline Form*** to the appeal intake office.

(3) **Eligibility for Appeal**

a. Employees Eligible for Appeal Hearing:

i. Any tenured employee who has satisfactorily completed the required initial probationary period, and is suspended, involuntarily demoted, or dismissed from employment, may request a formal hearing before an appeals referee to appeal the disciplinary action.

ii. Tenured employees who are members of a collective bargaining unit will be allowed to appeal any single action through either the applicable collective bargaining appeal procedures or the appeal process defined in these rules and procedures. Once an appeal is initiated in either process it must be resolved in that process. [Florida Statute 447.401]

b. Employees Not Eligible for Appeal Hearing:

i. If the employment action taken against the employee was not a suspension, demotion, or dismissal as defined in this policy.

ii. An employee who has not satisfactorily completed the required initial probationary period will have no right to a pre-disciplinary hearing or to an appeal hearing.

iii. If an appointing authority elects to return an employee to his/her previous position or class due to unsuccessful completion of the required conditional probationary period following a promotion, such action is not appealable.

iv. Employees not holding a tenured position are not eligible for an appeal hearing. This includes any employee within the Court Administrator (Administrative Office of the Courts) who holds a position which was not classified as of January 1, 1998 and funded by the county.

v. Tenured employees who have been dismissed, suspended, or involuntarily demoted after a pre-disciplinary hearing are not eligible for an appeal hearing if they fail to submit the completed ***Employee Discipline Appeal Request Form*** to the appeal intake office within 10 calendar days after the official date of receipt of the ***Notice of Discipline Form***.

c. The appeal intake office will notify an employee who is not eligible for an appeal hearing within seven calendar days from the receipt of the employee's appeal request. The employee may request a review of this decision in writing to the appeal intake office within ten calendar days of the notice of ineligibility. The appeal intake office will schedule a hearing to decide the issue of eligibility. An appeals referee will be appointed as described in Section 2A(6). The appeals referee will render a final decision (bench ruling) at the end of the hearing and memorialize the ruling in a written final order within 14 calendar days. In the event an evidentiary hearing is needed, the appeal intake office will coordinate with the parties to schedule the hearing with the same appeals referee.

(4) **Scheduling of Hearings**

a. An appeal hearing will be scheduled within 60 calendar days after the appeal intake office receives a request for appeal, unless a motion to dismiss or motion for summary judgment has been filed or by mutual consent of the parties.

b. Upon receipt of a request for an appeal hearing, a motion to dismiss, or a motion for summary judgment, the appeal intake office will coordinate the appointment of an appeals referee.

c. The appeal intake office will use an independent service to appoint a qualified individual with labor and employment experience from a rotating panel to serve as an appeals referee to preside over the appeal hearing as described in Section 2A(6) above.

d. The appeal intake office will coordinate all hearings at a date, time, and location convenient to both parties, the witnesses, and the appeals referee. Efforts will be made to schedule hearings during normal business hours. The appeal intake office will also coordinate the services of a court reporter to preserve a record of hearing proceedings.

e. The appeal intake office will notify all parties of date, time, and location of appeal hearings and motion hearings.

f. All hearings will comply with Florida's Sunshine Law (Chapter 286, Florida Statute).

g. In the event the employee does not appear at a scheduled hearing without good cause, the appeals referee shall dismiss the appeal for lack of prosecution.

(5) **Motions**

a. **Motion to Dismiss**: The appointing authority may move to dismiss for issues of timeliness in filing an appeal or when it is believed there is lack of jurisdiction over a claim for appeal.

b. **Motion for Summary Judgment**: Any party may move for summary judgment when it is believed that there is no genuine issue of material fact and that he/she is entitled to prevail as a matter of law. The appeals referee will apply the same standard described in Section 2B(9)(b and c).

c. Administration of Motions:

i. Motions must be filed with the appeal intake office within 20 calendar days from the date the request for appeal was filed. A copy must also be provided to the opposing party.

ii. Motions for Summary Judgment shall comply with the following requirements:

1. The motion shall state with particularity the grounds upon which the moving party will rely for summary judgment and the substantial matters to be argued.

2. All facts argued in support of the motion must be supported by written testimony as described below, by affidavit(s) or otherwise sworn or certified evidence, stipulation(s), documents or other admissible evidence. Admissions contained in the Notice of Discipline and the Appeal Request Form may be utilized to support a Motion for Summary Judgment. Live testimony will not be taken at a hearing on a Motion for Summary Judgment.

3. Any documents supporting the motion must be properly authenticated.

4. Evidence submitted through written testimony shall be under oath or under penalty of perjury; and, in the form of an affidavit, or declaration, or a deposition or hearing transcript from other proceedings; except that testimony offered as an admission by the opposing party need not be sworn if properly authenticated.

5. Evidence should be of the same quality that the appeals referee would admit at an evidentiary hearing.

iii. If the opposing party elects to respond to the motion in writing, he/she must submit such response to the appeal intake office within 15 calendar days of receipt of the motion, but no later than five calendar days prior to the hearing on the motion. A copy must also be provided to the other party.

iv. The appeal intake office will schedule a motion hearing for the appeals referee to consider oral arguments as soon as possible.

v. During the motion hearing, each party will have 15 minutes to present oral arguments. The appeals referee may ask questions of either party at the conclusion of oral arguments.

vi. When considering a motion for summary judgment, the judgment sought will be rendered if the moving party presents sufficient evidence to show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

vii. The appeals referee will rule separately on each specific appointing authority rule, policy, or procedure or any subsection therein for which summary judgment is sought.

viii. Should the appointing authority prevail on its motion to dismiss or motion for summary judgment, the appeals referee will render a final decision at the hearing (bench ruling) indicating the disciplinary action imposed by the appointing authority is upheld, and the appeal is dismissed.

ix. Should the appeals referee issue a bench ruling denying the motion to dismiss or motion for summary judgment, the appeal intake office will schedule an evidentiary appeal hearing as soon as possible.

x. Following the decision by the appeals referee either granting or denying a motion, the appeals referee will memorialize the ruling in a written final order within 14 calendar days.

xi. Should the employee prevail on his/her motion for summary judgment, the appeals referee will issue a bench ruling vacating the disciplinary action imposed by the appointing authority and award any appropriate relief as described in Section 2B(9)(f).

(6) **Subpoenas**

The Special Act mandates employees retain substantially similar rights and protections as set forth in Sections 11 and 12 of the prior Civil Service Act. To effectuate the purpose of the Special Act, the appeals referee must possess the authority to issue subpoenas to witnesses for attendance and subpoenas for documents.

a. The appeals referee is authorized to issue subpoenas to compel the attendance of witnesses and the production of books, accounts, records, and documents at an evidentiary appeal hearing.

b. It is the responsibility of any party seeking to compel the attendance of a witness through subpoena to:

i. Obtain blank subpoena forms from the appeal intake office. Completed forms should be returned to the appeal intake office for issuance.

ii. Obtain service of the subpoena, upon issuance, by a person over the age of 18 years who is not a party to the action, including the

payment of any compensation for the service of the subpoena. Service of the subpoena, including witness fee and expenses, will be made as provided in general Florida law and is the responsibility of the serving party.

iii. To the extent permitted by law, a judge, upon application of the appeals referee or either party, shall compel obedience to a subpoena to appear or produce documents through contempt proceedings.

(7) **Pre-Hearing Conference**

a. To facilitate the evidentiary appeal hearing proceedings, the appeal intake office will coordinate with the parties to schedule a pre-hearing conference with the appeals referee at least seven calendar days prior to the evidentiary hearing. The appeal intake office will provide notice of the date and time of the pre-hearing conference to all parties.

b. The parties will submit a pre-hearing statement to the appeals referee, with a copy to the opposing party, at least three calendar days prior to the pre-hearing conference which contains:

i. a brief, general statement of each party's case;

ii. a list of all exhibits to be offered at the hearing (exhibits included in the documentation must be appropriately labeled and tabbed separately and an indexed list of such exhibits with a brief description of each exhibit must also be included);

iii. a list of all witnesses who may be called;

iv. a concise statement of all facts which have been admitted and require no proof at the hearing;

v. a concise statement of those issues of fact which remain to be litigated;

vi. a list of motions requiring action by the appeals referee, if any; and

vii. the signature of each party (or a designated representative).

c. During the pre-hearing conference, which will be held via telephone conference, the parties will:

i. discuss the possibility of a settlement;

ii. stipulate to as many facts or issues as possible;

iii. exchange lists of witnesses (including names, addresses, and telephone numbers) that may be called at the hearing and resolve scheduling conflicts;

iv. exchange lists of and examine all evidence, exhibits, and documents to be offered at the hearing;

v. determine the issues of fact which are admitted and will require no proof at the hearing; and

vi. determine those issues of fact that must be considered by the appeals referee at the hearing.

d. The appeals referee shall address all preliminary, non-dispositive motions and make evidentiary rulings on any objections to the exhibits, documents, or other evidence offered by either party at the pre-hearing conference or as needed.

e. The pre-hearing statements and the pre-hearing order will control the course of the hearing and may not be amended except by order of the appeals referee.

(8) **Evidentiary Appeal Hearing**

a. In an evidentiary appeal hearing, the appointing authority bears the burden of proof to show, by a preponderance of the evidence, that the employee did in fact violate any appointing authority rule, policy, or procedure, or any subsection therein.

b. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether such evidence would be admissible in the courts of this state. Hearsay evidence may be introduced and used for supplementing or explaining other evidence, but it shall not be enough to support a finding by the appeals referee unless it would be admissible over objections in a civil action.[iii]

c. The appeals referee will address any preliminary matters including motions in limine, motions to sequester witnesses, or other procedural or substantive matters which should be addressed before introduction of the evidence. Witnesses will be identified and sworn at the hearing.

d. Each party must bring a minimum of five hard copies of the supporting documentation and evidence submitted as part of the pre-hearing conference process to the evidentiary appeal hearing, including all exhibits which are appropriately labeled and tabbed separately with an indexed list of such exhibits and a brief description of each exhibit. New evidence or witnesses discovered after the filing of the pre-hearing conference will only be permitted at the hearing with approval of the appeals referee.

e. Each party may make an opening statement to inform the appeals referee of the facts to be shown by the evidence. The appointing authority will proceed first with its opening statement followed by the employee.

f. After opening statements, each party will have 60 minutes to present their case. Time limits may be increased by approval of the appeals

referee at the pre-hearing conference. Time limits may also be extended by approval of the appeals referee at the evidentiary appeal hearing.

g. The appointing authority will proceed with its case before the appeals referee. The appointing authority may call witnesses and introduce evidence to support the employment action taken by the appointing authority.

h. Subsequently, the employee will proceed with its case. The employee may call witnesses and introduce evidence in support of his/her case.

i. Witnesses called by any party may be cross-examined by the opposing party. Re-direct examination will be permitted.

j. The appeals referee may inquire of either party or witnesses at the conclusion of examination of each witness by the parties.

k. At the conclusion of the evidence and witness testimony, each party will have the opportunity to present closing arguments.

(9) **Final Decision and Order of the Appeals Referee**

a. As soon as possible after the conclusion of the appeal hearing, but within 30 calendar days, the appeals referee will issue a written decision to the affected parties, setting forth his/her findings and conclusions and the reasons to support such findings and conclusions. The appeals referee's decision will be based solely on the documentation, evidence, and testimony presented at the appeal hearing. The 30-day period begins the day following the conclusion of the appeal hearing.

b. The appeals referee may reverse the appointing authority's decision and restore the employee's former status only if he/she finds the suspension, demotion, or dismissal was made for a reason other than just cause as applied in herein.

c. It is not part of the appeals referees function to determine whether the degree or type of disciplinary action is appropriate. Therefore, the appeals referee may not reduce, increase, or otherwise modify the action imposed upon the employee by the appointing authority. If the conduct which is proven establishes a violation of at least one of the appointing authority's rules, policies, or procedures, the action taken must be upheld in its entirety. If the conduct which is proven does not establish a violation of the appointing authority's rules, policies, or procedures, or if the action taken is found not to be for just cause as applied herein, the action must be vacated in its entirety and the employee placed in the same position that he or she would have been in had the action not been taken. [iv]

d. In determining whether the conduct which is proven supports the action of the appointing authority, the appeals referee will consider each alleged violation(s) cited on the ***Notice of Discipline Form***.

e. In cases where the employee does not contest the cited violations of the appointing authority's rules, policies or procedures; and, when it becomes apparent that the only relief sought is to reduce the discipline imposed, the appeals referee may dismiss the appeal upon filing of an appropriate motion.

f. Remedies/Relief:

   i. A prevailing employee in an appeal hearing will be entitled to be made whole from any adverse effects of the action imposed by the appointing authority. The scope of relief includes back pay subject to mitigation; reinstatement of lost benefits; reinstatement to fringe benefit plans; and retroactive seniority.

   ii. Attorney's fees and cost of litigation will not be recoverable.

g. The decision of the appeals referee in any appeal hearing will be considered a final order, subject to review pursuant to the Florida Rules of Appellate Procedure.

   i. In the case of a tenured employee of the Court Administrator as defined in this process, appeals referee may issue a recommendation to the chief judge, but such recommendation is not binding on the chief judge.

h. Upon the filing of a motion, the appeals referee shall have the authority to decide whether a stay or partial stay may be granted to either party pending an appeal of the final order.

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[i] *The standard of just cause as applied in the is policy is the exact same standard adopted by the prior Civil Service Board to promulgate the definition of just cause as set forth in the prior Civil Service Act. The employee protection remains the same.*

[ii] *Sections 7(2) and 12(1) of the prior Civil Service Act, Chapter 2000-445, Laws of Florida, set forth the authority of the Civil Service Board to adopt rules for the uniform administration of the act. As for the standard of 'cause', the prior Civil Service Board adopted Civil Service Rule 11.2. The rules set forth in Section 2(A)(3) of this process are substantially similar to those in the prior Civil Service Rule 11.2.*

[iii] *This was the standard established in Section 12(3) of the prior Civil Service Act, Chapter 2000-445, Laws of Florida.*

[iv] *This was the standard established in the prior Civil Service Rule 15.22.*