

UNION COUNTY
RESOLUTION 2025-34
ADMINISTRATIVE PROCEDURES FOR GRIEVANCE HEARINGS

1. SCOPE OF RULES

These rules govern the procedure in all grievance hearings on appeal from certain personnel actions under the Union County Personnel Ordinance and the Union County Personnel Handbook.

2. NOTICE OF HEARING.

2.1 A request to have a personnel action reviewed in a grievance hearing must be made in writing and filed with the County Manager no later than ten (10) calendar days from service of the written decision of the County Manager or supervisor on the employment matter at issue; a statement of specific grounds for the appeal must accompany the request for hearing. Failure to file a notice of appeal within ten (10) calendar days shall constitute forfeiture of the right to appeal.

2.2. When a timely request for hearing is filed, a hearing shall be scheduled before an independent hearing officer. The County shall notify the party requesting the hearing, and all interested parties, by certified mail, return receipt requested of the hearing.

2.3 The notice shall include the name of the hearing officer, and the time, place, date and nature of the hearing, which time shall be not less than five nor more than sixty days from the date of filing of the request for hearing, provided that the hearing officer may for good cause or upon stipulation of the parties set the hearing for a later date.

3. HEARING, CONDUCT, RECORD.

3.1 Testimony at the hearing shall be taken under oath and recorded by tape, computer, or otherwise. Upon the request of any party, testimony shall be transcribed, provided that all costs of transcribing shall be paid by the party so requesting.

3.2 The hearing shall be conducted in an orderly and informal manner without strict adherence to the rules of evidence that govern proceedings in the courts of the State of New Mexico. However, in order to support a decision, there must be a residuum of legally competent evidence to support a verdict in a court of law. Irrelevant, immaterial or unduly repetitious evidence may be excluded.

3.3 The County shall have the burden of proof and shall present its opening statement, evidence, and closing argument first.

3.4 Opportunity shall be afforded all parties to appear and present evidence and argument on all issues involved. A party may be represented by counsel and may conduct cross-examination for a full and true disclosure of the facts.

3.5 The hearing officer shall administer oaths or affirmations to witnesses, determine the credibility of such witnesses, determine the admissibility of evidence and the weight of such evidence, and decide the law and the facts of the case.

3.6 The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be generally followed; however, when it is necessary to ascertain facts not reasonably susceptible of proof under these rules, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record.

3.7 The hearing officer shall control the conduct of all parties and all other persons present in the hearing room. The hearing officer may, under the appropriate circumstances; (1) remove any person from the hearing room; (2) close the hearing to the general public; (3) exclude all witnesses until they are called to testify; (4) continue the hearing to a later time and date; and (5) take any other action the hearing officer determines is necessary to ensure orderly proceedings and conduct a fair and impartial hearing.

3.8 The hearing officer shall make a record of the hearing, which shall include:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of the matters officially noticed;
- (4) offers of proof, objections, and rulings thereon;
- (5) any proposed findings submitted; and
- (6) the decision by the hearing officer.

4. FINDINGS AND CONCLUSIONS; DECISION.

4.1 The hearing officer shall issue a decision in the matter by written communication to the parties or their attorneys mailed to their last known address not later than thirty (30) days following conclusion of the hearing. A copy of the decision shall be provided to the County Clerk for recordation in County records.

4.2 The hearing officer shall allow counsel a reasonable opportunity, not to exceed five (5) days after the conclusion of the hearing, to submit requested findings of fact and conclusions of law. Service upon an attorney or upon a party shall be made by delivering or mailing a copy to the attorney's last known address. All parties shall be deemed to have been served on the third day following the mailing.

4.3 The final decision of the hearing officer shall include findings of fact and conclusions of law, separately stated.

4.4 If the hearing officer determines that the grievance is valid, the hearing officer may require the County to take such affirmative action as the hearing officer determines is necessary to rectify the action complained of, including, but not limited to, reinstatement, promotion, suspension for a lesser period, reinstatement to a prior position, or award or no award of back pay, but the hearing officer shall not have the authority to award damages other than back pay.

5. SUBPOENAS; INSPECTION OF RECORDS; DISQUALIFICATION.

5.1 Subject to the rules of privilege and confidentiality recognized by law, the hearing officer may require the furnishing of information, the attendance of witnesses, and the production of books, records, papers, or other objects necessary and proper for the purposes of the proceeding.

5.2 The hearing officer may issue subpoenas requiring the attendance and testimony of witnesses and production of any evidence relating to any matter in question in the proceeding. The form of the subpoena shall adhere, insofar as is practicable, to the form used in the district court.

5.3 Any party to the proceeding shall be entitled to subpoenas in the name of the County. The subpoena shall show upon its face the name and address of the party at whose request the subpoena was issued. Unless otherwise required by law, the parties shall not be required to pay fees for attendance and travel to witnesses filed by a party, may modify or vacate a subpoena for any reason that justice requires.

5.4 A subpoena issued under these rules shall be served in the same manner as subpoenas issued by the district court.

5.5 In case of disobedience to any subpoena issued and served under these rules, or for the refusal of any person to testify regarding any matter for which he may be lawfully interrogated, the hearing officer may apply to the district court in the county of

the person's residence for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. If the refusal or disobedience is found to be unlawful, the district court shall enter an order requiring compliance in full or as modified. Disobedience of the court order shall be punished as contempt of the district court in the same manner and by the same procedure as provided for like conduct committed in the course of judicial proceedings.

5.6 A hearing officer shall recuse the hearing officer from any proceeding in which, in the judgment of the hearing officer, cannot conduct a fair and impartial hearing and reach a fair and reasonable decision. Any party may request a disqualification of a hearing officer on the grounds of the person's inability to be fair and impartial by filing a motion and an affidavit promptly upon the discovery of the alleged grounds for disqualification, stating with particularity the grounds upon which it is claimed that the person cannot be fair or impartial. The burden shall be upon the moving party to show by clear and convincing evidence the hearing officer's inability to be fair and impartial. The hearing officer shall make the final determination concerning disqualification of the hearing officer.

6. JUDICIAL REVIEW.

Any party who is adversely affected by the final order or decision under these rules is entitled to judicial review thereof pursuant to Rule 1-075 of the Rules of Civil Procedure for the District Courts of the State of New Mexico (SCRA 1986).

7. PRIOR RULES SUPERSEDED.

This resolution supersedes all prior resolutions establishing administrative procedures for grievance hearings.

8. PURPOSE OF RULES; LIBERAL CONSTRUCTION.

The Board of County Commissioners declares the purpose of this resolution is to promote uniformity with respect to administrative procedure, to ensure that such procedure is fair and equitable to all who participate in the proceedings and to provide for judicial review of administrative decisions. These rules shall be liberally construed to carry out this purpose.

PASSES, APPROVED, AND ADOPTED this 9th day of December, 2024.

BOARD OF COUNTY COMMISSIONERS
OF UNION COUNTY, NEW MEXICO

Clyde Kiser

Chair

A. Kim Vint

Member

Lloyd Miller

Member

ATTEST:

Kim Mitchell

Clerk

