

CHAPTER VIII (GRIEVANCE AND DISCIPLINARY PROCEDURES)

PR-801.A GRIEVANCE SYSTEM

(Definitions for Chapter 8 are found in PR-101)

- A.** General. The grievance system is not available to non eligible employees as defined in PR-101(42), or to employees undergoing disciplinary actions by the individual appointing authority. An employee covered by these procedures who fails to exhaust his/her administrative remedies as provided herein, may be barred from bringing any legal claim or other action arising from facts or issues that could have been submitted for resolution under this procedure.
- B.** Non-applicable matters. The grievance system shall not apply to the following matters:
1. Retirement, life insurance, health insurance, deferred or state compensation plans.
 2. Any evaluation, evaluation procedure, certification or appointment.
 3. Any classification or reclassification action.
 4. Any reduction in force action.
 5. Any disciplinary action as set forth in PR-802.
- C.** Restrictions. An employee may not submit a grievance challenging the following management rights, but may submit a grievance concerning the manner of their administration, as they personally affect the employee:
1. An agency's right to direct its employees.
 2. An agency's right to hire, promote, transfer, assign, and retain employees.
 3. An agency's right to maintain efficiency of government operations and to determine the methods and means, and to select the personnel by which these operations are to be conducted.
 4. An agency's right to evaluate an employee's overall performance.
- D.** Agency control. An employee may not submit a grievance concerning any matter not subject to the control of the agency.

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- E. Amendments. Once a grievance is filed, it may not be amended to include additional grievance matters. Additional grievance matters must be separately grieved.
- F. Grievance hearings shall be recorded by tape recording.

PR-801.B GRIEVANCE PROCEDURE FOR YUMA COUNTY AGENCIES AND DEPARTMENTS

- A. The procedures set forth in this section are not available for Disciplinary Matters set forth in PR-802. Disciplinary proceedings are governed solely by the procedures set forth in PR-802.
 - 1. The employee shall have one oral discussion with the immediate supervisor within five (5) working days after learning of the occurrence of the action being grieved, in an attempt to resolve the problem, before initiating the written grievance procedure. A written record of the occurrence of the oral discussion shall be kept by the immediate supervisor. FORM: RECORD OF ORAL DISCUSSION STEP 1
 - 2. If the employee is not satisfied with the results of the oral discussion and wishes to formally grieve the matter, the employee shall file the grievance in writing with the agency head and with the Human Resources Director within five (5) working days after the oral discussion. FORM: EMPLOYEE GRIEVANCE STEP 2
 - 3. The grievance shall contain a complete statement of all the facts and circumstances involved in the alleged violation and the specific redress sought. FORM: EMPLOYEE GRIEVANCE STEP 2
 - 4. Any grievance alleging noncompliance with these grievance rules shall specify the precise rule alleged to have been violated. FORM: EMPLOYEE GRIEVANCE STEP 2
 - 5. All employees presenting a grievance in which the issues and redress sought are identical will sign the grievance and designate a contact person from the group.
 - 6. The grievant is allowed a reasonable amount of work time to prepare and process a grievance but the use of such time shall be approved in advance by the Agency head.

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7. The Agency head will respond to the grievant within a reasonable time, but in no event later than ten (10) working days after receipt of the grievance. The response must be a written decision regarding the grievance, which written decision shall be served upon the grievant either personally or by registered mail. FORM: RESPONSE TO GRIEVANCE STEP 3
 - a. If the grievant is satisfied with the decision, the grievant shall acknowledge grievant's concurrence with the decision within five (5) working days of receipt of the decision by signing the decision in concurrence, in which case the decision shall be final. FORM: RESPONSE TO GRIEVANCE STEP 3
 - b. If the grievant is not satisfied with the written decision, the grievant must, within five (5) working days of receipt of the decision, request that the agency head conduct a hearing on the grievance by signing the decision requesting such hearing. If an action by the agency head is what is being grieved, the employee may request that the Human Resources Director appoint another agency head or other appropriate County executive to hear the grievance. FORM: RESPONSE TO GRIEVANCE STEP 3
 - c. If the grievant does not concur in writing with the written decision in the time permitted, or does not request a hearing in writing in the time permitted, then the decision of the Agency head shall be final. FORM: RESPONSE TO GRIEVANCE STEP 3
 - d. The written decision shall be on a form that shall be marked "*RESPONSE TO GRIEVANCE STEP 3*" and that shall set forth at its end:
 1. "I Concur" with a signature line for the grievant;
 2. "I Do Not Concur and Request a Hearing" with a signature line for the grievant;
 3. And which form shall set forth the statement: "IF YOU DO NOT RETURN THIS DECISION TO ME OR YOU DO NOT CONCUR WITH THE DECISION AND REQUEST A HEARING AS SET FORTH HEREIN WITHIN THREE (3) WORKING DAYS OF YOUR FINAL RECEIPT OF THE DECISION, DECISION WILL BE FINAL. FORM: RESPONSE TO GRIEVANCE STEP 4

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8. If a hearing is requested by the grievant, the Agency head shall, on the form designated "NOTICE OF GRIEVANCE HEARING STEP 4":
 - a. Set a hearing date within five (5) working days; and
 - b. Shall notify the grievant of the time and place of the hearing; and
 - c. Notify the grievant that grievant must bring an original and one copy of any written materials the grievant wishes the Agency head to examine; and
 - d. Notify the grievant that grievant has a right to testify, and that the grievant is permitted to bring witnesses to the hearing who will be permitted to testify on grievant's behalf; and the grievant shall notify the Human Resources Department of the names of the witnesses and the Human Resources Department shall notify the appropriate Agency head and the witnesses of the date, time, and place of the hearing. No person shall refuse to be a witness at a hearing. No employee will lose any wages and/or benefits as a result of testifying; and
 - e. That after grievant and grievant's witnesses, if any, have testified, the agency head may examine grievant and grievant's witnesses and any other witnesses whom the Agency head decides are necessary to the determination of the grievance; and
 - f. That no persons other than those persons set forth in this section, or as allowed by the Agency head, or the Human Resources Director (or designee) shall be permitted to participate in the hearing, other than a person representing the employee, and who shall be allowed to aid the employee in the presentation of the employee's case by examining the employee and the employee's witnesses, and other witnesses who have presented evidence.
 - g. An agency head's written hearing decision will be rendered and served upon the grievant personally or by registered mail within 10 working days after the hearing. The decision on the grievance shall be final. FORM: POST-HEARING GRIEVANCE DECISION STEP 5E
9. Any of the specific time limits set out in this grievance procedure may be extended by the written concurrence of both the Agency head and the grievant. FORM: EXTENSION OF TIME
10. Grievances shall not be part of the personnel file of any employee but shall be kept separate and apart and shall be subject to disclosure only pursuant

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to law. Personnel files shall be at all times available to the grievant or the Agency head for disclosure and use in any litigation or complaint filed by the grievant against them before any commission, board, tribunal or court, or in any grievance or disciplinary matter.

11. At any stage of the grievance proceeding, an agency head may request the Human Resources Director to advise and aid the agency head and may request the County Attorney to render a legal opinion as to the matter.
12. Service. All documents and forms listed or required under this chapter and specifically under this section, shall be served in one of the following ways by the Agency head and employee upon each other; and both must deliver copies of the documents and forms served by them, together with the certificate of service, upon the Human Resources Director. FORM: CERTIFICATE OF SERVICE
 - a. TYPES OF SERVICE: Personal hand delivery by the person delivering or serving the document on the other person with the recipient acknowledging receipt by signing an "Acknowledgement of Receipt." which is set forth on the certificate of service (but which may be set forth on a form required to be delivered to be served).
 - b. By a constable or process server with the constable or process server making a return of service to the person delivering or serving the document; it is recommended that all documents in dismissal actions be served by constable or process server if the recipient refuses to sign the "Acknowledgment of Receipt".
 - c. Registered or Certified Mail return receipt requested (addressee only).
 - d. Method, manner, time and place of service shall be documented on a "Certificate of Service", a copy of which shall be filed with the Human Resources Director and the agency head. Form: certificate of service.
13. Incorporated as part of this chapter are the following forms set forth at the end of this chapter which shall be used for the grievance system herein and which shall be considered a substantive part of the grievance system:
 - a. RECORD OF ORAL DISCUSSION STEP 1
 - b. EMPLOYEE GRIEVANCE STEP 2
 - c. RESPONSE TO GRIEVANCE STEP 3
 - d. NOTICE OF GRIEVANCE HEARING STEP 4
 - e. GRIEVANT'S WITNESS LIST
 - f. POST-HEARING GRIEVANCE HEARING DECISION STEP 5E

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- g. AGENCY HEAD POST-HEARING DECISION STEP 5E
- h. REQUEST FOR REVIEW OF AGENCY HEAD'S DECISION STEP 6A
- i. EXTENSION OF TIME
- j. CERTIFICATE OF SERVICE
- k. TIME TABLE FOR GRIEVANCE PROCESS

PR-802.A DISCIPLINARY ACTIONS AND PROCEDURES

All Disciplinary actions set forth in this section are governed solely by the due process procedures set forth herein. Disciplinary actions set forth in this section are not subject to the grievance procedures set forth in PR-801.B.

A. SUSPENSION

1. Authority. An Agency Head may suspend any regular status employee without pay for cause after a hearing. A non-eligible employee may be suspended without pre-action notice or a hearing. An employee covered by these procedures who fails to exhaust his/her administrative remedies as provided herein, may be barred from bringing any legal claim or other action arising from facts or issues that could have been submitted for resolution under this procedure.
2. Notice. The Agency Head shall provide the employee with a written statement of the reasons for the suspension. The statement shall specify the period of suspension and the employee's right to a hearing as set forth in this section and the employee's post-hearing appeal rights as set forth below. FORM: NOTICE OF SUSPENSION/ REDUCTION IN PAY/ NOTICE OF CHARGES/ REQUEST FOR HEARING/ RESPONSE.
3. Reduction in pay. An Agency Head may adopt a procedure providing for the reduction in gross pay of an employee who has received a suspension of 80 working hours or less. Any such procedure shall be reviewed by the Yuma County Financial Services Department and the Human Resources Director who shall decide whether the procedure may be reasonably carried out and processed by their respective Departments. Their determination as to whether application of the procedure is reasonably practical shall prevail.
Any proposed procedure shall include, as a minimum:
 - a. A provision that the reduction in pay is imposed as an alternative to a suspension, and a requirement that the employee shall continue to work all scheduled hours during the

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reduction in pay period.

- b. A provision that the total dollar amount of the reduction in pay shall not exceed the dollar amount of the suspension for which the reduction is substituted.
 - c. A provision that the reduction in pay shall not reduce the employee's salary below the entrance salary of the employee's grade.
 - d. A requirement that the employee shall be informed in writing of the imposition of any reduction in pay, and that the notice shall include a statement that the employee is entitled to a hearing as set forth and notification to the employee of the employee's post-hearing appeal rights pursuant to the procedures set forth concerning the suspension and/or the reduction in pay.
4. Limitation. Except as otherwise provided by statute or rule, suspensions shall not exceed a total of 30 working days during any 12-month period. The 12-month period begins with the first day of the first suspension.

B. DEMOTION

1. Authority. An Agency Head may demote a regular status employee, but only for cause and after a hearing. The demotion may be to any regular position, provided the employee meets the minimum qualifications for such class. An agency head may demote a regular status employee during promotional probation to the position from which he/she was promoted without cause, a hearing, or pre-action notice.
2. Notice. Before the effective date of the demotion, a written notice shall be provided to the employee containing the specific reasons for the demotion and the employee's hearing rights as set forth in this section, and appeal rights as set forth in Section 8 below, shall be provided with such notice. FORM: NOTICE OF DEMOTION/ NOTICE OF CHARGES/ REQUEST FOR HEARING/ RESPONSE.
3. Probation. Except as otherwise provided in these rules, a demoted employee shall not be required to serve a probationary period in the position to which demoted.

C. DISMISSAL

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1. Authority. A regular status employee may be dismissed from employment by an Agency Head, but only for cause and after a hearing.
2. Notice. Before the effective date of the dismissal, a written notice containing specific reasons for the dismissal, the employee's hearing rights as set forth in this section, and appeal rights as set forth shall be provided to the employee. FORM: NOTICE OF DISMISSAL/ NOTICE OF CHARGES/ REQUEST FOR HEARING/ RESPONSE.

PR-802.B HEARING PROCEDURES FOR DISCIPLINARY ACTIONS

- A. Before a regular status employee can be dismissed, suspended or reduced in pay or demoted as set forth in this section, the Agency Head shall on the form provided: (FORM: NOTICE OF CHARGES/ REQUEST FOR HEARING/ RESPONSE):
1. Give the employee written notice of the charges; and
 2. Provide a summary of the Agency Head's basis for the charges; and
 3. Provide an opportunity for the employee to present a written response to the charges; and
 4. Provide an opportunity to request a hearing; and
 5. Notify the employee that disciplinary action is subject to procedures under PR-802.B; and
 6. Use the forms designated in these rules (or if unavailable, forms designated by the County Attorney or Human Resources) for actions and notices required in disciplinary proceedings.

The employee's response and request for hearing, if employee wishes to be heard, shall be made on form provided (FORM: NOTICE OF CHARGES/ REQUEST FOR HEARING/ RESPONSE), not later than five (5) working days after the employee receives notice of the disciplinary charges, unless extended in writing by the Agency Head on a form designated as "Extension of Time" FORM: EXTENSION OF TIME. Copy of the notice of disciplinary charges and the response and request for hearing must be delivered to the Human Resources Director on the same dates delivered or served by the Agency Head and the employee, respectively. In consultation with the Agency Head, the Human Resources Director may appoint a hearing officer to preside over the disciplinary hearing and render a decision.

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- B.** If the employee does not request a hearing within five (5) working days after the employee receives notice of the disciplinary charges, the Agency Head shall cause to be served upon the employee a copy of the disciplinary order filed with the Clerk of the Board of Supervisors which shall set forth the effective date of the disciplinary action taken and that the discipline taken is final. THE FILING OF THE DISCIPLINARY ORDER IS THE FINAL ACTION OF THE DISCIPLINING AGENCY HEAD AND IS OPERATIVE AND EFFECTIVE FOR ALL PURPOSES SET FORTH IN THE DISCIPLINARY ORDER AS OF THE DATE THE DISCIPLINARY ORDER IS FILED WITH THE CLERK OF THE BOARD.
- C.** If the employee does request a hearing within five (5) working days after the employee receives notice of the charges, the agency head shall, in writing, on the form provided (FORM: NOTICE OF DISCIPLINARY HEARING):
1. Set a hearing date within five (5) working days of receiving the request for hearing time; and
 2. Notify the employee of the time and place of the hearing; and
 3. Notify the employee that the employee must bring an original and one copy of any written materials the employee wishes the Agency Head to examine; and
 4. Notify the employee that the employee has a right to testify, and that the employee is permitted to bring witnesses to the hearing who will be permitted to testify on employee's behalf; and
 5. That after employee and employee's witnesses, if any, have testified, the Agency Head or Human Resources Director (or designee) may examine employee and employee's witnesses and any other witnesses whom the Agency Head finds are necessary to the determination of the disciplinary hearing; and
 6. That no persons other than those persons set forth in this paragraph and its subsections, or as allowed by the Agency Head shall be permitted to participate in the hearing, other than --
 - a. A person representing the employee, who shall be allowed to aid employee in the presentation of the employee's case by examining the employee and the employee's witnesses and other witnesses who have presented evidence;
 - b. The Human Resources Director and the County Attorney.

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- D. Disciplinary hearings shall be recorded by tape recording. The Agency Head will within five (5) working days from the date of the hearing, render decision on the disciplinary action which shall be final upon the filing of a Disciplinary Order with the Clerk of the Board which disciplinary order shall set forth the effective date of the disciplinary action taken and that the action taken is final. The filing of the disciplinary order is the final action of the disciplining agency head and is operative and effective for all purposes set forth in the disciplinary order as of the date the disciplinary order is filed. The decision may be to discipline the employee to a lesser degree than the discipline originally noticed, with such discipline as may be appropriate under these rules. Such determination of lesser discipline and the filing of the disciplinary order thereon shall be final and not subject to hearing as set forth herein. A copy of the Order is filed with the Human Resources Department. FORMS: DECISION ON DISCIPLINARY HEARING and DISCIPLINARY ORDER.
- E. Any of the specific time limits set out in these disciplinary proceedings may be extended by the written concurrence of both the Agency Head and the employee. FORM: EXTENSION OF TIME
- F. If an employee is on an approved period of leave with pay, the final action will be effective at the end of the approved period of leave with pay, and the dismissal letter or other final decision shall be served on the employee according to this section.
- G. Discipline during probation. A probationary employee, other than an employee on promotional probation, may be suspended without pay and/or terminated without pre-action notice and/or a hearing or appeal rights. An employee on promotional probation may be demoted back to the position from which he/she was promoted without pre-action notice and/or a hearing or appeal rights.
- H. Relief from duty. Nothing in this section shall preclude the Agency Head **from** immediately placing an employee on administrative leave pending application of these disciplinary actions and procedures, but no pay shall be withheld for such period. FORM: LETTER TO EMPLOYEE EXPLAINING ADMINISTRATIVE LEAVE
- I. Service. All documents and forms listed or required under this chapter and specifically under this section shall be served in one of the following ways by the Agency Head and employee upon each other and both must deliver copies of the documents and forms served by them, together with the certificate of service, upon the Human Resources Director. FORM: CERTIFICATE OF SERVICE

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TYPES OF SERVICE

1. Personal Service
 - a. Personal hand delivery by the person delivering or serving the document on the other person with the recipient acknowledging receipt by signing an "Acknowledgment of Receipt." which is set forth on the Certificate of Service (but which may be set forth on a form required to be delivered to be served).
 - b. By a constable or process server with the constable or process server making a return of service to the person delivering or serving the document.
2. Registered or Certified Mail return receipt requested (addressee only).
3. Method, manner, time and place of service shall be documented on a "Certificate of Service", a copy of which shall be filed with the Human Resources Director and the agency head. FORM: CERTIFICATE OF SERVICE.

J. Application of A.R.S. 38-446 to Disciplinary Decisions

1. Pursuant to A.R.S. 38-446, no public officer or employee is personally liable for acts done in his official capacity in good faith reliance on written opinions of the County Attorney.
2. The County of Yuma maintains insurance against liability for the actions of its officers and employees and as such requires as part of its insurance maintenance that disciplinary decisions be reviewed under A.R.S. 38-446 by the County Attorney, prior to the final disciplinary decision being made. This requirement is made in order to ensure that the actions taken are within the scope of authority of the Agency Head for purposes of coverage for liability.
3. The County requires that the Human Resources Department, in addition to the duties set forth in PR-802 herein, review disciplinary matters for compliance with these Rules.
4. The Human Resources Department shall make such other review as may be required by the County Administrator or County Attorney. This review may include written findings of such review.

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5. Nothing set forth herein shall be construed as limiting the Human Resources Department or the County Attorney's Office in providing such aid or advice as may be requested at any time by any Agency Head in any disciplinary matter.
- K.** Incorporated as part of this Chapter are the following forms set forth at the end of this Chapter which shall be used for the disciplinary system herein and which shall be considered a substantive part of this disciplinary system:
1. NOTICE OF SUSPENSION/ REDUCTION IN PAY/ NOTICE OF CHARGES/ REQUEST FOR HEARING/ RESPONSE
 2. NOTICE OF DEMOTION/ NOTICE OF CHARGES/ REQUEST FOR HEARING/RESPONSE
 3. NOTICE OF DISMISSAL/ NOTICE OF CHARGES/ REQUEST FOR HEARING/RESPONSE
 4. NOTICE OF DISCIPLINARY HEARING
 5. DECISION ON DISCIPLINARY HEARING
 6. DISCIPLINARY ORDER
 7. CERTIFICATE OF SERVICE
 8. EXTENSION OF TIME
 9. WAIVER
 10. TIME TABLE FOR DISCIPLINARY ACTION

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