

MILWAUKEE COUNTY PERSONNEL REVIEW BOARD

RULES OF PROCEDURE

(Pursuant to S. 33.03(3) County General Ordinances)

Revised: Effective: July 19, 2005

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PREAMBLE

STATUTORY REFERENCE

WHEREAS, pursuant to Chapter 33 of the General Ordinances of Milwaukee County, the Milwaukee County Personnel Review Board was established to administer the quasi-judicial duties formerly performed by the Milwaukee County Civil Service Commission as they relate to the discipline and discharge of County employees and the hearing of appeals of certain grievance in a fair and impartial manner; and,

WHEREAS, in accordance with the establishment of the Personnel Review Board, the duties and responsibilities set forth in Wisconsin Statutes Section 63.10 and 63.12 and Section 17.207 of the Milwaukee County General Ordinances relating to discipline and discharge of employees have been delegated to the Personnel Review Board; and,

WHEREAS, pursuant to Section 33.03(3) of the General Ordinances of Milwaukee County, the Personnel Review Board has been given authority to adopt rules and regulations enabling it to properly conduct its hearings and to insure compliance with the due process rights of individuals as set forth in the Wisconsin Constitution and that of the United States of America; now, therefore,

BE IT RESOLVED that, pursuant to this grant of authority, the Personnel Review Board issues the following rules and regulations.

RULE I

OFFICERS AND DUTIES

The Personnel Review Board (hereinafter referred to as PRB) shall annually elect a president and vice-president. The vice-president shall serve in the absence of the president. The president, or vice-president in the absence of the president, shall act as chairperson of all meetings of the PRB. In the event of the absence of both the president and vice-president, a designated Board member shall act as chairperson and preside over any meeting. The chairperson shall make rulings on the admission of evidence, legal objections, legal motions, and such other procedural questions which may arise. The chairperson's ruling on such procedural aspects of any meeting or hearing shall be final, except that any member of the PRB present at such meeting or hearing may request a vote by the PRB on the chairperson's ruling.

RULE II

QUORUM

Three members shall constitute a quorum for the transaction of business of the PRB. All decisions of the PRB must be concurred in by at least a majority of those present at the hearing or meeting unless otherwise provided by these rules. Any member not present at a meeting during which any portion of a disciplinary hearing is heard may not participate in any decision relating to such hearing.

RULE III

MEETINGS AND NOTICES

Section 1 Notice of all Meetings

The executive secretary of the PRB shall give notice of all meetings in conformity with the State Statutes on "Open Meetings of Governmental Bodies" (Section 19.81 - 19.88, Wisconsin Statutes). Notice of all meetings shall be furnished to the Courthouse Building Superintendent for public posting within the Courthouse, the County Board of Supervisors, all certified bargaining units representing Milwaukee County employees, media reporters assigned space in the Courthouse press room, and any other person or organization who request such notice.

Section 2 Other Business for Board Consideration

All agendas will include notice that the PRB will consider "Such other business as may come before the Board." The purpose of this entry on all agendas is to insure the existence of an opportunity for public discussion of any matters not known at the time the notice is drafted by the executive secretary. Absent a showing of urgency, PRB action on "other business" not specifically noticed shall be delayed until the next regularly-scheduled meeting.

Section 3 Notices Relating to Proposed Closed Sessions

All notices relating to proposed closed sessions shall be reviewed by the executive secretary for the PRB prior to publication to determine compliance with Section 1 of this rule, except for those sessions duly announced as closed for the purpose of discussing internal matters of operation of the PRB, deliberation, consideration of discipline, and for conferring with legal counsel of the PRB in relation to such deliberations and considerations of discipline at hearings duly scheduled and conducted by the PRB.

Section 4 Disqualification of Board Members

If a Personnel Review Board member is unqualified to render a decision for reasons of conflict-of-interest or bias, the Board Member shall not participate in the Board's consideration of the case before it. If a party deems a Board Member to be unqualified for reasons of conflict-of-interest or bias, the party may move for disqualification.

RULE IV

CONDUCT, PROCEDURES OF MEETINGS, AND MINUTES OF MEETINGS

Section 1 Public Comment Before A Vote is Taken

Public comment may be allowed before any vote is taken on any agenda item discussed in open meetings. The chairperson may allocate an appropriate length of time for such comment.

Section 2 Voting

A. Voting Procedure

All votes by members of the PRB when said PRB is in open meeting shall be by voice, excepting a vote on whether or not the PRB should go into closed session. A roll call vote is required when requested by any PRB member. All motions made and carried to go into closed session shall be recorded in the minutes in such a manner that the vote of each member is ascertained and recorded. All votes while in closed session shall be by voice vote, except if requested by a PRB member or if such vote constitutes the final vote on disciplinary charges or grievance appeals for which a hearing was held.

B. Board Actions Involving a Tie Vote

In the event of a tie vote, the matter fails and the case must be dismissed for a rehearing.

Section 3 Minutes of all Meetings

The minutes of all meetings shall be a summary of the events of such meeting and shall include those significant points brought to the PRB's attention by the public. The original minutes shall be recorded and transcribed by the PRB's executive secretary or agent. Such transcription shall be the official minutes of the PRB and shall be open for public review at the office of the executive secretary of the PRB during normal working hours.

Copies of approved minutes of every meeting, except those portions covering hearings of charges against employes, shall be submitted to the Director of the Department of Human Resources, the County Executive, Chairman of the County Board, Chairman of the Personnel Committee of the County Board, and any other persons requesting copies of said minutes. Submission of the copies shall be within two weeks following the meeting during which the PRB approves said minutes.

RULE V

THE PROCESSING OF DISCIPLINARY CHARGES AND HEARINGS

Section 1 Who Can File Charges

- A. It shall be the duty of the superior officer* to file charges against any person in the classified service and subordinate to that superior officer if, in that officer's opinion, there is cause for demotion, suspension, or discharge.
- B. If a superior officer neglects or refuses to file charges, it shall be the duty of the Director of the Department of Human Resources to file charges if the Director of the Department of Human Resources believes that there is cause to file charges against any person in the classified service.
- C. Any citizen, excepting parties mentioned in A and B above or an individual acting in a representative capacity for any group or organization, may file charges against any person in the classified service as long as:
 - 1. The allegations contained in the charge are made under oath and formally notarized; and,
 - 2. Such allegations are supported by the Affidavit of one or more witnesses who are alleged to have first-hand knowledge of the facts underlying the allegations.

Upon the filing of such charge, the executive secretary shall verify compliance of such charge with 1 and 2 above; and, when so verified, the executive secretary shall place said charge on the agenda for the PRB's determination as to whether the charges are grave enough to warrant a hearing.

- D. The Milwaukee County Ethics Board may file charges alleging violation(s) of the Milwaukee County Ethics Code, pursuant to s. 911(2) or s. 9.11(3), M.C.G.O., after the Ethics Board finds probable cause to believe that such violation(s) have occurred.

Section 2 Contents of Charges

- A. Format

Whenever a superior officer, Director of the Department of Human Resources, or citizen has decided to charge any person in the classified service as acting in such a manner as to show him/herself to be incompetent to perform his/her duties or to have merited demotion or discharge, that superior officer, Director of the Department of Human Resources, or citizen shall file a complaint which sets forth:

1. The name of the person complained against.
2. A description of the act or omission complained of.

*Superior Officer, as used in this rule, shall include a person possessing appointing authority with the County, the chief executive officer of a department, board, or institution, the County Election Commission, or the County Civil Service Commission."

3. The date or dates such act or omission occurred.
4. The location where such act or omission occurred.
5. A specific recitation of that portion of the rule or regulation allegedly violated by the person complained of.

When the Milwaukee County Ethics Board files charges with the PRB under Rule V, Section 1.D., the Ethics Board shall file the verified written complaint received by the Ethics Board under s.9.09(1) M.C.G.O. (including any amendments adopted under s.9.09(3)(b)) or made by the Ethics Board under s. 9.09(3)(a) M.C.G.O., together with the written findings of fact, conclusions of law and recommendations issued by the Ethics Board under 9.11(1) M.C.G.O.

B. Time Limits For Filing/Suspension Pending Hearing

The superior officer or Director of the Department of Human Resources may suspend the person in classified service when such complaint is written, provided such complaint is filed with the PRB no later than three working days of such suspension. Absent such action or request, it is the policy of the PRB that no suspension shall be effectuated. If the complaint is not filed with the PRB within three days after disciplinary action is taken by the superior officer or Director of the Department of Human Resources, the PRB may dismiss the charges and reinstate the employe with back pay. The superior officer or Director of the Department of Human Resources may request the PRB to suspend the person who is the subject of their complaint at the time such complaint is filed with the PRB. Such request shall be part of the written complaint on Form 2923 R-3 filed with the executive secretary of the PRB, and such suspension will be continued, honored, and granted until the matter is heard by the PRB. All complaints shall be filed with the executive secretary of the PRB at his/her offices during regular working hours.

C. Limits of Jurisdiction/Waiver of Hearing

Nothing in this section shall limit the power of a superior officer to suspend a person in the classified service for a reasonable period not to exceed ten days. If the person is suspended more than once within any six-month period for any length of time whatsoever, that person shall have the right to a hearing before the PRB for any suspensions subsequent to the first suspension within the six-month period, unless the employee so suspended, freely and in writing, gives notice to the PRB that he/she waives the right to such hearing.

Section 3 Scheduling of Hearings

A. Hearing Within 21 Days Unless Continued/Adjourned

Upon receipt by the executive secretary of the PRB of a complaint or request for rehearing under Rule V, Section 7, of these rules, the PRB shall set a time and place for a hearing. Said hearing shall be held within 21 days of the receipt of the complaint or request, unless the hearing is:

1. Laid over by stipulation of all parties.
2. Laid over in the interest of fairness upon the PRB's own motion.
3. Laid over upon motion of the charged party.

B. Continuations/Adjournments must be made for Good Cause

If a continuation/adjournment is not agreed to by all parties, the Personnel Review Board may, upon presentation of a good cause, make a decision to continue/adjourn the matter.

C. Notice to Parties of Hearing and Adjournments

Notice of hearing date and any adjournments thereof shall be given to the person filing the charges and the employee. If a legal representative or union representative appears on behalf of the employee, notices shall be given to the representative who shall have the responsibility to convey notice to the employee. Failure of the employee's representative to convey notice to the employee shall not constitute grounds for delay of any PRB action.

D. Notice to Witnesses

Each party is responsible for advising the party's own witnesses of any continuance or adjournment.

Section 4 Charges of Off-Duty Criminal Activity

Where charges filed by a superior officer, Director of the Department of Human Resources, or a citizen contain allegations that an employee was involved in off-duty criminal activity, it is preferred that such complaint include a statement showing the relationship between the employee's job performance and the alleged off-duty criminal activity. It is required of the charging party that such relationship be shown at the time of the hearing. If, at the time of hearing, a sufficient relationship between the alleged off-duty criminal activity and the employee's job is not shown, the PRB will not sustain discharge and shall dismiss all charges against said employee and reinstate the employee with back pay.

Section 5 Representation of Parties

The superior officer, Director of the Department of Human Resources, or citizen who files a complaint with the PRB may be represented at any PRB proceedings by counsel. The person against whom charges are filed may appear in person, by an attorney at law, by the employee's certified collective bargaining representative, or any other person as may be approved by the PRB for a specific case from time to time. Approval of such other person shall be obtained in

advance of any proceedings. Failure of any party to appear at a hearing shall not preclude the PRB from proceeding with a hearing on any matter where notice was properly served upon all parties.

Section 6 Adjournments

Adjournment of any hearing will be granted upon written request which is received by the executive secretary of the PRB at least two business days before the scheduled hearing date. Such written request must specify the reasons therefor and shall contain a date when the person making such request will be ready to proceed. If the PRB approves such request, it shall set another date for the hearing. If it does not agree to the adjournment, the hearing shall proceed as scheduled. Any request for adjournment not made in compliance with this section will be considered by the PRB on a case-by-case basis at the time such request is made.

Section 7 Petition for Rehearing

The petition for a rehearing of any PRB action must be made in writing and filed with the executive secretary of the PRB within 30 days after the decision of the PRB has been made public. A rehearing by petition may be sought by any party to the action and shall only be granted when the petitioner demonstrates, by way of specific affidavit, to the PRB's satisfaction that the evidence petitioner expects to present at the rehearing could not, by the exercise of due diligence, have been discovered and submitted at the original hearing. Further it must be shown that such evidence is of such magnitude that, if proven at the hearing, it could have changed the findings of those Board members who attended the hearing in question and participated in making the decision on same. The petition for rehearing shall include such affidavits as are necessary to describe the evidence expected to be presented at said rehearing and why such evidence was not presented at the original hearing.

Section 8 Amendments to Charges

Amended charges must be submitted to the PRB in writing and the opposing party should be given an opportunity to object to their submission. If the objection is sustained by the Board, the Party requesting to amend the charges may file them as new charges. Charges may be amended to cure technical defects or to clarify or amplify allegations in the charges or to set forth additional facts or allegations related to the subject matter of the original charges. Amended charges, with the exception of technical defects, must be submitted at least 14 days prior to the scheduled hearing.

RULE VI

CONDUCT OF HEARINGS

Section 1 Admissibility of Evidence

The PRB is not bound by the rules of evidence as contained within the Wisconsin Statutes. Irrelevant, immaterial, or unduly repetitious evidence will be excluded. Hearsay evidence will be admissible and given whatever weight or credence the PRB members wish such evidence to have. Summaries of records shall not be admissible as evidence unless the records from which the summaries are compiled are made available for examination by opposing parties and the PRB members. A hearing will not necessarily be delayed for purposes of allowing opposing parties to view the

records upon which the summaries are compiled. If, subsequent to such review, discrepancies are found, opposing parties may petition for a rehearing pursuant to Rule V, Section 7 of these rules.

Section 2 Examination of Witness

A witness shall be examined first by the party who calls the witness. Witnesses may be allowed to testify either by answer to questions, or in the absence of counsel, in the narrative form. Cross-examination of a witness is not limited to those matters to which a witness testified to on direct examination. Direct and cross-examination shall not be interspersed with argument or commentary by the questioner. A party shall not make statements relating to the admission of evidence while examining a witness.

Section 3 Exhibits

All exhibits shall be marked and made available to the opposing party before being shown to any witness. It is recommended that copies of all exhibits be given to PRB members and opposing parties before the witness to whom the exhibits relate is called to testify. Exhibits entered into record are to remain in the custody of the PRB's executive secretary or designees unless withdrawn. In the event such exhibits are withdrawn, copies of such exhibits shall be submitted to the executive secretary to be maintained in the file.

Section 4 Order of Testimony

In all cases, excepting a petition for rehearing or appeal of a grievance, the superior officer, Director of the Department of Human Resources, or citizen who filed the complaint shall proceed first with their evidence. The person charged in the complaint shall then have an opportunity to present evidence in defense of any charges. Further evidence, the nature of rebuttal, shall be allowed by the PRB upon motion of the party requesting the opportunity to present such evidence. In the case of a rehearing or appeal of a grievance, the party who petitioned or appealed for same shall proceed first. The opposing party shall reply thereafter. Any further evidence in the nature of rebuttal shall be granted at the discretion of the PRB.

Section 5 Subpoena and Witness Fees

Each party is entitled to call witnesses in his/her behalf. If requested by a party, the PRB shall supply the party with necessary subpoenas to compel the testimony of any witness. In the case a refusal of any person to comply with the subpoena issued under this rule or to testify to any matter regarding which the person may lawfully be compelled to testify, the PRB may direct its legal counsel to begin proceedings in the Circuit Court of Milwaukee County to compel the person's attendance and/or testimony. Any Milwaukee County employee called as a witness before the PRB shall not receive any witness fees unless such attendance requires the employee's appearance during non-working hours. Any person subpoenaed by the PRB shall receive witness fees and mileage provided for a witness in a civil action. No witness subpoenaed at the insistence of any party other than the PRB will be entitled to witness fees or mileage unless the PRB, at the time of the hearing, certifies on the record that the witness's testimony was relevant and material to the matter heard by the PRB. In such a case, those witnesses subpoenaed by a party will be entitled to receive witness fees and mileage provided for a witness in a civil action. Such fee shall be paid to the witness by the PRB. In the event the PRB withholds payment of the witness fees, the party who subpoenaed the witness is responsible for payment of witness fees and mileage.

Section 6 Legal Briefs

The PRB, on its own motion, or upon the request of any party, may allow parties to submit legal briefs or memoranda in support of their respective positions. When such briefs or memoranda are requested, seven copies shall be submitted to the executive secretary of the PRB and one copy to each opposing party. At the time legal briefs or memoranda are requested, the PRB may set a schedule for filing of same.

Section 7 Burden of Proof

The party who brings charges or petitions for a rehearing shall have the burden of proving their allegations by the preponderance of evidence on all complaints or petitions, other than those which contain allegations that the employee complained of engaged in criminal activity either on or off the job. In order to sustain a complaint or petition alleging criminal activity, the allegations must be proven by clear and convincing evidence.

Section 8 Employee Reevaluation Period

In addition to those sanctions authorized by Wis. Stats. 63.10(2), the PRB hereby provides for the institution of an employee reevaluation period, to be approved by the PRB upon stipulation of the parties, or at the PRB's option, imposed upon the parties following the PRB's post-hearing findings that charges filed against the employee were well-founded and the facts and circumstances of the case dictate the remedy's use.

The length of the employee reevaluation period and the employee conduct to be rectified during that period will be decided, identified, set forth, and disclosed to the parties by order of the PRB upon approval or imposition of the employee reevaluation period. It is the intent of the PRB that a decision detailing the conduct for which an employee may be separated without recourse to the PRB be made in each case where the PRB approves or imposes a reevaluation period in accordance with this rule. The employee reevaluation period shall provide the employee an opportunity to rectify the conduct delineated by the PRB so as to conform to the standards required by county management for such conduct, and the employee shall be on notice from the time of approval or imposition of the employee reevaluation period that failure to rectify said conduct to the satisfaction of county management may result in the employee's being separated from county employment by the appointing authority at any time during the employee reevaluation period. Such separation during the employee reevaluation period shall be without further review by the PRB. In the event the appointing authority does separate the employee prior to completion of the employee reevaluation period, it shall submit to the PRB, a form provided, a written statement giving the date and reasons for such separation.

It is the intent of the PRB that the employee reevaluation period shall not affect the employee's status as it relates to working conditions, employee benefits, or those protections afforded under Wis. Stats. 63.10, which are unrelated to the conduct for which the PRB has approved or imposed the employment reevaluation period.

Section 9 Motions

A. Motions to Dismiss Based on Personal Jurisdiction or Subject Matter

Any party may move at any time to dismiss the case either on the ground the Personnel Review Board does not have jurisdiction of the person or over the subject matter of the charges brought. The Board may raise issues on its own motion relating to its jurisdiction to hear the matter of some matter raised in petition for rehearing or other complaint. Each party shall be afforded an opportunity to make written and/or oral arguments regarding the motion.

B. Other Motions

An application to the Board for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. An application to the Board for an order shall be by a motion made during a hearing.

Section 10 Withdrawal of Charges

A. When Charges May be Withdrawn

Subject to approval of the Board, the charging authority or his/her representative may withdraw a case at any time prior to a matter proceeding to hearing.

B. Reinstatement of Employee upon Withdrawal of Charges

If an employee was suspended without pay prior to the withdrawal, said employee shall be reinstated as of the date of suspension.

Section 11 Dismissal of Charges

Any dismissal order issued by the Board shall be on the merits unless otherwise expressly stated. The Board may request the filing of a copy of any settlement prior to dismissing a case.

Section 12 Hearing Examiner for Ethics Board Charges

In a case where the Milwaukee County Ethics Board files charges with the PRB under *Rule V, Section I. D* of these rules, the PRB may, by a majority vote of the members present, appoint a hearing examiner to hear the case. The hearing examiner shall be a retired or reserve judge or an attorney who, based on the attorney's experience and reputation, the PRB deems appropriate to serve in that capacity. The hearing examiner shall conduct an evidentiary hearing on the charges which shall conform, so far as practicable, to the provisions of these rules governing the conduct of hearings. After the hearing is concluded, the hearing examiner shall prepare written proposed findings of fact and conclusions of law. The PRB shall review and may adopt or modify the proposed findings of fact and conclusions of law. To the extent that the findings of fact and conclusions of law are adopted by the PRB, and subject to any modifications made by the PRB, they shall constitute the PRB's determination whether violations of the Ethics Code, *Ch. 9 M.C.G.O.*, have occurred, and they shall be sent to the Ethics Board as provided in *s. 9.13, M.C.G.O.*

RULE VII

ADMINISTRATIVE BUDGETARY FUNCTIONS

The PRB shall authorize by formal vote the PRB's annual budget and any subsequent requests for additional funds to that budget or requests for carrying over of funds to the following year, to complete unfinished business. The executive secretary shall administer all lawful payments from the authorized budget as set forth by the PRB.

RULE VIII

AMENDMENTS TO RULES

These rules may be amended, modified, or repealed by a majority of the members present at a meeting of the PRB. Advance notice of an intended rule change will be made at least one Board meeting prior to any action taken by the PRB.

RULE IX

PROVISIONS FOR TRANSCRIPTS

When the PRB engages a professional court reporter to record hearings, the parties may request copies of the transcripts at their own cost. The original of such transcript ordered shall be filed with the executive secretary of the PRB. The PRB will bear the cost of any transcripts ordered for its own purposes.

RULE X

SERVICE UPON THE BOARD OF LEGAL PROCESS

Service of Legal Process shall be deemed effective when made upon the executive secretary or upon the President or Vice-President of the PRB in accordance with Wis. Stats. S. 801.11(4)(a)7.

Effective as approved this 19th day of July, 2005.

MILWAUKEE COUNTY PERSONNEL REVIEW BOARD

Helen J. Dixon (1997-)
Patrick E. Doyle (2003-)
Robert Pleva (2004-)
Thomas Nardelli (2004-)
Coral Pleas (2005-)

Past Members of the Board:

Wayne Caskey (1978-1979)
Rodney L Cubbie (2000-2003)
Karen Jackson (2003-2003)
Fred J. Knox (1978-1999)
Mary Lou Linton (1989- 2004)
Kathleen Marsolek (1978-1982)
Thomas J. Parker (1978-2003)
Paul E. Prentiss (2003-2004)
Paul J. Prpish (1978-1989)
Robert W. Schroeder (1980-2004)
William G. Testdorf (1982-1997)
Roy Williams (2004-2005)

CODE REVISIONS:

1. July 19, 2005: Created Rule V, Section 1. D filing of Ethics charges; amended by adding Rule V, Section 2 A. what must be filed on Ethics charges; created Rule VI, Section 12- Hearing Examiner for Ethics Charges.
2. February 3, 2004 : Created Rule III Meetings and Notices, Section 4- Disqualification of Board members, relating to recusal.
3. May 6, 1997 Created Rule VI, Section 9-Motions
4. February 28, 1988 Created Rule VI, Section 8- Employee Reevaluation Period