MILWAUKEE COUNTY PERSONNEL REVIEW BOARD

RULES OF PROCEDURE

(Pursuant to Milwaukee County Code of General Ordinances Section 33.03(3))

Effective: April 4, 2023

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PREAMBLE

STATUTORY REFERENCE

WHEREAS, pursuant to Chapter 33 of the Milwaukee County Code of General Ordinances, the Milwaukee County Personnel Review Board ("PRB") 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 Sections 63.10 and 63.12 and 17.207 of the Milwaukee County Code of General Ordinances relating to the discipline, discharge and grievance matters of employees have been delegated to the Personnel Review Board; and,

WHEREAS, pursuant to Section 33.03(3) of the Milwaukee County Code of General Ordinances, 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 ("PRB") shall annually elect a president and vice-president in November. The president, or vice-president in the absence of the president, shall act as chairperson of all meetings of the PRB. If both the president and vice-president are absent from a meeting, the PRB members present shall designate a PRB member to act as chairperson and preside over the meeting. The chairperson shall make rulings on the admission of evidence, legal objections, legal motions, and procedural questions that may arise. The chairperson's ruling on 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. The chairperson's decision may be overridden by a majority vote of the PRB members present at the meeting.

RULE II

QUORUM

A majority of PRB 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. If such a majority of the quorum is not reached with respect to the result of a disciplinary hearing, any member not present at a meeting during which any portion of a disciplinary hearing is heard may participate in any discussion surrounding or decision relating to such hearing if the missing member(s) listen to all recordings of the evidentiary hearing, review all exhibits admitted into evidence, confer with PRB members who were present as needed, and read all briefs submitted by the parties.

Meetings and hearings may be conducted via teleconference and/or videoconference. If a hearing is held in person, one or more of the Board members may appear virtually.

RULE III

MEETINGS AND NOTICES

Section 1 Notice of all Meetings

The PRB Administrator shall give notice of all meetings in conformity with the Wisconsin Statutes governing "Open Meetings of Governmental Bodies" (Wis. Stat. §§ 19.81–19.88). Notice of all meetings shall be furnished to the Courthouse Building Superintendent for public posting within the Courthouse, the County Board of Supervisors, and any other person or organization who requests such notice. The public meeting notice must list all locations where the meeting will be held, including the approximate time of when the PRB will be in each location. The PRB may cancel a scheduled or noticed meeting if no disciplinary matters are scheduled for the meeting.

Section 2 Accessibility of Meetings

All public meetings must be held in forums either real or virtual that are reasonably accessible to members of the public and shall be open to all citizens at all times the PRB meets in open session.

Section 3 Other Business for PRB Consideration

All agendas will include notice that the PRB will consider "Communications and/or comments from the public." The purpose of this entry is to allow the public to raise any matters related to the work of the PRB not known at the time the agenda is drafted by the Administrator. Absent a showing of urgency, PRB action on any topics not specifically noticed in the agenda shall be considered by the PRB at an appropriate later meeting.

Section 4 Notices Relating to Proposed Closed Sessions

All notices relating to proposed closed sessions shall be reviewed by the PRB Administrator prior to publication to determine compliance with the Wisconsin Statutes Section 19.85(1).

Section 5 Disqualification of PRB Members

If a PRB member has a conflict of interest or bias related to a specific proceeding or matter, the PRB member shall not participate in the PRB's consideration of that case. If a party believes a PRB member to have a conflict of interest or bias, the party may move for disqualification of that member. The remaining members of the PRB will vote as to whether the PRB member should be disqualified for that matter. A majority vote of the remaining members is required to disqualify a PRB member.

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 the PRB is in open meeting shall be by voice, excepting a vote on whether 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 can be ascertained and recorded. All votes while in closed session shall be by voice vote, except if requested by a PRB member.

B. PRB Actions Involving a Tie Vote

In the event of a tie vote, the matter fails, and the case may be scheduled for a rehearing as provided in these rules.

Section 3 Minutes and Recordings 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 by the PRB's Administrator or designee.
Copies of approved minutes of every meeting, except those portions covering hearings of charges against employees, shall be submitted to the Chief Human Resources Officer; County Executive; Chair of the County Board; Chairs of the Finance, Personnel, and Audit Committees of the County Board; the Civil Service Commission; 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.

An audio recording of the open session of each meeting shall be made and retained by the PRB for at least seven (7) years. In addition, a video recording of the open session of each meeting may be generated by the virtual meeting software used by the PRB from time to time. If a video recording is generated, it will be retained under the default settings of the virtual meeting software unless otherwise determined by the PRB.

RULE V

PROCESSING OF DISCIPLINARY CHARGES AND HEARINGS

Section 1 Who Can File Charges

A. It shall be the duty of the superior officer[1] 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 Chief Human Resources Officer to file charges if the Chief Human Resources Officer 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 pursuant to the Wisconsin Statutes Section 63.10(1) as long as:

1. The allegations contained in the charge are made under oath and formally notarized;

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; and

3. The allegations and facts, if charged and established, would amount to cause for discharge of the officer or employee in the judgment of the PRB.

[1] Superior Officer, as used in this rule, shall include a person possessing appointing authority with the County, a department head, board chair, the County Election Commission, or the County Civil Service Commission.

Upon the filing of such charge, the Administrator shall verify compliance of such charge with C1 and C2 above; and, when so verified, the Administrator shall place said charge on the agenda for the PRB's determination as to whether the charges are grave enough to warrant a hearing.

Section 2 Contents of Charges

A. Format

Whenever a superior officer or the Chief Human Resources Officer 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, suspension or discharge or any citizen has decided to charge any person in the classified service as acting in such a manner as to merit discharge, that charging party 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;
3. The date or dates such act or omission occurred;
4. The location where such act or omission occurred if relevant; and
5. A specific recitation of that portion of the rule or regulation allegedly violated by the person complained of.

B. Time Limits for Filing/Suspension Pending Hearing

All written charges or notices of suspension must be filed with the PRB within three business days[2] after the superior officer or Director of Human Resources takes disciplinary action within the jurisdiction of the PRB. All written charges or notices of suspension shall be filed at the PRB office during regular business hours.

For written charges of discharge, the superior officer or Director of Human Resources may suspend a person in the classified service pending review of the charges, provided that the complaint indicates that such a suspension has been imposed. Such suspension will be in full effect until the matter is decided by the PRB.

If written charges are not timely and properly filed with the PRB, the PRB will dismiss the charges and reinstate the employee with back pay.

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

[2] A "business day," as used in these rules, is defined as a day that the PRB staff office is open for business. If any deadline falls on a non-business day, the deadline rolls to the next business day. When calculating time periods stated in days under these rules, exclude the day of the event that triggers the period.

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 PRB Administrator 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. Waiver of Right to Hearing Within 21 Days

Should the charged party, and/or their representative, request to lay over the hearing more than 21 days after the PRB's receipt of the complaint or request for rehearing, they must waive the right they have to a hearing within 21 days. Requests and notices of waiver can be made:

1. To the office of the PRB until the end-of-business the Friday before the charged party's initial hearing date. Such requests shall include a proposed date for the rescheduled hearing.

2. To the PRB at the charged party's initial hearing date.

The PRB accepts waivers at their own discretion. If the PRB's office does not confirm receipt of a waiver to a charged party and that party does not attend their initial hearing date, the PRB will determine whether the hearing shall proceed as scheduled.

C. Continuations/Adjournments Must Be for Good Cause

If a continuation/adjournment is not agreed to by all parties, the PRB may, upon presentation of a good cause, make a decision to continue/adjourn the matter. For adjournments of hearings beyond the initial hearing, refer to Section 6.

D. 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 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.

E. 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, Chief Human Resources Officer, 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 a substantial relationship between the employee's job and the alleged off-duty criminal activity. It is required of the charging party that such relationship is shown at the time of the hearing. If, at the time of hearing, a substantial 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, Chief Human Resources Officer, or citizen who files a complaint with the PRB may be represented at any PRB proceedings by counsel or other person authorized by the charging party. The person against whom charges are filed may appear in person and/or be represented by an attorney or other person authorized by the charged party. 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 other than the initial hearing may be granted upon written request which is received by the PRB Administrator at least three business days before the scheduled hearing date. Such written request must specify the reasons for the adjournment and shall contain a date when the person making such request will be ready to proceed. The Administrator will notify the PRB of the request. 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 generally not be granted; however, the PRB may grant an untimely request for good cause.

Section 7 Petition for Rehearing

The petition for a rehearing of any PRB action must be made in writing and filed with the PRB Administrator 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 PRB 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 employee may be given an opportunity to object to their submission. If the objection is sustained by the PRB, the Party requesting to amend the

charges may file them as new charges. Charges may be amended to cure technical defects; 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 10 business 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. However, the PRB will not rely on uncorroborated hearsay evidence alone to sustain a finding. Summaries of records shall not be admissible as evidence unless the records from which the summaries are compiled are available for examination by opposing parties and the PRB members. A hearing may be delayed for purposes of allowing opposing parties to view the records upon which the summaries are compiled

Section 2 Time Limits to Hearings

Although each hearing is unique and may require longer or shorter sessions, the PRB expects that it will allot four hours or less (two hours for each side) for discharges and two hours or less (one hour for each side) for suspensions. Should either side believe that the hearing will require more time than what the PRB generally allocates, the party should notify the PRB or its office of the potential for a longer hearing prior to the meeting. The chairperson of the meeting has the right to ensure efficient conduct of hearings and provide opportunities for both parties to set forth their positions except to the extent that matters may be delaying or interfering with the efficiency of proceedings.

Section 3 Examination of Witness

A witness shall be examined first by the party who calls the witness. Witnesses generally testify by answering questions; however, an unrepresented party may testify in the narrative form to provide evidence on his or her own behalf. Generally, cross-examination of a witness is not limited to those matters to which a witness testified on direct examination. Direct and cross-examination shall not be interspersed with argument or commentary by the questioner. Parties may conduct redirect and recross-examinations to clarify witness testimony or address subject matter introduced during cross-examination. One party's witness may be called to testify again by the other party so long as the other party seeks new and relevant testimony not duplicative of the information already provided by the witness. A party shall not make statements relating to the admission of evidence while examining a witness.

Section 4 Exhibits

Copies of all proposed exhibits shall be provided to the Administrator to be marked appropriately and made available to the PRB, the opposing party, and the witness stand before being shown to any witness. Exhibits entered into record are to remain in the custody of the PRB's Administrator or designees unless withdrawn. In the event such exhibits are withdrawn, copies of such exhibits shall be submitted to the Administrator to be maintained in the file.

Section 5 Order of Testimony

In all cases, excepting a petition for rehearing or a grievance, the charging party shall proceed first with its 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 a grievance, the petitioning party shall proceed first. The opposing party shall then respond, and any further evidence in the nature of rebuttal may be allowed at the discretion of the PRB.

Section 6 Subpoena and Witness Fees

Each party is entitled to call witnesses on his/her behalf. If requested by a party, the PRB shall supply the party with necessary subpoenas to compel the testimony of any witness. All officers and County employees shall attend and testify when requested to do so by the PRB. In the case of a refusal of any person to comply with a 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. The PRB may compel the production of documents consistent with Section 33.04(1) of the Milwaukee County Code of General Ordinances.

Pursuant to the Wisconsin Statutes Section 63.12(3), any person who is not in the civil service of Milwaukee County and appears before the PRB by order of the PRB shall receive witness fees and mileage as provided for a witness in a civil action in Milwaukee County Circuit Courts, and such fees will be paid by the PRB. No witness subpoenaed by the PRB at the insistence of any party other than the PRB will be entitled to witness fees or mileage unless the PRB certifies on the record that the witness's testimony was both relevant and material to the matter heard by the PRB. In cases where the PRB does not pay witness fees or mileage, the party who subpoenaed the witness is responsible for payment of such fees.

Section 7 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, copies shall be submitted to the PRB Administrator and to each opposing party. At the time legal briefs or memoranda are requested, the PRB may set a schedule for filing of same.

Section 8 Burden of Proof

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

Section 9 Employee Reevaluation Period

In addition to those sanctions authorized by Wisconsin Statutes Section 63.10(2), the PRB, at its option, may provide for an employee reevaluation period imposed upon the party(ies) 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. A decision detailing the conduct for which an employee may be separated without recourse to the PRB will 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, on a form provided, a written statement giving the date and reasons for such separation.

The employee reevaluation period shall not affect the employee's status as it relates to working conditions, employee benefits, or those protections afforded under the Wisconsin Statutes Section 63.10 that are unrelated to the conduct for which the PRB has approved or imposed the employee reevaluation period.

The above Reevaluation Period differs from a Last Chance Agreement, which is negotiated between the parties, with a copy of the Agreement being provided to the PRB to be acknowledged and placed on file.

Section 10 Motions

A. Motions to Dismiss Based on Lack of Subject Matter Jurisdiction

A party may move at any time to dismiss the charges because the PRB does not have subject matter jurisdiction. The PRB may also raise issues on its own motion relating to its jurisdiction to hear the charges. Each party shall be afforded an opportunity to make oral arguments regarding such a motion. The PRB may request written arguments/further briefing on the issue at its discretion.

B. Other Motions

All other motions to the PRB, unless made during a hearing, shall be made in writing, state with particularity the grounds therefor, and set forth the relief or order sought. The PRB shall set a time for the opposing party to respond.

Section 11 Withdrawal of Charges

A. When Charges May Be Withdrawn

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 12 Dismissal of Charges

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

Section 13 Employee Grievances

Pursuant to Section 17.207(7)(e)(1) of the Milwaukee County Code of General Ordinances, the PRB shall hear appeals of grievances as they are defined in the Ordinances that have reached step five of the County's grievance procedure. The PRB will first determine whether the appeal fits the definition of a grievance under Section 17.207(1) and whether the employee has correctly followed the previous steps in the grievance procedure. The PRB will review the record of the case, hold a hearing thereon as soon as practical, and notify all interested parties of its decision within ten business days following the completion of the hearing.

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 Administrator 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 PRB meeting prior to any action taken by the PRB.

RULE IX

PROVISIONS FOR TRANSCRIPTS

The official record of a PRB hearing is the audio recording of the meeting. The parties, courts, or others may request copies of the recordings to prepare a written transcript of a hearing; however, both the recording and the written transcript must be obtained by the requester at its own cost. The original of such transcript ordered shall be filed with the PRB Administrator. The PRB will only bear the cost of any transcripts ordered for its own purposes.

RULE X

SERVICE UPON THE PRB OF LEGAL PROCESS

Service of legal process shall be deemed effective when made upon the Administrator or upon the president or vice-president of the PRB in accordance with the Wisconsin Statutes Section 801.11(4)(a)(7).

Effective as approved this 4th day of April, 2023.

MILWAUKEE COUNTY PERSONNEL REVIEW BOARD

CODE REVISIONS

1.	April 4, 2023	Revised Rule IV, Section 3.
2.	October 18, 2022	Removed Provisions Created July 19, 2005; Revised Rule II; Created Rule V, Section 3B – Waiver of Right to Hearing Within 21 Days; Created Rule VI, Section 13 – Employee Grievances; General Revisions Throughout.
3.	January 30, 2018	Added Telephonic Meeting Provision to Rule II.
4.	February 3, 2015	Created Rule III, Section 2 – Accessibility of Meetings, Rule VI, Section 2 – Time Limits to Hearings; General Revisions Throughout.
5.	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.
6.	February 3, 2004	Created Rule III, Section 4 – Disqualification of PRB members, relating to recusal.
7.	May 6, 1997	Created Rule VI, Section 9 – Motions
8.	February 28, 1988:	Created Rule VI, Section 8 – Employee Reevaluation Period