
CHAPTER 20

GRIEVANCE PROCEDURE

Adopted by the Board of Supervisors September 24, 1991

20.1 Purpose

The purpose of the County of Spotsylvania Employee Grievance Procedure (hereinafter, "Procedure") is to afford an immediate and impartial method for the resolution of disputes which may arise between the County government and employees in the County service. (Source: Virginia Code §15.2-1507.)

20.2 Coverage of Personnel

- A. All regular full-time and regular part-time, as distinct from seasonal or temporary, employees who have satisfactorily completed 12 months of employment in authorized positions approved by the Board of Supervisors are eligible to file grievances under this Procedure excluding the following:

1. Key officials of the County as defined below:

Deputy County Administrator

Deputy County Attorney

Director of Economic Development/Tourism

Director of Finance

Fire Chief

Director of Information Services

Director of Parks & Recreation

Director of Human Resources

Director of Planning

Director of Utilities/Public Works

Community Development Administrator

Director of Code Compliance/ Chief Building Official

Director of Code Compliance/Zoning Administrator

Director of Capital Project Management

General Registrar

2. Members of boards and commissions
 3. Employees whose terms of employment are limited by law
 4. Appointees of elected individuals or elected groups
 - County Administrator
 - County Attorney
 5. Full-time employees with less than 12 months of employment
 6. Full-time employees on a performance improvement plan with less than 18 months of employment and regular part time employees in matters concerning their dismissal. Seasonal, temporary, and limited term employees
 7. Law enforcement officers as defined in Section 9.1-500 et seq. of the Code of Virginia, generally police officers, whose grievance is subject to the provisions of Chapter 5 (Section 9.1-500 et seq.) and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing Procedure in the resolution of his grievance.
 8. Employees of those constitutional officers who have not elected to follow the County's personnel policies.
- B. The County Administrator shall determine the officers and employees by position, excluded from this Procedure, and shall maintain in the Human Resources Department a list of such excluded positions.

In accordance with the Code of Virginia §63.2-219, the grievance procedure will be available to the Director of the Department of Social Services.

20.3 Definition of Grievant and Grievance

A. Grievant

A grievant shall be any employee eligible to use this Procedure having a grievance, as defined below.

B. Grievance

A grievance shall be a complaint or dispute relating to his or her employment by an employee eligible to use this Procedure as follows:

1. Formal disciplinary actions: written reprimands, suspensions, demotions and dismissals resulting from formal discipline or unsatisfactory job performance and/or conduct
2. The application of human resources policies, procedures, rules and regulations including the application of policies set forth in ordinances and statutes.
3. Retaliation as a result of:
 - a. Using this Procedure or participating in the formal grievance of another County employee under this Procedure
 - b. Compliance with the laws of the United States or the Commonwealth of Virginia as well as reporting any violation of such laws to a governmental authority
 - c. Seeking any change in law before the United States Congress or the Virginia General Assembly
4. Discrimination on the basis of national origin, race, color, gender, religion, disability, age, genetic information, sexual orientation, marital status, pregnancy or other form of harassment.

20.4 Issues That Shall Not Be Grieved

A. Management Decision

The Board of Supervisors and its designees establish policy for Spotsylvania County and reserve the exclusive right to manage the affairs and operations of the County

government. Management has determined that the following complaints shall not be grieved:

1. Establishment and revision of wages and salaries, including position classification and performance evaluations and/or concomitant pay increases, or general benefits
2. Work activity accepted by the employee as a condition of employment or which may reasonably be expected to be a part of the job content
3. The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations
4. Failure to promote, except where the employee can show that established promotional policies or procedures were not followed or fairly applied
5. The methods, means and personnel by which work activities are to be carried on, including but not necessarily limited to:
 - a. The provision of equipment, tools, and facilities necessary to accomplish tasks
 - b. The scheduling and distribution of manpower/personnel resources
 - c. Training and career development
6. Termination, layoff, demotion or suspension from duties because of lack of work, reduction in workforce, or job abolition except where such action affects an employee who has been reinstated within the previous six months as a result of the final determination of a grievance

NOTE: In any grievance brought under the exception, the action shall be upheld upon a showing by the County that there was a valid business reason for the action and the employee was notified of such reason in writing prior to the effective date of the action.
7. The hiring, promotion, transfer, assignment, and retention of employees within the County service
8. The relief of employees from duties, or action necessary to carry out such duties, during County emergencies

20.5 Human Resources Department Responsibilities

As an impartial administrator of this Procedure, the Human Resources Department shall:

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1. Open a file and assign a number to each written grievance
 2. Ensure that all parties are aware of the process
 3. Monitor procedures and time frames
 4. Notify either party of noncompliance
 5. Be informed of the status of the grievance by both parties at each step
 6. Maintain appropriate documentation
 7. Perform all other responsibilities as specified in the Procedure

20.6 Procedure for and Conduct of Grievance Hearings

A. Time Limits

For purposes of this Procedure, “days” shall be defined as calendar days and time periods shall begin on the day following that on which any action is to be taken or report rendered, and run without regard to weekends or holidays. If a time period ends on a weekend or holiday, the last day of the time period shall be the end of the business day of the first working day following the weekend or holiday.

B. Mutually Agreed Extension

Time limits established under this Procedure are intended to be strictly construed and enforced. However, in the interest of fairness, any time limit may be extended if both parties agree to such extension in writing.

C. Forms

All stages of the Procedure beyond the First Step, which is described hereafter in Section 20.9, shall be put in writing on forms available from the Human Resources Department.

D. What Employee Expects

When an employee puts his grievance in writing on the appropriate form, he shall specify the specific relief he expects to obtain through this Procedure. Grievants shall be entitled, should they prevail in the grievance, only to the relief specifically requested.

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E. Hearings During Business Hours

As far as practical, all grievance hearings shall be held during normal County working hours.

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F. Witnesses

The grievant and management may call appropriate witnesses at any step, which are described hereafter in Sections 20.9 through 20.12, of the Procedure. All witnesses including the grievant, shall be subject to examination and cross-examination. Witnesses shall be present only while actually providing testimony.

G. Time Lost

County employees who are necessary participants at grievance hearings shall not lose pay for time necessarily lost from their jobs and will not be charged leave because of attendance at such hearings.

H. Representatives

At the Step Three hearing, which is described hereafter in Section 20.11, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, the County likewise has the option of being represented by counsel. A person shall not serve as both a representative and a witness for the grievant.

Each party shall bear the costs and expenses, if any, of his legal counsel or representative and in preparing his case.

I. Record

The use of recording devices or a court reporter is not permitted at Step One, Two, and Three hearing, which are described hereafter in Sections 20.9 through 20.12.

J. Appeal

Where a grievant has obtained partial relief at one level of this Procedure but decides to appeal to the next higher level, the filing of a Request for a Hearing at the next higher level shall constitute rejection of, and relinquishment of any claim to any and all relief granted at the previous level.

K. Rules of Evidence

Hearings are not intended to be conducted like proceedings in court and the rules of evidence do not necessarily apply.

L. Presentation and Examination

Except in cases involving discipline, the grievant shall present his evidence first. All witnesses, including the grievant, shall be subject to examination and cross-examination.

20.7 Grievability

A. To Determine Grievability

Decisions regarding grievability, including the question of access to the procedure, shall be made by the County Administrator pursuant to procedures set forth below. Decisions shall be made at the request of the grievant or his department director within 10 days of such request. A copy of the ruling shall be sent to the grievant and to the grievant's department director. The issue of grievability may be raised at any time prior to the Step Four hearing. Once raised, the issue shall be resolved before further processing of the grievance.

A request that grievability be determined shall toll the time limits under this Procedure. Time limits shall begin to run again the day after the decision on grievability is made by the County Administrator or the Circuit Court.

B. To Appeal Grievability Decision

Decisions by the County Administrator that an issue is not grievable may be appealed by the grievant to the Circuit Court of Spotsylvania County. Proceedings for the review of the decision of the County Administrator shall be instituted by filing a notice of appeal with the County Administrator within 10 calendar days after the date of his decision as to grievability, and by giving a copy of such notice to the department director. Within 10 calendar days after receiving the notice of appeal, the County Administrator shall transmit to the Clerk of Circuit Court of Spotsylvania County a copy of his decision, a copy of the notice of appeal, and any exhibits which may have been provided in connection with the resolution of the issue of grievability. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the County Administrator to transmit the record within the time allowed shall not prejudice the rights of the grievant. If the County Administrator fails to transmit the record within the time allowed, the Circuit Court, on motion of the grievant, may issue a Writ of Certiorari requiring the County Administrator to transmit the record on or before a certain date.

Within 30 calendar days of receipt by the Clerk of Court of the record in the matter, the Court, sitting without a jury, shall hear the appeal on the record transmitted to the Court and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Court may receive such other evidence as the ends of justice may require. The Court may affirm, reverse or modify the decision of the County Administrator. The decision of the Court shall be rendered no later than the 15th day from the date of the conclusion of the hearing. The decision of the Court is final and is not appealable. All matters, from the institution of a request that the County Administrator determines grievability through the notation of appeal of an adverse decision by the County Administrator, shall be recorded on forms provided by the Director of Human Resources.

C. If Determined Non-Grievable

The classification of a complaint as non-grievable by either the County Administrator or the Circuit Court of Spotsylvania County shall not be construed to restrict any employee's right to seek, or management's right to provide, customary administrative review of complaints outside of the scope of the Procedure. (See Chapter 19.)

20.8 Consolidation of Grievances

If more than one grievance is filed arising from the same factual circumstances, the County Administrator may, at any time prior to a panel hearing, consolidate those grievances to joint processing unless any grievant objects. If the grievances are consolidated, all time limits set forth in this Procedure shall thereafter be calculated from the date of the last filed grievance. Once consolidated, the grievances shall be processed as a single matter.

20.9 Step One: Immediate Supervisor Level

A. Employee

An employee who wishes to utilize this Procedure must submit a completed Intent to Grieve form to his/her immediate supervisor within twenty (20) calendar days of the incident giving rise to the grievance or within twenty (20) calendar days following the time when the employee reasonably should have gained knowledge of the incident. Within five (5) business days of receiving such notice, the immediate supervisor must respond in writing to the employee with respect to the particular grievance.

An employee grieving a suspension or termination or one who reasonably fears retaliation from his/her immediate supervisor may bypass Step One, described in §20.9, and request to have the grievance heard initially by the department director or constitutional officer (Step Two) pursuant to §20.10. If the department director or constitutional officer is the immediate supervisor, such employee may bypass both Steps One and Two and request to have the grievance heard initially by the County Administrator (Step Three) pursuant to §20.11.

To bypass any Step and request to have the grievance initially heard higher than Step One – Immediate Supervisor Level, a qualifying employee must notify the Department of Human Resources and submit the completed Intent to Grieve form to the official at the appropriate grievance level (department director or constitutional officer {Step Two}; County Administrator {Step Three}). Such employee must notify the Department of Human

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Resources and submit the completed Intent to Grieve form to the official at the appropriate level within 20 calendar days of the grievance incident or within 20 calendar days from the time such employee reasonably should have known the grievance incident occurred. Within 5 days of receipt of the completed Intent to Grieve form, a written response will be provided to the employee regarding the grievance.

If the County Administrator is the grieving employee's immediate supervisor, such employee may bypass Steps One and Two by requesting to have the grievance heard initially by a designee of the County Administrator. To do this, a qualifying employee must timely notify the Department of Human Resources and submit the completed Intent to Grieve form to the County Administrator. Upon receipt of same, the County Administrator shall immediately assign a neutral designee to make necessary decisions regarding grievability and procedure availability and coverage for that particular employee pursuant to this Policy. The designee will act in the place of the County Administrator for all subsequent Steps of the process pursuant to this Chapter. This paragraph applies only to those qualified employees for whom the County Administrator is the immediate supervisor.

An employee who fails to identify the grievance within the time period and use the Procedures specified above forfeits and waives any right to grieve the incident.

B. Mutual Agreement

The employee and the immediate supervisor may arrive at a mutually satisfactory resolution during their discussion. Either party may contact the Human Resources Director for consultation in doing so. A mutually agreeable resolution at Step One saves both the employee and the supervisor delay in reaching a remedy.

20.10 Step Two: Department Director Level

A. Notify Director of Human Resources

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If the grievant is not satisfied with and does not accept the Step One response, and the grievant wishes to advance to Step Two of this Procedure, the grievant shall contact the Human Resources Department, file a completed Grievance Form A identifying specifically and in detail the nature of the grievance and the expected remedy. The grievant shall present such Grievance Form A to his department director within 5 calendar days of the immediate supervisor's verbal reply to Step One.

B. Director Meets with Grievant

Within 5 calendar days of receipt of such submission, the department director shall schedule and hold a meeting with the grievant to review the grievance. The meeting may be adjourned to another time or place by agreement of both parties. The grievant and department director may discover a mutually satisfactory resolution. A written reply to the grievance shall be provided by the director to the grievant and the Human Resources Department within 5 calendar days after their meeting.

C. If Director is Supervisor

If the grievant's immediate supervisor is also his department director, he shall pass by the second step of this Procedure and proceed immediately to Step Three.

D. If County Administrator Is Supervisor

If the grievant's immediate supervisor is the County Administrator, he shall pass by Step Three of this Procedure and proceed immediately to Step Four.

20.11 Step Three: County Administrator Level

A. Notify Human Resources Department

If the grievant is not satisfied with and does not accept the Step Two written response and the grievant wishes to advance to Step Three of this Procedure, the grievant shall notify the Human Resources Department and so indicate his dissatisfaction on Grievance Form A, and request a hearing before the County Administrator. The request shall be submitted to the Director of Human Resources within 5 calendar days of receipt of the Step Two response. The Director of Human Resources will forward the Step Two response to the County Administrator within 5 calendar days of receipt from grievant.

B. County Administrator

Within 5 calendar days of receipt of the Grievance Form, the County Administrator shall schedule and hold a meeting with the grievant to review the grievance. The meeting may be adjourned to another time or place by agreement of the parties. A written reply to the

grievance shall be provided to the grievant by the County Administrator within 5 calendar days after the meeting.

20.12 Step Four Procedure: The Grievance Panel

A. Notify Human Resources

If the grievant is not satisfied with and does not accept the Step Three written response, or if the County Administrator or his designee fails to respond within the required time frame, and the grievant wishes to advance to Step Four of this Procedure, the grievant shall notify the Human Resources Department and indicate on Grievance Form A request for a grievance panel hearing. The request shall be submitted to the Director of Human Resources within 5 calendar days of receipt of the third step response.

B. Panel Arrangements

An impartial Grievance Panel shall be constituted for each grievance. The Director of Human Resources shall arrange for the Panel selection and shall schedule the Panel hearing. If the Director of Human Resources is a party to the grievance, the request form shall be submitted to the County Administrator and the County Administrator or his designee shall make the necessary arrangements.

20.13 Composition of the Grievance Panel

A. Members

The Grievance Panel shall be composed of 3 members who shall be chosen in the following manner:

1. One member shall be appointed by the County Administrator
2. One member shall be appointed by the grievant
3. In cases which are not termination or retaliation cases, the third member shall be chosen by the members appointed by the County and the grievant. If unable to agree on a third member, the chief judge of the Circuit Court of Spotsylvania County shall select the third Panel member
4. In employee termination or retaliation cases, an administrative hearing officer shall be the third member. The administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court from a list maintained by the Executive Secretary pursuant to Section 2.2-4024, of the Code of Virginia and shall be made from the Spotsylvania County region on a rotating basis. The request for the appointment shall be made

by the Director of Human Resources with 5 days after the request for a panel hearing is filed.

5. Parties to informal fact-finding procedures conducted pursuant to Section 2.2-4019 may agree at the outset of the proceeding to have a hearing officer preside at the proceeding in lieu of a grievance panel. Such agreement may be revoked only by mutual consent.

B. Prohibited From Serving on Panel

The Panel shall not be composed of any persons having direct involvement with the grievance being heard by the Panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participants' spouse are prohibited from serving as Panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a Panel member.

C. Panel Selection

Both the grievant and County Administrator shall make their appointments to the Panel within 5 calendar days after the request for a panel hearing is filed. The Director of Human Resources shall be notified of the appointments on Grievance Form.

In cases which are not termination or retaliation cases, these members shall select the third member within 10 calendar days, and shall notify the Director of Human Resources of their decision. In the event the first two members cannot reach an agreement as to the third member within 10 calendar days the Director of Human Resources, after confirming such fact, shall immediately notify the County Attorney's Office. The County Attorney shall request the Chief Judge of the Circuit Court to appoint the third member.

D. Chairperson of Panel

The third panel member shall serve as Chairperson. The Chairperson shall consult with the Director of Human Resources and set the time for the hearing. Notice shall be given to the grievant and the County Administrator. The hearing shall be held as soon as possible, allowing sufficient time for access to records as specified below.

20.14 Conduct of Grievance Panel Hearing.

The Grievance Panel shall conduct the hearing as follows:

A. Attendance

At the request of either party the hearing shall be private and limited to the grievant, the panel members, legal counsel or other representative of the grievant and the County, appropriate witnesses as they testify, and official recorders. However, the panel reserves the right to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing.

B. Panel's Deliberations

The panel shall consider any grievance de novo without regard to any proposed disposition by any lower authority, unless the grievant and the County Administrator shall agree, in writing, that the issue(s) shall be so limited. In all other cases, the panel shall consider the matter as if presented to it in the first instance.

The Panel may at any time ask the parties or their representatives for statements clarifying the issues involved in the grievance.

Exhibits, when offered by the grievant or the County, may be received as evidence by the Panel, and when so received shall be marked and made a part of the record.

The parties may offer evidence and cross examine witnesses and shall produce such additional evidence as the Panel may deem necessary to an understanding and determination of the dispute. There shall be no formal rules of evidence. The Panel shall be the judge of the relevancy of any evidence offered. All evidence shall be taken in the presence of the Panel and the parties, except by mutual consent of the parties. The grievant shall proceed first, and shall bear the ultimate burden of persuasion. At the conclusion of the grievant's evidence, the County shall have the opportunity to present its evidence. All parties shall be afforded a full and equal opportunity for the presentation of their evidence.

At the conclusion of the County's presentation, the Chairperson shall specifically inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving a negative response, the Chairperson shall permit the parties to summarize their cases and shall then declare the hearing closed.

The hearing may be reopened by the Panel on its own motion or upon application of a party for good cause shown at any time before a final decision is made.

Upon the request of the Panel, the County Administrator, or the grievant, the Director of Human Resources shall insure that a verbatim record of the hearing is made and retained in his custody for 12 months or until the grievance proceedings are completed, if longer. The record may be in writing or by a taped recording. The grievant shall be entitled to a

copy of such record upon payment of a reasonable fee, including the costs of labor in providing the verbatim record.

The Director of Human Resources may be called upon by the Panel as a witness at any time to provide specific policy interpretation or clarification of applicable County policy and these Procedures.

C. Costs of Panel

The grievant shall bear the reasonable costs and expenses, if any, of his Panel member.

The County shall bear the reasonable costs and expenses, if any, of its panel member and those of the third Panel member unless the grievant objects. Upon objection, the reasonable costs and expenses of the third Panel member shall be shared equally between the County and the grievant.

D. Compensation

No person shall receive any compensation, whether monetary or otherwise, for his time in serving as a member of a Grievance Panel. Notwithstanding this prohibition, a County employee serving as a member of a Grievance Panel may receive his usual County salary for the period he serves on such a Panel.

E. Information About Grievance

The County shall provide the panel with copies of the grievance record prior to the hearing, and shall provide the grievant with a list of the documents furnished to the Panel.

At the request of the grievant, at least 10 calendar days prior to the scheduled panel hearing, the grievant and his attorney shall be allowed access to and copies of all relevant files intended by the County to be used by it at the panel hearing.

The grievant shall furnish to the County copies of all documents, exhibits, and a list of witnesses it intends to use at the panel hearing at least 7 calendar days in advance of the hearing. Within 3 calendar days after receiving these items from the grievant, the County shall furnish to the grievant copies of all documents, exhibits, and a list of witnesses it intends to use at the panel hearings.

F. Representation

Both the grievant and the County may be represented by legal counsel or other representative at the panel hearing. Such representatives may examine, cross-examine, question, and present evidence on behalf of the grievant or the County before the Panel

without being in violation of the provisions of Virginia Code Section 54.1-3904. A person shall not serve as both a representative and a witness for the grievant.

G. Other Panel Procedures

In all matters not otherwise covered by this Section, the Panel shall determine the Procedures to be followed.

20.15 Decision of The Grievance Panel

A. General

The decision of the panel shall be filed in writing by the Chairperson with the County Administrator and the grievant, not later than 15 days after the completion of the hearing. The decision shall summarize the grievance and the evidence shall make specific findings of fact, and shall state in full the reasons for the decision and the remedy to be granted. Decisions shall be by majority vote of the entire panel. The decision of the panel shall be final and binding if it is consistent with law and written policy.

B. In Favor of Grievant

If the Panel finds, based on the greater weight of the evidence, that the grievant has been denied a benefit or wrongly disciplined, it shall have the authority to reverse, reduce, or otherwise modify such action and, where appropriate, to order the reinstatement of such employee to his former position with back pay. Provided, however:

1. Back pay shall not exceed pay for time actually lost due to such suspension or discharge, in an amount the panel believes equitable.
2. Any award of back pay shall be offset by interim earnings the grievant earned during the period of separation.

C. Panel Cannot

The panel shall not have authority to do any of the following:

1. Formulate policies or procedures.
2. Alter existing policies or procedures.
3. Circumscribe or modify the rights of the County as outlined in this Procedure.
4. Exonerate an employee from all discipline when the employee admits guilt or it is proven by the greater weight of the evidence presented to the panel.

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5. Grant relief greater than that which the grievant has requested in the Request form.

D. In Favor of County

If the panel finds that the grievant has failed to prove his claim, based on the greater weight of the evidence, it shall sustain the position of the County.

20.16 Implementation of Remedy

A. Review of Panel's Decision

The County Administrator, or his designee, shall review the decision of the Panel for compliance with law and written policy. If the decision is inconsistent with any law or applicable policy, he shall set forth his findings in writing and request the Panel to reconsider its decision. If the County Administrator, or his designee, has a direct personal involvement with the event or events giving rise to the grievance, the review shall be made by the Spotsylvania County Commonwealth's Attorney. The review shall be completed and the panel informed of the determination within 10 calendar days of the filing of the Panel decision.

B. Remedy

The County Administrator shall implement any remedy, which may be ordered by the Panel, provided that such decision is consistent with law and written policies. If the County Administrator finds the Panel decision is not consistent, he shall not implement the decision of the Panel. The Grievant or the County Administrator may petition the Circuit Court for an order to implement the decision of the Panel.

20.17 Compliance

A. Notification

After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the Procedure, including the Panel Hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within 5 calendar days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the County Administrator.

B. County Administrator

The County Administrator may require a clear written explanation of the basis for just cause extensions or exceptions. The County Administrator shall determine compliance issues. Compliance determinations made by the County Administrator shall be subject to judicial review, which shall be initiated by the grievant filing a petition with the Circuit Court within 30 calendar days of the compliance determination.

20.18 Consistency with Administrative Review

When the County initiates disciplinary measures as provided for in Chapter 19, the County Administrator may consider Step One and Step Two grievance procedures properly exhausted if similar proceedings were already conducted pursuant to Chapter 19.

20.19 Assistance with Grievance Procedure

Assistance in the use of this Procedure and forms to be used are available from the Department of Human Resources.