



MERIT SYSTEM PROTECTION BOARD HEARING PROCEDURES

I. GENERAL INFORMATION

- All pleadings must be filed in writing with the Merit System Protection Board (Board or MSPB) by mail or hand-delivered. An initial appeal may be filed electronically by completing the MSPB Appeal Form on the MSPB County website. Other pleadings may be submitted electronically in PDF format by email, but hard copies must also be filed by mail or hand-delivery. At its discretion the Board may request that a pleading filed in hard copy also be filed electronically. The Board does not accept facsimiles.
- The Board's normal hours of operation are 9:30 a.m. to 3:00 p.m., Monday-Thursday. Any pleading or filing delivered to the Board's office after 3:00 p.m. may be deemed to have been received as of the following Board business day.
- A hearing provides an Appellant with the opportunity to appear before two (2) or more members of the Board or a hearing officer to present his/her appeal. Any merit system employee who is the subject of a dismissal, termination, demotion, suspension, or involuntary resignation action is entitled to a hearing before the Board.
- Chapter 2A, Administrative Procedures Act (APA) of the Montgomery County Code, as amended, governs hearings before the Board. Additional Board procedures are contained in the Montgomery County Personnel Regulations (MCPR), 2001, Section 35, Merit System Protection Board Appeals, Hearings, and Investigations.
- Hearings are conducted in a formal manner. The Board is not bound by the rules of evidence or procedure, but may look to them for guidance. The Board will give effect to the rules of privilege recognized by law, such as the attorney-client privilege and the attorney work product privilege. The Board may exclude incompetent, unreliable, irrelevant, or unduly repetitious evidence.
- The Appellant may represent himself/herself or be represented by legal counsel of his/her choice, although such representation is not required. The County is represented by the Office of the County Attorney. Local Fire and Rescue Departments (LFRD) are represented by attorneys of their choosing.

- Because Board hearings deal with personnel matters they are closed to the public unless requested otherwise by the Appellant at the time of the Prehearing Submission.

II. PARTIES TO AN ACTION

Pursuant to § 2A-8(d) of the APA, the County has the burden of going forward with the production of evidence at a hearing. When the action being appealed involves an LFRD employee, the LFRD has the burden of going forward.

The individual who filed the appeal is the responding party and referred to as the appellant.

III. DISCOVERY

- Once the Board has issued a notice acknowledging the receipt of an appeal, the parties may commence discovery. Unless otherwise ordered by the Board, the period for discovery ends on the date of the prehearing conference.
- Subject to the provisions of the Maryland State Public Information Act and at the requesting party's own expense, each party has the right to inspect and copy documents of the other party, where such discovery is not otherwise prohibited by law.
- The parties have the right to engage in other forms of discovery, including the use of interrogatories and the taking of depositions.
- If there is a dispute over discovery, a party may file a motion with the Board to compel discovery.

IV. MOTIONS

Any motion seeking a determination by the MSPB of any preliminary matter including, but not limited to, motions to compel discovery, motions *in limine*, and motions to quash subpoenas shall be made in writing. The opposing party shall have 10 calendar days from the date of the motion to respond to the motion before the Board rules on the motion.

V. REQUEST FOR RECONSIDERATION OF MSPB DECISIONS ON PRELIMINARY MATTERS

Any request to the Board to reconsider a ruling on a preliminary matter shall be in writing and filed within five (5) calendar days from the date of the ruling. The

opposing party shall have five (5) calendar days from the date of the request for reconsideration to respond. Thereafter, the Board shall issue a written decision on the request.

VI. PREHEARING REQUIREMENTS

Each party shall submit an original and three copies of its Prehearing Submission to the Board by the date set by the Board. The Prehearing Submission may not be submitted by facsimile or email; it must be mailed or hand-delivered to the Board. In addition to the required hard copy the Board may request an electronic copy of the Prehearing Submission or any other pleading.

The Prehearing Submission of the County or LFRD shall consist of the following:

- Complete list of charges.
- Copies of all written reports, documents, photographs, charts, letters, or any other material to be introduced or used at the hearing. All exhibits shall be placed in a 3-ring binder. Each exhibit must be labeled and tabbed. The County will label its exhibits as C. Ex. 1, C. Ex. 2, etc.
- The names and addresses of all prospective witnesses, and a summary of their anticipated testimony.
- The names and addresses of witnesses and documents and records requiring service of a subpoena.
- Estimated time required for presentation of the case.

The Appellant's Prehearing Submission shall consist of the same material outlined above except there is no need for a list of charges. Appellant will place his/her exhibits in a 3-ring binder. Each exhibit must be labeled and tabbed. Appellant will label his/her exhibits as A. Ex. 1, A. Ex. 2, etc.

At least seven (7) days before the prehearing conference the parties shall provide the Board with brief written explanations of any objections they may have to the other party's exhibits or witnesses.

Neither party shall be bound to introduce witnesses or documentation contained in their Prehearing Submission at the hearing.

Requests to call witnesses, or to use documents not contained in the Prehearing Submission may be granted upon good cause shown.

In an effort to facilitate the hearing process the Board requires the parties to:

- Meet with one or more members of the Board prior to the hearing and agree to stipulations concerning exhibits and testimony where possible.**
- Present preliminary motions and argument to the Board in writing at least ten (10) days prior to the hearing date.**
- Consider settlement and mediation at any time before and during the hearing.**

VII. WITNESSES

Only witnesses having direct knowledge of the facts on which the charges are based will be heard. The Board will hear:

- Testimony directly related to the charges.**
- Testimony indirectly related to the discipline and charges, provided a relevant relationship has been established.**
- Testimony of past work record, but only for the purpose of determining the degree of penalty.**

The Board may admit testimony submitted by sworn written interrogatory, affidavit, or deposition upon motion or if the parties agree.

VIII. SUBPOENAS

The Board has the power to issue subpoenas and require the attendance of witnesses located within Montgomery County, and the production by them of documents pertinent to any matter of inquiry, and to administer oaths and examine all witnesses in relation to any matter properly involved in a hearing.

The parties are responsible for notifying the Board of their need for subpoenas in sufficient time so as to allow subpoenas to be served prior to any scheduled hearing.

If subpoenas are issued, service of subpoenas shall be the responsibility of the requesting party. Although the County will generally ensure the attendance and testimony of County employees without the necessity of subpoenas, County Executive Branch agencies will accept service of Board subpoenas that require the attendance and testimony of Executive Branch employees. Board subpoenas must be served on the head of the agency with a copy to the assigned County Attorney. Agency heads and the assigned County Attorney shall accept a PDF copy of the Board subpoena. Upon receipt of a subpoena, the agency head shall direct the employee to obey the

subpoena and make reasonable attempts to adjust the employee's schedule to avoid conflict with the subpoena. If there is a conflict (*e.g.*, pre-approved leave or a required task that cannot be postponed or reassigned), the County may seek appropriate relief from the Board.

IX. CONTINUANCES

Requests for continuance shall be in writing, with a copy to the opposing party, and submitted to the Board at least five (5) calendar days prior to the hearing date. The Board may grant such request where good cause is shown.

X. HEARING PROCEDURES

The order of procedure shall be:

- Disposition of preliminary motions and matters;
- Opening statements, which shall be a summary of the case to be presented, unless waived or reserved;
- Presentation of factual case of the County or LFRD, and cross-examination of witnesses by the Appellant;
- Presentation of factual case for the Appellant, and cross-examination of witnesses by the County or LFRD;
- Rebuttal evidence of the County or LFRD, if any, and cross-examination of witnesses by the Appellant;
- Surrebuttal evidence of the Appellant, if any, and cross-examination of witnesses by the County or LFRD;
- Disposition of motions, if any; and
- Closing arguments.

A verbatim transcript of the hearing will be prepared, and an electronic version shared with the parties.

XI. TIME LIMITS

In order to assure prompt and timely resolution of appeals, the Board has established the following maximum time limits for the following during a hearing and all parties will be held to these limits:

Preliminary Motions	–	10 minutes, each party
Opening Statements	–	5 minutes, each party
Closing Statements	–	15 minutes, each party

XII. REQUEST FOR RECONSIDERATION OR REHEARING OF A FINAL BOARD DECISION

- Either party may request reconsideration or rehearing of the Board’s Final Decision within ten (10) calendar days from the date of a Final Decision. Thereafter, the Board may only grant reconsideration or rehearing in cases of fraud, mistake or irregularity.
- Requests for reconsideration or rehearing shall be in writing and contain supporting reasons with copies served by hand-delivery on all parties of record on the same date as served on the Board. The opposing party shall have five (5) calendar days to file a response with the Board.
- Pursuant to § 2A-10(f) of the Administrative Procedures Act, the Board has ten (10) days following receipt of the request to issue a decision. If a decision is not issued within the 10-day period, the request shall be deemed denied. A request for reconsideration or rehearing shall stay the time for any further appeal until the Board denies the request or, in the event the Board grants the request, such further time or a subsequent decision is rendered. A request for reconsideration does not stay the operation of any Board order unless the Board so states.

XIII. JUDICIAL REVIEW

Any aggrieved Appellant or the Chief Administrative Officer may obtain judicial review of a Board order or decision from the Circuit Court for Montgomery County, Maryland in the manner prescribed under the Maryland Rule 7-202.