

SECTION 4: EMPLOYEE CONDUCT

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4.1 POLITICAL ACTIVITY

4.11 Policy:

Except for voting in any special, primary, or general election, employees engaging in any political activity shall do so during off-duty hours. For purposes of this policy, elected officials are not County employees. They are covered under A.R.S. §38-296 as far as political activity is concerned.

4.12 Coverage:

This policy applies to all classified and unclassified positions. Nothing in this policy modifies or waives the “at will” status of an unclassified employee.

4.13 Employment Stipulations:

No employee may remain employed if he/she:

- A. engages in political activity in violation of federal, state or local law.
- B. offers himself/herself for nomination or election to any County, State, tribal, or federal elective office, unless that office will become vacant at the next election by retirement of the elected official. An employee shall be deemed to have offered himself for nomination or election to a salaried elected office upon the filing of a nomination paper pursuant to A.R.S. Section §16-311, subsection A; or by making a formal public declaration of candidacy; or otherwise holding himself/herself out as a candidate for the office, whichever occurs first.
- C. uses his official authority or influence to coerce or attempt to coerce any other employee to lend or contribute anything of value to a political party, committee, candidate or organization for political purposes.

4.2 SERVICE OF PROCESS, COMPLAINTS OR THREATENED LAWSUITS

4.21 Policy:

Service of Process generally involves the service of notice of claims, summonses and complaints, notice of appeals and subpoenas upon the County, county officials and employees. Rule 4 of the Arizona Rules of Civil Procedure requires service of process upon the County be made on the Clerk of the Board, or a designated deputy. Moreover, there will be times when certain county officers or employees are named as parties. Those persons will be served also.

4.22 Coverage:

This policy applies to all classified and unclassified positions. Nothing in this policy modifies or waives the "at will" status of an unclassified employee.

4.23 Procedures:

The following procedures must be followed when process is served upon the Clerk of the Board, County officials or employees:

- A. The Clerk of the Board or his designated deputies are the only persons authorized to receive process on behalf of Apache County.
- B. If a process server attempts to have any other department receive process, except when officials/employees are named individually, the employee shall not accept. The process server shall be directed to the Clerk of the Board. Nothing in this policy shall be construed as altering the service requirements established by state or federal law. A failure of a county employee to strictly follow the procedures set forth will not be deemed a waiver of the right to receive service of process in accordance with the manner required by state or federal law.
- C. At the time process is received, the form included with this policy must be filled out and forwarded immediately to the Clerk of the Board. This will only apply to notice of process naming a county official or employee. All other notices will be handled by the Clerk of the Board.
- D. When the Clerk of the Board is served with a notice of claim, complaint or summons, notice of appeal or subpoena, a copy of that document and the attached form or letter shall be forwarded immediately to the County Attorney. Since these matters have deadlines, time is of the essence.
- E. When the Clerk of the Board is served with a notice of claim or a summons and complaint, a copy of the notice of claim or summons and complaint must be sent to the Arizona Counties Insurance Pool.

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- F. All County employees should be instructed that when they are served with process, they should immediately inform their elected official/department head.
- G. If the process is served by first class mail with an “acknowledgment of service” or a request to accept service, the employee shall not complete and mail the acknowledgment or acceptance back. The employee should instead refer the “acknowledgment of service” or request to accept service to the County Attorney and wait for further legal instruction.
- H. When a County official or employee has been served with process, any further requests for information concerning the matter should be directed to the County Attorney's office.
- I. County departments may be served with “subpoena duces tecum” requesting information or documents. The County Attorney's office must be notified of the subpoena by the department in order to assist in determining what information may be provided or withheld. No information shall be released until it has been approved by the County Attorney.

4.24 Parties That Have Sued or Threatened To Sue

Except as required by law, employees and agents of Apache County may not communicate with attorneys, parties or agents of attorneys, or parties who have sued or threatened to sue the County regarding the subject matter of those claims without notifying the County Attorney's office and obtaining legal directions to the communication. County officials, employees and agents are entitled to have the presence of legal counsel before providing any interviews. When a county employee desires such representation, it shall be at the employee's own expense unless it is appropriate for counsel to be provided by the County.

Adherence to the above discussed steps will enable the County to more effectively defend itself in times of litigation.

4.3 CONFLICT OF INTEREST

4.31 Policy:

Any employee or Elected Official who has, or whose relative (spouse, child, child's child, parent, grandparent, brother or sister of half or whole blood and their spouses and the parent, brother, sister or child of a spouse) has a substantial interest in any contract, sale, or purchase, either direct or indirect, shall notify the County Manager of this interest in writing. The employee or Elected Official shall refrain from participating in the sale or contract in any way.

Any employee or Elected Official who has, or whose relative (spouse, child, child's child, parent, grandparent, brother or sister of half or whole blood and their spouses and the parent, brother, sister or child of a spouse) has a substantial interest in any decision made by the County, either direct or indirect, shall make the County Manager aware of this interest in writing. The employee or Elected Official shall refrain from participating in or influencing this decision in any way.

The intent of this policy is to comply with A.R.S. § 38-503 and is subject to the provisions of Section 1.26 of the Apache County Human Resources Policy Manual.

4.32 Coverage:

This policy applies to all classified and unclassified positions. Nothing in this policy modifies or waives the "at will" status of an unclassified employee.

4.4 DISCRIMINATION AND HARASSMENT PROHIBITED

4.41 Policy:

Apache County is an equal opportunity employer. Apache County prohibits discrimination and/or harassment based upon an individual's race, color, religion, age (40 years and above), sex, disability, or national origin by or against county personnel, including its officers, agents, or employees.

4.42 Coverage:

This policy applies to all classified and unclassified positions and elected officials. Nothing in this policy modifies or waives the "at will" status of an unclassified employee.

4.43 Equal Employment Opportunity/Nondiscrimination

Discrimination against an individual based upon his/her race, color, religion, age (40 years and above), sex, disability, national origin, or veteran status in recruitment, appointment, examination, training, pay, promotion, retention, discipline, or in any other employment process is prohibited except in the instance of a bonafide occupational qualification.

4.44 Harassment

Apache County is committed to providing all employees with a work environment free from sexual harassment as well as other types of harassment based upon an individual's race, color, religion, age (40 years and above), sex, disability, or national origin. Workplace behaviors based upon the protected categories listed above constitute prohibited harassment when:

- A. submission to such conduct is made either explicitly or implicitly a term of employment;
- B. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual;
- C. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

4.45 Reporting a Complaint

County personnel have an affirmative duty to maintain an environment that is free of prohibited discrimination and harassment. An employee who is offended by the conduct of another person or who feels that another's conduct interferes with the work environment is encouraged to speak directly with the individual engaging in objectionable behavior and request that the objectionable behavior be discontinued.

Complaints or reports of illegal discrimination and/or harassment should be taken to the Human Resources Director. Elected officials and all other individuals exercising managerial or

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supervisory authority on behalf of Apache County who receive complaints or reports of illegal discrimination or who have reason to believe that a violation of this policy may have occurred shall immediately inform the Human Resources Director, unless the Director is the subject of the complaint. Should the Human Resources Director be the subject of the complaint, reports should be taken to the County Manager.

The Human Resources Director shall evaluate any report or complaint and conduct, oversee or assist with any investigation required. County personnel are directed to cooperate with any county investigation and to treat information obtained in the course of a county investigation as confidential. The Human Resources Director shall work with the responsible elected official, department head, deputy county attorney, county administrator, or if necessary, the Board of Supervisors to address any identified problem. If the Human Resources Director is the subject of a report or complaint or cannot act as an impartial investigator, the County Manager or designee shall perform the functions of the Human Resources Director.

4.46 Confidentiality:

Reports and complaints of discrimination and/or harassment shall be treated as confidential to the extent that confidentiality does not interfere with the county's legal obligations, including its obligation to investigate allegations of misconduct and take appropriate action.

4.47 Retaliatory and other Prohibited Conduct:

It is a violation of this policy to engage in any form of prohibited discrimination or harassment, to fail to comply with any applicable provision or directive contained in this policy or to retaliate against any individual for complying with this policy, reporting a possible violation of this policy, or for cooperating with a county investigation. County employees who violate this policy are subject to disciplinary action, up to and including termination.

4.5 CONFIDENTIALITY

4.51 Policy:

All employees are to treat the internal business affairs and operations of Apache County as proprietary and confidential assets. It is the responsibility of each employee to take active steps to ensure the confidentiality of this information.

4.52 Coverage:

This policy applies to all classified and unclassified positions. Nothing in this policy modifies or waives the “at will” status of an unclassified employee.

4.53 Procedures:

- A. Employees shall discuss confidential information only with those individuals who have a legitimate “need to know” in keeping with general county interests. In addition, each employee shall have the responsibility to avoid unnecessary disclosure of any information related to any county business, whether or not it is confidential.
- B. All media or other inquiries shall be referred to the Clerk of the Board, the County Attorney, or the appropriate elected official. These individuals may designate another employee, where appropriate, to respond to the inquiries.
- C. Department heads and elected officials are responsible for identifying information that should be classified as confidential. The fact that a document is not marked as “confidential” does not mean that it is not in fact confidential and subject to the rules outlined above.
- D. Many aspects of county operations are open to the public. The County actively supports public oversight and willingly provides information to the public as it is requested. The procedure for providing the information to the public is defined in Section 7.2.
- E. In keeping with the provisions contained in ARS § 38-532, if an employee observes actions that he/she believes violate county policies and/or state or federal laws, this employee shall report these actions to the County Manager, the County Attorney, or the appropriate elected official. This reporting is consistent with and encouraged under this policy, even when the information is confidential. The County will not retaliate against any employee who reports these items in a reasonable manner as described above.
- F. Employees who violate this policy are subject to disciplinary action, up to and including termination of employment.

4.6 EMPLOYEE CONDUCT

4.61 Policy:

The employment of any individual by Apache County depends upon acceptable conduct and satisfactory work performance. The items listed below provide examples of prohibited employee conduct. This list is illustrative only and is not intended to be all inclusive.

4.62 Coverage:

This policy applies to all classified and unclassified positions. Nothing in this policy modifies or waives the “at will” status of an unclassified employee.

4.63 Prohibited Conduct:

The following list includes examples of actions that constitute prohibited employee conduct:

- 1) violation of county safety rules
- 2) employee has been convicted of a felony or has engaged in any activity which would violate State and Federal criminal statutes
- 3) threatening, intimidating or coercing a co-worker or member of the public
- 4) using foul or abuse language towards a co-worker, supervisor, or the public
- 5) intentionally causing physical harm and/or assaulting a co-worker or member of the public
- 6) willful defacing or destruction of county property and/or the property of others located at any prescribed county work location
- 7) misuse or abuse of county-owned or county based equipment or property
- 8) performing unauthorized personal work or activities during scheduled working hours
- 9) discourteous treatment of the public
- 10) engaging in prohibited political activity
- 11) abuse of sick leave, excessive absenteeism or tardiness
- 12) neglect of duty or failure to take reasonably required action
- 13) refusal or failure to answer questions completely and honestly during an administrative investigation

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- 14) giving false information in regard to one's own or a co-worker's actions
- 15) violating the county confidentiality policy
- 16) malicious gossip or accusations which tend to disrupt friendly relations between the County and the public, or between employees which may hinder county operations
- 17) sleeping while on duty
- 18) being in possession of, or under the influence of alcohol or illegal drugs while on duty or any other violation of the substance abuse prevention or the drug-free workplace policies
- 19) commission or conviction of any felony or misdemeanor involving moral turpitude which adversely reflects on the county or affects the employee's suitability for continued employment
- 20) insubordination, willful disobedience, or violating an official regulation or order
- 21) loss of required qualifications, license, or certification
- 22) fraud concerning theft or mishandling of county funds
- 23) falsification or unauthorized alteration of records, time sheets or any other information required by the county
- 24) seeking to obtain financial, sexual or political benefit from another employee by wrongful use of position, force or fear
- 25) abuse of position or official authority when interacting with employees or members of the public
- 26) employee job performance does not meet expectations
- 27) any prohibited harassment or discrimination as provided by these policies, local, state, or federal law
- 28) unauthorized possession of county property
- 29) absence from work without approved leave
- 30) unauthorized possession of firearms, lethal weapons or explosives
- 31) working unauthorized overtime hours

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- 32) illegally taking county property, equipment or funds for personal use
- 33) use of computer resources or e-mail for personal use without supervisory approval.
- 34) providing false or misleading information in any document, report, or statement related to his/her employment with the County. (Including but not limited to the employment application and related materials, complaints, and grievances.)
- 35) engaging in conduct, either during or outside of regular hours, that causes discredit to the County
- 36) any other improper conduct undermining the proper and efficient operation of county functions

4.7 DISCIPLINE PROCEDURES

4.71 Policy:

The employment of any individual by Apache County depends upon acceptable conduct and satisfactory work performance. Failure to comply with the policy provisions contained in this manual constitute sufficient grounds for disciplinary action up to and including termination of employment.

For purposes of this policy, the appointing authority means the Board of Supervisors, the County Manager or any other designee, or elected officials or their designees for their respective offices.

4.72 Coverage:

This policy applies to all classified positions. Nothing in this policy modifies or waives the “at will” status of an unclassified employee.

4.73 Pre-Action Meetings:

Prior to any disciplinary action consisting of suspension without pay or with reduced pay, demotion or dismissal of a classified employee, the elected official or department head shall hold a pre-action meeting with the employee. The purpose of the pre-action meeting is to present and discuss the charges subject to the disciplinary actions identified above.

The following guidelines shall apply to this meeting:

- A. The employee shall be provided written notice of the disciplinary charges, as well as the date and time of the pre-action meeting, at least 24 hours in advance.
- B. During the meeting, the elected official or department head shall describe the disciplinary charges and any other issues that have bearing on the situation.
- C. The employee shall be given the opportunity to respond to the disciplinary charges and to provide any additional information that he/she believes to be relevant to the charges.
- D. The department head or elected official shall prepare a written record of the meeting, summarizing the charges and responses of the employee.
- E. The employee may have a representative attend the hearing with him/her as an observer. However, this person shall not be allowed to participate in the meeting.
- F. The appointing authority may impose discipline at the conclusion of the meeting.
- G. All documentation listed above should be turned over to Human Resources for retention in the employees personnel file.

Attempts will be made by the county to schedule the pre-action meeting at a time that is convenient for the employee. Should the employee fail to appear for the pre-action meeting, the appointing authority will move ahead with the proposed disciplinary action.

4.74 Types of Discipline:

The material below describes types of discipline that may be taken to correct and discipline employees. The intent of this material is to describe typical disciplinary actions, but is not intended to limit the range of possible disciplinary actions or to create a progressive discipline policy. The seriousness of the offense may warrant imposing a more serious form of discipline, even termination, prior to utilizing lesser forms of discipline.

Verbal Reprimand: Prior to imposing a written reprimand for a minor offense, the appointing Authority may choose to provide a verbal reprimand in order to discuss the offense and the corrective action required by the employee. The offense and the corrective action should be documented in a memo from the appointing authority to the employee. This disciplinary step does not require a pre-action meeting prior to imposition. An employee disciplined with a verbal reprimand may not grieve or appeal under these policies.

Written Reprimand: For repeated conduct of a minor violation following a verbal reprimand, or in instances where, in the view of the Appointing Authority, the misconduct warrants this more serious type of discipline, a written reprimand may be imposed. The reprimand will be written to and discussed with the employee. The reprimand will briefly describe the offense and the corrective action. The employee shall be asked to sign the reprimand to acknowledge its receipt. A copy of the reprimand will be placed in the employee's official personnel file. This disciplinary step does not require a pre-action meeting prior to imposition. An employee disciplined with a written reprimand may not grieve or appeal under these policies.

Suspension Without Pay: The appointing authority may suspend an employee from his/her position without pay at any time for a disciplinary purpose. Prior to imposing a suspension without pay, a pre-action meeting must be held with the employee in accordance with the provisions listed in section 4.73. Suspensions without pay shall not exceed 30 calendar days. The Notice of Discipline regarding the offense and the rationale for the suspension shall be documented in memo form and discussed with the employee. The employee shall be asked to sign to acknowledge the memo. A copy of the memo shall be placed in the employee's official personnel file. An employee may appeal the suspension without pay in accordance with the provisions contained in section 4.9 of this manual. Note: Employees who are exempt under the FLSA cannot be suspended without pay for periods of less than one week unless the discipline is the result of an infraction of safety rules of "major significance." See C.F.R. § 541.118

Involuntary Demotion: The appointing authority may demote an employee whose performance does not meet expectations, or for disciplinary purposes. Prior to imposing an involuntary demotion, a pre-action meeting must be held with the employee in accordance with the provisions listed in section 4.73. The Notice of Discipline regarding the reason for the demotion shall be documented in memo form and discussed with the employee. The employee shall be asked to sign to acknowledge the memo. A copy of the memo shall be placed in the employee's official personnel file. An employee may appeal an involuntary demotion in accordance with the provisions contained in section 4.9 of this manual.

Termination of Employment: An employee may be terminated for cause at any time by the appointing authority. Prior to terminating an employee for cause, a pre-action meeting must be held with the employee in accordance with the provisions listed in section 4.73. Should the employee fail to attend the pre-action meeting (as in the case of job abandonment), the Notice of Discipline documenting the reasons for the termination shall be recorded in a letter and delivered

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to the employee either in person or via mail to the employee's last known address and a copy will be placed in the employee's official personnel file. An employee may appeal the termination in accordance with the provisions contained in section 4.9 of this manual. When an employee is terminated from employment under the provisions of this section, he/she shall be paid all wages due within three working days or the end of the next regular pay period, whichever is earlier, pursuant to A.R.S. § 23-533.

4.8 GRIEVANCE PROCEDURES

4.81 Policy:

The purposes of this grievance procedure are:

- A. To informally, if possible, resolve grievances at the employer/supervisor level.
- B. To provide for two-way, employee/employer communication.
- C. To promote harmonious relationships between employees, supervisors and management.

4.82 Coverage:

This policy applies to all classified positions. Nothing in this policy modifies or waives the “at will” status of an unclassified employee.

4.83 Matters Not Subject to Grievance Procedure:

Terminations, involuntary demotions, and suspensions without pay are not appealable under this policy. These matters may be appealed as provided in Section 4.9. Employee compensation, verbal or written reprimands and performance appraisals are also not appealable under this policy. Additionally, complaints of discrimination or harassment are covered by the harassment/discrimination policy contained herein.

4.84 Matters Subject to Grievance Procedure:

Except as stated in 4.83 above, a classified employee may use the appropriate grievance procedure for any decision occurring within his/her immediate chain of command that affects his/her employment with the County.

4.85 Informal Grievance Procedure:

Any employee who has a problem or complaint should first try to settle it through discussion with his/her immediate supervisor. If, after this discussion, he/she does not believe the problem has been satisfactorily resolved, he/she shall have the right to discuss it with his/her elected official or department head. Every effort should be made to find an acceptable solution by informal means.

4.86 Formal Grievance Procedure:

Issues that cannot be resolved through the informal grievance procedure may be taken to the formal procedure. This step will be taken within twenty business days following the incident. The levels of review in the formal grievance procedure follow the chain of command and are listed below:

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A. First Level of Review:

1. The grievance shall be presented in writing to the employee's immediate supervisor. The immediate supervisor shall review the grievance and shall render his/her decision and rationale in writing to the employee. The immediate supervisor shall deliver this material to the employee within ten business days of receiving the grievance.

2. If the employee does not agree with his/her immediate supervisor's decision, or if no answer has been received within ten business days, the employee may present the grievance in writing to the next level in his/her chain of command. Failure of the employee to take further action within ten business days following either the receipt of the supervisor's response or the expiration of the supervisor's deadline (whichever comes first) will close the grievance.

B. Follow-Up Levels of Review:

1. Once the grievance is received by the next level in the chain of command, this supervisor shall review the material conduct the appropriate investigation and render his/her decision in writing, and deliver the decision to the employee within ten business days. Failure of the employee to take further action within ten business days following either the receipt of the supervisor's response or the expiration of the supervisor's deadline (whichever comes first) will close the grievance

2. If the employee does not agree with the decision or, if no answer has been received within ten business days, the grievance can continue to be elevated to each subsequent step in the chain of command as specified in the steps above until reaching the appointing authority. Following the investigation of the grievance by the appointing authority, the appointing authority shall render his/her decision in writing and shall deliver the decision to the employee within twenty business days. The appointing authority's decision regarding the matter will be final, and the grievance will be closed.

4.87 Conduct of Grievance Procedure:

A. The time limits specified above may be extended by mutual agreement of the employee and management.

B. The employee may be allowed to use a reasonable amount of work time to prepare for the grievance. "Reasonable amount of work time" shall be defined by the department elected official or department head and shall not unduly disrupt the normal operations of the department.

C. Once a grievance has been dropped, either through direct action or by inaction, the grievance cannot be reinstated.

D. Once the grievance process has been concluded and a decision has been made by the appointing authority, the grievance cannot be reopened.

E. Employees shall be free from reprisal for using the grievance procedures in good faith.

4.9 APPEALS BY EMPLOYEE

4.91 Policy:

A regular, classified employee may appeal an action resulting in termination, involuntary demotion, or suspension without pay. Probationary employees are unclassified and have no right of appeal under this policy. In addition, all other categories of unclassified employees have no right to appeal under this policy. If an unclassified employee believes that he/she has been terminated, demoted, or given an unpaid suspension due to unlawful discrimination, he/she should follow the procedures outlined in the harassment/discrimination policy.

Appeals involving members of law enforcement, including POST certified Juvenile and Adult Detention Officers, will be conducted in accordance with all relevant requirements as established by A.R.S. § 38-1101.

4.92 Hearing Officer Appointment Procedure:

The Apache County Board of Supervisors shall appoint one or more Hearing Officers, any of which may be assigned as the Hearing Officer for any particular appeal sought under this policy. A Hearing Officer will be assigned based on the availability of the Hearing Officer, and at the discretion of the Human Resources Director. In the event the appealing Employee is employed in the Human Resources Department, the County Manager shall appoint the Hearing Officer. The Hearing Officer is fully empowered to grant or refuse extensions of time, to set procedures for the hearing, to conduct the hearing, and to take actions relative to the proceedings pursuant to the Rules for Personnel Hearings. The decision by the Hearing Officer shall be final. The Hearing Officer shall not be an employee of Apache County or have ever been an employee, Elected Official or had a financial relationship with Apache County other than that of a Hearing Officer. The Hearing Officer shall have experience in Employee/Employer disciplinary hearings.

4.93 Appeal Procedure:

Under this procedure, appeals must be filed in writing with the Human Resources Department within ten calendar days of the notice of discipline. The appeal shall state in detail the facts upon which it is based, the people and departments involved, and the remedy requested.

The Human Resources Director shall notify the Elected Official or Department Head of the appeal, along with any other filings throughout the Appeal process, within 24 hours of receipt of such document or notice. No answer to the appeal is necessary. However, if the Elected Official or Department Head chooses to file an answer, such answer shall be filed within ten calendar days from the date of appeal, and the Human Resources Director shall make a copy available to the employee.

The Hearing Officer shall conduct the hearing in accordance with the process set forth in section 4.99 of this policy and submit his/her report to the Human Resources Director for delivery to the Board of Supervisors.

4.94 Continuance of Hearing:

The hearing may be continued at the request of either the Employee or the Employer. Requests to continue the hearing must be submitted to the Human Resources Department in writing at least five days before the hearing date. If the Hearing Officer grants the continuance, then the Human Resources Director, or assigned subordinate, shall notify all concerned parties of the continuance. The Hearing Officer shall limit the number of continuances granted to ensure continuances are not sought solely for the purpose of delay.

Failure of the Employee to comply with these guidelines, and failure to appear at the time and place of the hearing, may result in dismissal of the appeal at the discretion of the Hearing Officer.

4.95 Nature of the Hearing:

The employee may represent himself/herself or be represented by legal counsel. The Elected Official or Department Head may represent himself/herself, or be represented by the County Attorney's office, or by other legal counsel selected by the County Attorney's office.

The hearing shall be informal, and technical rules of evidence and court procedure shall not apply, except that irrelevant, immaterial, or unduly repetitious material may be excluded. Evidentiary rules as to privilege shall be consistent with such rules in Arizona civil courts.

4.96 Witnesses:

The Hearing Officer, by authority of the Chairman of the Board of Supervisors, may issue subpoenas pursuant to section 4.99 to compel attendance of any person and the production of any books, papers, or other materials related to the investigation or the hearing, in accordance with A.R.S. §11-218.

The Hearing Officer may exclude from the room any witness not at the time under examination. The employee, the Elected Official/Department Head, and their representatives may not be excluded.

4.97 Withdrawal of an Appeal:

The Employee may submit a written request to withdraw an appeal any time prior to the conclusion of the appeal. The request shall be submitted to the Human Resources Department, who shall forward same to the Elected Official or Department Head in order to make the decision whether to allow the Employee to withdraw the appeal.

4.98 Decision by the Board of Supervisors:

The Board of Supervisors will adopt the findings of the Hearing Officer.

4.99 Rules for Personnel Hearings before a Hearing Officer:

I. STATEMENT OF PURPOSE

The purpose of these rules is to establish the procedure for personnel hearings before the Personnel Hearing Officer to ensure due process to the Employee and to allow an objective presentation of all necessary facts and materials to the Hearing Officer. The primary goals of these rules are to protect the lawful interests of the Employee and of the County, and, above all, to protect the interests of the citizens of Apache County, whose delegation of power and contribution of resources must be administered as a public trust for their benefit.

II. DEFINITIONS

Employee is the person subject to the privileges and constraints of the Personnel Policy who is appealing an action taken by the relevant Elected Official, Department Head, Supervisor, or County Manager.

III. GENERAL PROVISIONS

- 3.1 The Hearing Officer shall be assigned and scheduled by the Human Resources Director. Notice thereof shall be given by the Human Resources Director to the Employee. Notification shall be made in writing and will include the following information; Hearing Officer Name, date, time and, place of the hearing. All motions, papers, exhibits or other document or notice shall be filed with the Human Resources Department which shall provide copies of same to the Elected Official or Department Head and the Hearing Officer within 24 hours of receipt.
- 3.2 All appeal hearings shall be audio recorded. If either party to the hearing desires a Court Reporter, the party requesting such shall make all arrangements for the appearance and payment of the court reporter, and for any transcripts that may be required.
- 3.3 All testimony shall be taken under oath or affirmation.
- 3.4 All hearings and discussions shall be open to the public.
- 3.5 Technical rules of evidence shall not apply at the hearing. Hearsay and other such evidence shall be admissible at the hearing-the weight to be given such evidence will be determined at the sole discretion of the Hearing Officer.
- 3.6 The Board of Supervisors shall be authorized to issue subpoenas, compel attendance of witnesses, and compel production of documentary evidence. The party requesting the above actions shall draft any such documentation, including subpoenas, and shall pay all costs related thereto at the time the cost is incurred. In the event any third party refuses to attend or comply with any subpoena, such failure shall not be cause to reverse the decision of the Hearing Officer or cause delays in conducting any hearing.

- 3.7 The Hearing Officer shall have the right to rule on protective orders and motions to quash regarding subpoenas or other motions of a like nature. All rulings and all motions filed by either party shall include an order by the Hearing Officer assessing reasonable attorney's fees and costs against the unsuccessful party. Such award of attorney's fees shall be due and payable to the successful party upon issuance of the order. Each motion shall be accompanied by an affidavit stating the costs and attorney's fees incurred in creating such motion.
- 3.8 Each party shall disclose all documents which are relevant to the case and the names, addresses and telephone numbers of witnesses whom the party intends to call to testify at the hearing. The deadline for disclosure of documents and witness information is twenty days prior to the date of the hearing.
- 3.9 Evidence which is irrelevant to the charges presented or unduly repetitious may be excluded by the Hearing Officer.
- 3.10 Both parties shall have the right to file with the Hearing Officer all documents, records or reports deemed proper and necessary by either party for the consideration of the Hearing Officer, with copies to the opposing party.
- 3.11 The Hearing Officer may, upon the request of the Elected Official, Department Head, Supervisor, the Employee, or the persons representing either party, exclude from the hearing room all witnesses not then under examination. No party to the proceedings, their representative, or attorneys shall be excluded.
- 3.12 The Hearing Officer shall determine whether there is sufficient evidence to support the decision or from which the action was appealed and shall affirm the same if it is supported by a preponderance of the evidence. The Hearing Officer shall uphold the decision made if there was a reasonable basis for the decision.
- 3.13 The Hearing Officer shall assess reasonable attorney's fees and costs against the unsuccessful party which shall be due upon issuance of the Hearing Officer's order. Attorney's fees and costs awarded against the Employee shall be withheld from any funds for pay or leave owed to the employee.
- 3.14 The Hearing Officer shall make a final decision in writing within ten calendar days of the conclusion of the hearing.
- 3.15 The decision of the Hearing Officer is final and shall not be appealable to the Board of Supervisors. The Board of Supervisors shall accept and adopt the findings of the Hearing Officer.