

**Open Work Session**  
**August 1, 2017**  
**Personnel Manual Review (Chapters 12 and 13)**

Mrs. Sharon Morris, Former Assistant Director of Administration, Mr. Ed Baker, Former County Attorney and Mr. Creamer, former Council Administrator, came before Council. Mr. Joe Holloway said Council has had some input since the last meeting on the personnel manual. He said they have some employees that have asked what has changed from the prior manual. Mrs. Morris said they have started working on preparing a comparison. She said, in the meantime, every county employee should already have access to the 2003 manual and the one that is being proposed is on Intranet, so the employees should be able to do their own comparison. Mr. Joe Holloway said it may be easier for everyone to see a quick comparison. Mrs. Morris said, sure, but she just wanted to say that the documents are available.

*Chapter 12*

Mrs. Morris started the review of Chapter 12, disciplinary and corrective actions. She said the goal here is responsibility and performance on the part of the county employee. To retain the employee, and then to correct the actions that require discipline and to have a process by which that can happen. The responsibility of the department head is that they would ensure employees are informed of the rules, again, with a manual. The framework is established, and would be adopted to analyze and consider all facts and circumstances before taking any action, and then to administer a fair and reasonable and equitable discipline if necessary. She said the employee's rights are going to be spelled out as they go through the chapter. She said no comments, observations or records of disciplinary or corrective actions will be entered into an employee's official personnel file without written notice to the employee. She said she is not certain how the process is now, but department heads, supervisors were always allowed to have a file of their own on a county employee, and then they submit it, what goes into a permanent file with the personnel action notification. Disciplinary and corrective actions should be administered privately, and should only be taken after gathering available facts. They are reviewed, and the action then becomes that of the supervisor stating the problem verbally and/or in writing to give the employee the opportunity to explain and express their views. Mr. Cannon asked if there should be a third party involved in the process, to which Mrs. Morris asked if he means between the department and the employee, to which Mr. Cannon said he means the department head and the employee, should there be a third party there to account for what was and what was not said. Mr. Creamer said, in most instances, at least initially, that would take place at the time of the incident or soon after the incident. In other words, the idea of not having a separate occasion for this communication to take place, but take place as soon as possible or at the conclusion of whatever the problem might be. Mr. Cannon then asked if individual documentation by the department head is enough, to which Mrs. Morris responded, typically, the employee has a person who is authorized between them and the department head, and that person is the person who does the initial discipline and it rolls up. She said it would have been heard by more than one person, but certainly you can. Mrs. Morris said a record should be made and kept with

either human resources or the supervisor as applicable. She said the range of disciplinary actions determination of which penalty is to be imposed in a particular situation requires the application of responsible judgment on the part of management. The form that is referred to should be eliminated. She said she does not know the form numbers now, so that is not part of this process, but there should be a form to provide a framework for interrelating the facts of the situation, and that is now the personnel action notification. Mrs. Morris said, as she previously mentioned, at the time the manual was written, we were not in this form of government, so where there needs to be changes with administrative functions in accordance to the charter, if she knows it, when she gets to it, she will say that. Mrs. Morris continued, she said in looking at progressive discipline there should be an oral counseling and a warning. There should be a written warning and then the official reprimand. There is a process for the employee, and they have appeal rights at every level until they get to a formal grievance. The hope there would be that the employee would go to their supervisor or the first level of management beyond themselves and, if they are not satisfied at that point, they would then go to the department head and, if necessary, then they can go to an appeal process. Mr. Cannon asked if there should be some notation that the oral counseling or oral warning should be documented, to which Mrs. Morris said, in her personal opinion, she would write it. Mr. Cannon said he is wondering when it should be put in the manual as this is for all employees. Mr. Creamer asked if Mr. Cannon is suggesting that in addition to an oral warning or counseling that it should be documented by the person who is giving the information, the person who is giving the warning or counseling should make some written notation, to which Mr. Cannon responded, yes. Mr. Joe Holloway said he thinks that is a good suggestion. Mrs. Morris said that is generally the kind of thing that gets put into the supervisor's desk drawer. It does not need to go through an official process if it is oral. Mr. Joe Holloway clarified, informally, to which Mrs. Morris responded, yes. If the employee has gone through the oral, written and official reprimand, their action then becomes the suspension. A suspension places the employee in a nonpay, nonduty status. She said the department head and the correlation with Human Resources (HR) is essential. It could be accomplished by a warning to the employee that further violations of rules could result in discharge. Paid leave cannot be used to avoid being suspended in a nonpay status. She said for instance, they cannot go on vacation when they get suspended. It is a nonpay status. Suspensions will be coordinated with the Director of Human Resources prior to the notification to the employee. The suspension notice shall contain the effective date and the reasons the employee was suspended and their appeal rights. Mr. Joe Holloway asked, if you go back, paid leave cannot be used to avoid being suspended, what if they have vacation time accrued or other time accrued, does that mean they cannot draw that money. Mrs. Morris said the goal here would be a punishment. To allow a person to go on vacation does not do anything for them except give them time away from the workplace. Mr. Joe Holloway said he realizes that, but in a situation where accrued leave time or vacation is due them anyway, as they might not be guilty. He then clarified they are going to come to a hearing at some point in time, to which Mrs. Morris responded, yes. Mr. Joe Holloway said what he is thinking about is they might need the money if they are being suspended without pay. Mrs. Morris said that could be a recommendation but, again, the goal would be not to allow a person to go on vacation on a suspension, but rather be in a nonpay status. Mrs. Morris said his point is well taken, as she understands what he is saying. Mr. Joe

Holloway said, if they have this hearing in front of the Board and they are found not guilty, but they have suffered two or three weeks without pay, it could put them in a situation monetarily that they would not have been in otherwise. Mrs. Morris said the suspension normally is not more than two weeks, so it is not normally more than a pay cycle. Mr. Joe Holloway asked what is a normal suspension, to which Mrs. Morris responded, she does not know what is happening now, but, typically, it would be less than ten days. Mr. Joe Holloway then asked if this can be changed, to which Mrs. Morris responded, yes. Mr. Joe Holloway said a lot of folks live paycheck to paycheck, so it may be something Council might want to change. He said Council does not want to reward the employee, but the person may not be guilty. Mrs. Morris clarified that until they get to appeal process, Council wants to ensure that they have pay, using what is already due them, to which Mr. Joe Holloway responded that is correct. Mr. Creamer said this is the first time in a long while that the County Council has been given a thorough and detailed review of these procedures, and it is entirely within Council's scope of authority to make adjustments beyond anything that is in the manual now or which might be recommended as a change. He said things such as what was just mentioned are important considerations for Council to determine. Mrs. Morris said that is a plus for the employees if you do it that way. Mr. Joe Holloway said he cannot imagine somebody having the time approved and getting suspended, whether they are guilty or not guilty, but not being able to buy groceries because they did not get a paycheck, especially if the money is theirs in the first place. Mrs. Morris continued with the review, she said personnel action notifications should be electronic. A personnel action notification with supporting documentation shall be sent to HR, and that is already happening. She said a demotion allows for an employee who has demonstrated an inability to perform the work in their existing grade to be demoted, if there is an appropriate lower grade position for the employee, and the employee has the capability or there is a reasonable probability that the employee will be able to perform satisfactorily in a lower position. She said there needs to be prior coordination between the Director of Human Resources and the department head of the employee. The demotion shall contain the effective date and time of the demotion, the reason, and the employee's appeal rights. She said, again, the personnel action notification, that document is the employee's history. An electronic personnel action notification with supporting documentation shall be sent to the Department of Human Resources requesting that the employee be demoted. Mr. Cannon asked on the prior coordination, would it be necessary to have legal counsel there at that time, to which Mrs. Morris responded if an employee is going to be demoted, there has been progressive discipline, and the employee is already aware that they are not performing to the level that they should be in the grade that they should be, and they have a right of appeal at that time. She said if they are getting annual reviews, then that is the time that would happen, and they would know that. Mr. Cannon said he is not really looking at this from a rules perspective as much as procedural. Mrs. Morris asked if Mr. Baker if he wanted to add anything, to which Mr. Baker responded, no, he agrees. Mrs. Morris continued, she said discharge terminates the employee's status. It may be based upon the employee's actions off as well as on the job. It may also be based on the actions before the employee's hiring, which may reflect upon their suitability for county service. She said a discharge must be reviewed by the Director of Human Resources and the County Attorney. All discharge actions must be approved by the Director of Administration. Mr. Creamer said all of these steps are for the purpose of avoiding a

circumstance were if tempers were high and someone was dismissed without proper procedures. Mr. Matt Holloway asked do each of these steps have to be followed each time. He said he could see an instance where somebody was suspended, and then if they were discharged and they did not offer them a demotion, a lower pay grade position. He then asked is there anything written where it says that these steps do not have to be followed sequentially, or do they have to be followed, to which Mrs. Morris responded, the progressive discipline has to be followed. The demotion says it may be requested. Mrs. Morris said it is determined by an employee's performance and the employee's work history. She said that is why it is important that the HR Director and the Director of Administration have that relationship because the Director of Administration is the person who also supervises the department head, and part of the annual review is a relationship building between that employee and the department head. Mr. Kilmer asked what if there is some egregious behavior by an employee, not necessarily anything criminal, but, a real violation, computer use, things like that, can they go straight to dismissal or do they have to go through this process, to which Mr. Baker responded, they can take that straight to dismissal. He said there are a number of cases where there has been some event that triggers a dismissal. The action is so egregious that you do not have oral counseling. Mr. Cannon said he wanted to make sure that the procedure is set where you do not. Mrs. Morris said, if it is not clear, that might be language that needs to be added to make that more clear. Mr. Matt Holloway said that might be a good opening paragraph for that section. Mr. Joe Holloway said if we go back to the dark days of the recession when the County had to go through the RIFs, reduction of force. He said some employees were questioning when they were going to be losing their jobs, and one of the first things that happens when somebody is going to be let go is they turn their computer off, which rightfully needs to be done. He said one time there was a situation where somebody came to work and tried to get on their computer and there was a glitch with the computer, and they were thinking that they had been laid off. He then asked is there anything in the manual that has a procedure on what actually happens when you let somebody go, to which Mrs. Morris responded that is on the next page, page 65. Mr. Cannon asked if the employee that is given written notice of the discharge, if the notice for discharge should be done in person. Mrs. Morris said she thinks that can be added to the personnel manual. Mr. Cannon said that section is vague. He said a lot of times if employees know they are going to be terminated, they do not show up for work. Mrs. Morris said if the employee is at work, yes. Mr. Cannon said he would not want to default to just saying, we gave them notice. It should be more personal if the employee is present. Mrs. Morris continued, she said once the approvals for the discharge have been obtained, a notification must be immediately sent to the Director of Information Technology to disconnect the employee from access to all county systems. She said the timing should be so as soon as the employee is discharged, they no longer have access to county systems. Mr. Joe Holloway then asked if that step has always been followed. He said he knows there were some questions and some disheartened people. Mr. Dodd asked if somebody is going to be terminated or gets terminated, can the County just turn off computer access. What happens if the employee goes through the appeal process, and then they are reinstated, have they lost all their emails and whatever they had on the computer, to which Mrs. Morris said that is a good IT question. Mr. Dodd asked do you think they hold the account open just in case. Mr. Cannon said he thinks they will hold the account for a certain period of

time even if the employee is no longer there so that IT can retain that securely. Mr. Dodd clarified that the information is not lost, it is just not available to the employee, to which Mr. Cannon responded, yes.

### *Chapter 13*

Mr. Baker said in redoing the chapter, they tried to make it a natural flow for the employee. This chapter talks about all the different types of discipline. He said Chapter 13 is very short. It should be very simple. It is on what happens if the employee disagrees with the discipline. He said for example, section 13-01 about the policy, it is identical to the existing manual which was last updated in 2010. He said it basically says – recognizes the fact that in an employment situation there is going to be disputes in discipline and provide an avenue for the employee to seek a third party review. Mr. Baker said section 13-02 is also identical to the existing manual. It provides for a risk of exclusion which was section 13-03 that do not come under the grievance procedures. He said a primary example is in section 13-03 where the sheriff's deputies do not have access to the grievance system. He said in looking at position classifications that is really a legislative act, so there is no grievance procedure to appeal what positions are established. He said it mentions oral or written warnings. Mr. Baker said that is the very beginning of the disciplinary process, and it does not include any monetary penalty or suspension. He said the last one in that section is discharge of an employee. He said that is discharge of a person that works at will. Mr. Baker continued, he said the informal grievance process is section 13-04. He said in a couple places there are some modifications to the wording, but otherwise the intent and the process are still the same. He said in section 13-04, down under E, there is a sequence of events when you are going through the grievance process. You take it to a supervisor, to the department head before you get into a formal grievance. He said you have the informal grievance. They have always had trouble with the time-periods, such as somebody would be on vacation, somebody would be unavailable, so the time-period changed from five days to ten days. The supervisor would process the informal grievance within ten working days instead of five. Mr. Baker said in section 13-04, on page 67, paragraph G, failure to act, the question come up of what happens as it is going through the progression and somebody just says I am not going to do anything with it, so they added language in that section that says take it to HR. He said HR would take over handling it at that point in time. Mr. Joe Holloway asked what if the grievance has to do with a safety issue, work conditions, in which the supervisor fails to respond within ten days. He asked is there something different they can use for safety issues other than what is written, to which Mr. Baker responded, no, it used to be five days. He said they did not have anything on what happens if they fail to act, so they put in ten days. Mr. Joe Holloway asked if that could lead to a liability issue if someone was to get hurt, to which Mr. Baker responded, yes. Mr. Joe Holloway asked if it should be put in the manual that if it is a safety issue, that it would be stepped up to within immediate action. Mr. Cannon said where it says if discipline had been imposed, the Department of Human Resources may uphold or modify the discipline. He then asked if that would be the responsibility of the supervisor, whoever is supervising, or the department head. Mr. Baker said this is only when neither one of them have taken any action at all. If they have gone through the discussion with the employee and said, I do not see any reason to change, that is still my decision, then you take the next step, which is when you go to

the Personnel Board. This is just trying to adjust those options where nobody is making a decision. Mr. Baker said if nobody is going to make the decision, then that is different – it is inaction. It is not -- if they say, I have reviewed it, my decision stands, then they can go to the next section and file the formal appeal. Where they saw a roadblock is if they just do not do anything. In other words, if you are going to do something within ten days and you do not do it, you had to have some mechanism to move the appeal along. Mr. Cannon asked if a department head is doing it and there is inaction on their part, should the Director of Administration be aware of that. Mr. Creamer said the next step would be to ask the Director of Human Resources, and if the Director of Human Resources were to see what was just described, then he thinks that would go to the Director of Administration because it is a different situation. Mr. Cannon said you are giving the Director of Human Resources the right to uphold or modify the discipline. He said it would seem to be going from the Department to Human Resources, and he thinks it should be going up the chain of command. Mr. Baker clarified he means up to the Director of Administration. Mr. Cannon said he is not requiring that change, but suggested that it needs to be thought about a little more. Mr. Creamer said from Council's perspective, all the comments and suggestions that have been made are being put in a list that will come back to Council for further consideration. Mr. Creamer said they are not looking at the things said today as being final. Mrs. Morris said that goes back to her point about the relationship between the HR Director and the Director of Administration. One controls the life of the employee, and the other controls the life of the person who is over the employee. They definitely should be working together. Mr. Baker said section 13-05 is on the formal grievance procedure. It also is substantially identical to the one that is existing. He said there are a couple of places that they made word changes. In D2, they added that the witness has to be subpoenaed or can be subpoenaed. Mr. Joe Holloway asked if they can go back to section 13-05B on the formal grievance. He said it says the formal grievance must be submitted in writing to the Director of Human Resources. He then asked in going back to Mr. Cannon's suggestion, would that be better if it is said and the Director of Administrator. Mr. Baker he does not see a problem with that. He said they would be advised of the formal grievance being initiated. He said you also have to remember that it is a formal grievance, but they could be grieving a three-day suspension. He said it is a policy decision. Mrs. Morris said if they were not connected, it would also allow the Director of Administration to supersede the decision of the HR Director who is under his authority. Mr. Joe Holloway clarified that he has the authority to do that, to which Mrs. Morris responded, yes, he does. Mr. Baker asked supersede over what, to which Mrs. Morris said to have authority over the decision. Mr. Baker said the Director of Administration cannot override the formal grievance. Mrs. Morris said normally a grievance must be presented in writing to the HR Director. Mr. Joe Holloway is suggesting that it be written to both the HR Director and the Director of Administration. Mr. Baker clarified for informational purposes, to which Mrs. Morris responded, yes, for informational purposes, not the decision. Mr. Baker agreed. Mr. Joe Holloway said it is just a suggestion. Mrs. Morris said she thinks it is a good one. Mr. Joe Holloway said he thinks if he was Director of Administration, he would want to know a little more about what is going on when it gets to this level. Mrs. Morris said she is assuming that everybody plays well together, but in instances where they do not, having a policy in writing does make a difference. Mr. Cannon said unless this is something when the Human Resources Director is hired, there is some document that establishes the correct procedure that must be followed. He

then asked is there a separate document that the Human Resources Director might have that says, oh, when there is a grievance, you have to notify the Director of Administration, to which Mrs. Morris responded, no county policy. Mrs. Morris said remember years ago HR was in the Administrative Office. There was no Department of Human Resources. The function was delegated by the then Director of Administration to somebody. Mr. Creamer said before that, the function was actually performed by the Director of Administration. Mr. Baker continued with Chapter 13, he said D5 was modified slightly from the current manual to divide the distinction between whether or not the employee is going to be represented by legal counsel, an attorney, or by another county employee, somebody else and it specifies the information will have to be given in either case. Mr. Baker said another area they had questions about is number six. That is where the employee can make the request that normally formal grievance proceedings are closed unless they ask for it to be open. That is identical to what is in the current manual. He said a little bit later it is addressed how that determination is made if they do request that it is open. Mr. Baker said paragraph F talks about the Director of Human Resources rejecting the submission of a formal grievance. He said they added to that provision to specify the basis upon which it can be rejected, so it says it can be rejected if they have not completed the action under the informal grievance procedure. In other words, they have tried to bypass that informal grievance process, or if not permitted within the ten-day limit, or it did not provide a clear statement of the issues and does indicate specific corrective action desired. Most of those are very concrete. Mr. Baker said the statement of issues can be a little bit fuzzy in which case the grievance is returned to the employee who is grieving for additional clarification or additional information. Mr. Creamer asked, given that information required for the Director of Human Resources to confirm has been provided, would it be appropriate in that last section that the Director of Human Resources shall return the grievance to the grievant for clarification and additional information, to which Mr. Baker responded, yes. Mr. Creamer clarified in F, the Director of Human Resources is performing an administrative function to make sure that the grievance has provided sufficient information for the Personnel Board to be able to render a decision and consider the issues, to which Mr. Baker responded, yes. Mr. Creamer said the purpose is that there would be a dead end. Mr. Baker said section 13-06A is substantially the same as the existing manual. It did have a time-frame which has been removed from the time that they would be notified and meet and letter B was changed to reflect the change in form of government. They revised it to the executive appoints and the council confirms. Mrs. Morris said in letter B, at the end, it should be the members select one of the members as the chairperson at the first meeting. Mr. Baker said it is the same thing. Mr. Baker said letter C is duplicative of the current manual, but they thought it was necessary for the county attorney to represent the Personnel Board and prepare the findings of fact and opinion of the board. He said section 13-07 is standard procedure, same as it is now. Paragraph A dealing with the closed hearing was expanded essentially to make it clear that personnel matters are confidential, not subject to the Public Information Act, not subject to disclosure, so when the employee asks that the hearing be held in open, this provision makes it clear to them that he has to waive in writing the confidentiality. You cannot ask for an open hearing, and then come back later and accuse someone in the County of making things public. He said they struggled with this a little bit, but they basically said that the employee makes a request, it goes to the Personnel Board, the Personnel Board makes the final decision.

There are on rare occasions matters that come up that are sensitive enough that you cannot have an open session. He said he thinks the clearest example is one they had a number of years ago when they wanted to have an open hearing that would have forced the Detention Center to reveal all the locations that were being recorded. That is something for security reasons they would not want to do. Mr. Baker continued, he said paragraph B is similar, but it used it say keep for a reasonable period of time. He said almost all departments have approved policies now, and their records have to be maintained for at least that long or as long as the case is still active. Mr. Creamer asked Mr. Baker if he knows what the retention policy is for the department, to which Mr. Baker responded that was handled by Maureen, so he does not know what it is. Mr. Creamer said that would be something the Council would want to know. Mr. Baker said section 13-07D is another one that was somewhat difficult. He said the historical practice is if the department head is bringing in a county employees to testify at a grievance as a witness to the incident or policy and procedure or something like that, they were allowed to come without using time. Witnesses who are county employees, possibly for the same reason, but they were being asked for by the grievant, they were forced to take vacation. They felt that at the time when this was drafted is that if a county employee has valuable information to share with the Personnel Board, regardless of whose side they are on, they should be able to come without using time. They tried to keep the procedure as informal as possible. He said he does not know what the Personnel Board's feelings are on it now, but, historically, they wanted to make it very, very informal. This spells out the procedure informally that both parties have a right to ask questions. It is a liberal leave process hearing, so you have to give both sides the right to ask questions, and also provide that at the end, both sides can make closing remarks. He said section 13-08 is another situation that they clarified from the prior manual, that is, the chair of the Personnel Board should vote not just in cases of a tie. Mr. Baker said the other question that they have had come up in the past, the Personnel Board will have a hearing and say, yes, the employee violated the rules in some way, shape or form, but the violation does not merit the discipline. They felt that the discipline should be with the departments. He said, so, they made a provision in the manual that the Personnel Board can say, we are going to uphold the grievance, but it disagrees with the discipline, and the department head can review it. If he wants to change it, fine. If he does not want to change it, fine. The Personnel Board cannot impose discipline. He said a lot of that is because the department head may know things that had not come out in the hearing about the general work performance, may have made oral warnings, so there may be a number of different reasons why he imposed the discipline and that is why they felt the ultimate decision or discipline should remain with the department. Mr. Baker said the only other change was in section 13-09, in which it increased from five working days to ten. The Personnel Board is all lay people, not county employees. He said what used to happen is that someone would draft the findings and mail them out to the members of the Personnel Board, they review them and get them back. Five days is just not timely, so they are recommending ten days. He said in some situations that would be tight, but you have to have closure for the employee. Mr. Creamer clarified that it says the County Attorney shall draft the findings, the attorney representing the board, to which Mr. Baker responded, yes. Mrs. Morris said at the next open work session, they will review Chapter 14.



**Open Work Session  
August 1, 2017  
Personnel Manual Review (Chapters 12 and 13)**

  
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John T. Cannon, President

  
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Larry W. Dodd, Vice President, District 3

  
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Ernest F. Davis, District 1

  
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Marc Kilmer, District 2

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John B. Hall, District 4

  
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Joe Holloway, District 5

  
\_\_\_\_\_  
Matt Holloway, At-Large

  
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Laura Hurley, Council Administrator