

# Todd County

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MINNESOTA



## Todd County Personnel Board of Appeals Policy

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## **Todd County Personnel Board of Appeals Policy**

These rules apply to all appeals before the Todd County Personnel Board of Appeals.

### **Definitions**

These definitions shall apply when the following words are used in these rules, unless indicated otherwise.

1. Appellant: Any applicant, employee or appointing authority desiring a hearing under these Rules and who has filed an Appeal in conformance with these Rules.
2. Appointing Authority: The official, employee, board, or commission, or the person or group of persons empowered by statute, ordinance or resolution to make an appointment to positions as county employees within the scope of the County Personnel Act.
3. Chair: The chair of the Todd Personnel Board of Appeals.
4. County Attorney: The Todd County Attorney or his/her designee.
5. Director of Human Resources: County Coordinator
6. Notice of Appearance: A written statement from an attorney indicating that he/she will appear at the hearing on behalf of an Appellant.
7. Notice of Hearing: A written notice provided to all Parties establishing the time, date and location of the hearing and other pertinent information.
8. PBA Attorney: Legal counsel designated by the County Attorney to advise and assist the PBA in carrying out its responsibilities under the Personnel Policies and these Rules.
9. Party or Parties: The Appellant(s) and Respondent(s).
10. Personnel Board: The Todd County Personnel Board of Appeals (PBA) as appointed by the Todd County Board of Commissioners pursuant to Minn. Stat. § 375.65.
11. Personnel Officer: Human Resources Manager
12. Record: The Appeal, Notice of Hearing and all motions and orders which have been reduced to writing; evidence received; a recording of the hearing; the findings, conclusions and recommendations or Decisions of the Personnel Board; all memoranda or data submitted by any party in connection with the hearing; and the transcript of the hearing, if one was prepared.
13. Respondent: The person or County department(s) alleged to have violated an Appellant's rights under Minn. Stat. § 375.66, subd. 1.
14. Rules: These Todd County Personnel Board of Appeals Rules.

## **Policy**

Pursuant to [Minn. Stat. § 375.65](#) subd. 1, the Todd County Board shall appoint three persons to serve staggered terms as members of the Personnel Board of Appeals. After the first appointments expire, successors shall serve terms for three years each. Expiration dates for the first terms of office shall be affixed by the County Board. Vacancies shall be filled by a majority of the vote of the County Board for the unexpired term. Persons appointed to the Personnel Board of Appeals shall not serve while holding any county office or while standing as a candidate for any county office, nor while employed by the county.

Persons appointed to this Board will have 7 years of experience in management, legal or human resources profession. Each member of the said board shall be a resident of the county and shall forfeit office if he/she become a non-resident. The Personnel Board of Appeals shall follow rules and procedures for matters brought before it as outlined under Appeal Procedures within this policy. Each member shall be paid a per diem as established by the County Board plus any mileage expense incurred from meeting pursuant to Minn. Stat. § [375.65 subd. 2](#).

The Personnel Board of Appeals shall organize by electing a Chair and Vice-Chair.

## **Meeting Requirements**

The Personnel Board of Appeals meets upon the call of its chair, the Human Resource Manager, the County Coordinator or the County Board Chair.

## **Appeal Findings and Scope of Authority**

The Personnel Board of Appeals does not have the right to amend, modify, nullify, ignore, add to or subtract from the provisions of the County Personnel Policies. The Personnel Board of Appeals considers and decides only the specific issue(s) submitted by the County and the appellant, and has no authority to make a decision on any issue not so submitted. The Personnel Board of Appeals cannot make decisions contrary to, inconsistent with or modifying or varying in any way the application of laws, rules or regulations having the force and effect of law. The findings are based solely upon the Personnel Board of Appeals' interpretation or application of the express provisions of the County Personnel Policies and on the facts of the appeal presented. If the appeal is not covered by the express provisions of the County Personnel Policies, the Personnel Board of Appeals refers the appeal back to the County Board without other findings or reports.

Findings and reports of the Personnel Board of Appeals are submitted to the County Board for consideration and action as deemed appropriate by the County Board. Where so required by state or federal regulations, the findings of the Personnel Board of Appeals are final and binding, subject to further appeals as may be provided by law.

## **Jurisdiction**

Review Personnel Board of Appeals Policy (4.05) to determine who is included/excluded. Appeals may be taken to the Personnel Board of Appeals by applicants for employment with Todd County, employees of Todd County, or appointing authorities as defined in Minn. Stat. § 375.57, subd. 2.

## **Responsibilities**

The Personnel Board of Appeals makes findings and reports to the County Board within 30 days of the filing of an appeal by an applicant, employee, or department head in the following circumstances:

1. Alleged arbitrary or capricious action on the part of the County Board with respect to final establishment of rules under Minn. Stat. § 375.56 to 375.71.
2. Alleged discrimination by the Personnel Director or the director's employees in examination procedures or preparation of lists of eligible candidates, or discriminatory use thereof by the appointing authority under the provisions of Minn. Stat. § 375.56 to 375.71 or rules promulgated hereunder.
3. Alleged misinterpretation or evasion by the Personnel Director or County Board of provisions of Minn. Stat. § 375.56 to 375.71 or the rules promulgated thereunder in a manner seriously detrimental to the party or parties bringing the appeal.
4. Such other matters of grievances may be provided for in rules promulgated under the authority of Minn. Stat. § 375.56 to 375.71.

## **Appeals Procedure**

The Appeals Procedure promulgated pursuant to Minn. Stat. § 375.66 subd. 2 is outlined below:

1. Request for Hearing: The employee shall present a written request for a hearing before the Personnel Board of Appeals to the Human Resources Manager within fourteen (14) calendar days following receipt of the employer's decision regarding a grievance. Within five (5) business days of the date of receipt, the Human Resource Manager provides a copy of the Appeal Form to the Chair, to the County Attorney, and to the PBA Attorney. The Human Resource Manager also provides the Appellant a copy of these Rules.
2. As soon as reasonably possible after receipt of the Appeal and no more than fifteen calendar days from the day the request is received, the Human Resources Manager, in consultation with the Chair and PBA attorney, shall establish the date, time, and location of the hearing to allow attendance by all parties. The Human Resource Manager shall transmit a Notice of Hearing to all Parties, the Personnel Board, and the PBA Attorney.

## **Notice of Hearing**

The Notice of Hearing shall contain at least the following:

- a. The time, date and place for the hearing, and a statement that the Parties should begin to prepare for the hearing;
- b. A citation to the authority of the Personnel Board to hold the hearing;
- c. A statement of the allegations asserted or issues raised by the Appellant in the Appeal together with a citation to the relevant statutes, rules or policies allegedly violated or that may control the outcome of the hearing;

- d. Notification of the right of the Parties to be represented by an attorney, or to represent themselves;
- e. A copy of any procedural rules of the Personnel Board that are applicable to the hearing and a brief description of the procedure to be followed at the hearing;
- f. A statement that if a Party will be represented by an attorney, the attorney must file a notice of appearance with the Chair and all other parties at least seven (7) calendar days prior to the date of the hearing;
- g. A statement advising the Parties to bring to the hearing all documents, records, and witnesses they need to support their position;
- h. A statement advising the Parties of the name of the appointing agency or other County official to be contacted to discuss informal disposition of the case;
- i. A statement that copies of written documents to be presented at the hearing, and a list of proposed witnesses, if any, must be submitted to the PBA Attorney for distribution to the Chair and the Parties at least five (5) business days before the hearing and that failure to comply with this rule may, within the discretion of the Chair, be grounds for a continuance of the hearing;
- j. A statement that any Party may request that any other Party make available copies of documents related to the issues to be considered in the hearing, by making a request directly to the other Party or his/her attorney, as appropriate;
- k. A statement that all data practices issues relating to written and oral evidence to be presented at the hearing should be resolved prior to the hearing by obtaining waivers from the subject of the data or court orders, and parties may obtain information on the procedures to accomplish this from the Todd County Human Resource Manager;
- l. A statement that any Party sending a letter, exhibit, brief, memorandum, or other document to the Chair shall simultaneously send a copy to all other Parties;
- m. A statement advising the Appellant that failure to appear at the hearing, without good cause for failing to appear, will result in the allegations in the Appeal being deemed not proved and the Personnel Board will issue a recommendation or decision adverse to the party failing to appear;
- n. A statement advising the Parties that if nonpublic data is admitted into evidence it may become public;
- o. A statement that at any time prior to the close of the hearing, the Appellant may file an amended Appeal, provided that, should the amended Appeal raise new issues or allegations, the Chair shall provide the Parties with a reasonable time to prepare to submit evidence to address the new issues or allegations, if requested.

- p. A statement that the Chair may exclude testimonial or documentary evidence that was not disclosed after a request has been made pursuant to item J of these Rules, or the PBA shall continue the hearing at their discretion.
- q. A statement that requests for production of documents pursuant to item J of these Rules or for continuances shall be made within a reasonable time after their need becomes evident to the requesting Party.

### **Right to Counsel and Notice of Representation**

At the hearing a Party may be represented by an attorney or a Party may represent himself/herself. When appearing without an attorney, another person may assist a Party.

If a Party intends to be represented at a hearing by an attorney, the attorney shall file a Notice of Appearance with the PBA Attorney and all other Parties at least seven (7) calendar days before the hearing. Such notice shall not be required from the County Attorney. In the discretion of the PBA Chair, the failure to file this notice may be grounds for a continuance of the hearing.

If a Party has notified other Parties that he/she will be represented by an attorney, other Parties shall direct their written communications to that attorney. All notices to Todd County shall be directed to both the County Attorney and the County Coordinator as follows:

#### **COUNTY ATTORNEY**

John Lindemann

[John.lindemann@co.todd.mn.us](mailto:John.lindemann@co.todd.mn.us)

(320) 732-4434

#### **COUNTY COORDINATOR**

Chris Pelzer

[Chris.pelzer@co.todd.mn.us](mailto:Chris.pelzer@co.todd.mn.us)

(320) 732-1916

The PBA Attorney is the legal advisor to the Personnel Board. The PBA Attorney will assist the Chair in ensuring that these Rules are followed and shall advise the Personnel Board as to the meaning of all statutes and County personnel rules applicable to an appeal. The County Attorney or his/her designee may represent any County department or other Respondent who is a County employee in a hearing before the Personnel Board.

### **Change in Hearing Date**

The Personnel Board of Appeals may delay the hearing date for a time, not to exceed forty-five days, if either party shows good reason.

### **Powers and Duties of Chair**

The Chair shall perform the following duties:

- a. preside at the hearing;
- b. grant or deny continuances;

- c. grant or deny requests for discovery;
- d. hear and rule on motions;
- e. maintain the official record until transmitted to the County Attorney's Office or his/her designee after the recommendation or decision of the Personnel Board has been issued;
- f. prepare findings of fact, conclusions and recommendations or decisions that reflect the determination of the Personnel Board;
- g. send copies of all orders, recommendations or decisions to all Parties simultaneously.

### **Conducting the Hearing**

The hearing will be conducted in a manner designed to protect the rights of all persons and Parties providing testimony at the hearing and to ensure fundamental fairness. The hearing will be held before three (3) members of the Personnel Board.

A Party shall be prepared to present all oral and written evidence, on the hearing date. Attendance at the hearing shall be limited to the Personnel Board, a court reporter or secretary to the Personnel Board, the PBA Attorney, the Appellant(s), Respondent(s), their attorneys or others assisting a Party representing himself/herself, the Director of Human Resources or his/her designee, and any witnesses that the Parties intend to call. The Personnel Board in its discretion may require that witnesses be present in the hearing room only when presenting their own testimony.

The Appellant(s) and Respondent(s) may provide an opening statement to summarize the issues and an oral or written closing argument after completion of all testimony. An attorney may not testify on behalf of his/her client.

The following additional procedures shall govern the hearings before the Personnel Board:

- a. The Personnel Board shall only consider evidence submitted under oath or affirmation and made a part of the record, including stipulations, settlements and consent orders.
- b. All witnesses need to be sworn in by the Chair.
- c. Witnesses may give testimony in narrative fashion rather than by question and answer.
- d. All witnesses shall be subject to cross-examination.
- e. The Personnel Board may question witnesses.
- f. Any Party may be a witness and may call other persons as witnesses.
- g. The Chair shall admit all evidence that logically tends to prove or disprove a material fact, including hearsay, if it is the type of hearsay upon which reasonable, prudent persons are accustomed to rely. The Chair shall give effect to the rules of privilege



recognized by law. The Chair may exclude evidence that is incompetent, irrelevant, immaterial or unduly repetitious.

- h. Documentary evidence may be introduced in the form of copies or excerpts. A copy shall be received to the same extent as the original document unless a genuine question is raised as to its authenticity.
- i. The Personnel Board may take notice of judicially cognizable facts, on the record, with opportunity for any Party to contest the facts so noticed.
- j. Except during the hearing, no Party shall communicate directly or indirectly with the Personnel Board concerning any issue of fact or law relevant to the hearing.
- k. Hearings shall be recorded by audiotape or court reporter. The Chair or any Party may request that the recording be transcribed. The Party requesting a court reporter or transcription shall be responsible to pay the cost of such court reporter or transcription. The records of the testimony should be preserved until the time for further appeal has expired.
- l. If the Chair allows briefs or written closing arguments to be submitted after the hearing, they shall be submitted simultaneously.
- m. The record of the hearing shall be closed upon the completion of the testimony, or receipt of the final written briefs, arguments or transcript, if any, or late-filed exhibits that the Parties and the Chair have agreed should be received into the record, whichever occurs latest.
- n. The Personnel Board shall deliberate and vote privately on the issues raised at the hearing following the closing of the record. The Personnel Board shall vote affirmatively or negatively without abstaining. A quorum of the Personnel Board for this purpose shall be two (2).
- o. All data practices issues involving documents or testimony to be presented at the hearing should be resolved prior to the date of the hearing. If necessary, a Party should obtain a court order allowing the disclosure of data that is not public prior to the date of the hearing.

The steps of the hearing are as follows:

- 1. The employee or his/her representative present testimony.
- 2. The employer or their representative may cross-examine.
- 3. The employer or their representative may present testimony.
- 4. The employee or his/her representative may cross-examine.

### **Burden of Proof**

The Appellant has the burden of proving the issue before the Personnel Board by a preponderance of the evidence. If a Respondents asserts any affirmative defenses, he/she shall have the burden of proving the existence of any such defense by a preponderance of the evidence.

### **The Decision**

The decision of the Personnel Board of Appeals shall be based upon substantial and competent evidence. Findings, decision and order, and any reports of the Personnel Board of Appeals shall be submitted to the County Board within fifteen calendar days following the close of the hearing, for consideration and action as deemed appropriate by the County Board. With respect to employees of departments and agencies paid in full or in part by Federal funds, the findings of the Personnel Board of Appeals shall be final and binding in those circumstances necessary to conform to any valid Federal or State regulations affecting the department or position. [Minn. Stat. § 375.66 subd. 3](#). A binding decision of the Personnel Board of Appeals may be appealed as provided by state statute [375.67](#).

A copy of the decision shall be served upon all Parties, the Director of Human Resource and the County Attorney.

The Chair shall transmit the record to the County Attorney's Office at the time the recommendation or decision of the Personnel Board is issued.

### **Time Limits**

If the request for a hearing before the Personnel Board of Appeals is not presented within the time periods stated above, it is considered waived; unless just cause can be shown.

When a Party fails to appear at a hearing, the Personnel Board of Appeals Attorney will immediately mail a letter to that Party containing notice that he/she has seven calendar days from the date of the hearing to provide the Personnel Board with good cause for failing to appear. If timely response is not provided, or if in the judgment of the Personnel Board the response fails to provide good cause for failing to appear, the Personnel Board will issue a recommendation or decision adverse to the Party failing to appear.

### **Reprisals Prohibited**

No employee will be disciplined for requesting a hearing, or for giving testimony in the Personnel Board of Appeals Hearing.

### **PBA Attorney**

The Todd County Attorney shall designate a PBA Attorney to advise and assist the Personnel Board in the conduct of hearings and the issuance of recommendations or decisions. The PBA Attorney shall confer with all parties to an Appeal to prepare a Joint Statement of Issues and Facts, and a Stipulation of Exhibits that will define the matters to be heard and considered by the Personnel Board at the hearing. The PBA Attorney shall send a copy of the Joint Statement of Issues and Fact and Stipulation of Exhibits to all parties, the County Attorney's Office, the Director of Human Resource, and the members of the Personnel Board, at least seven calendar days prior to the date of the hearing.

### **Adoption/Amendment of Rules**

These Rules may be adopted or amended only by decision of the Personnel Board of Appeals and County Board.