

Memorandum



Date February 26, 2016

To Honorable Members of the Ad Hoc Judicial Nominations Committee:
Philip T. Kingston (Chair), Tiffinni A. Young (Vice-Chair), Monica R. Alonzo,
Rickey D. Callahan, B. Adam McGough, Casey Thomas, II

Subject Overview of Functions and Selection Process for Administrative Law Judges

Biennially the City Council appoints three to five Administrative Law Judges to hear demotion or discharge appeals for eligible City employees. The authority for these appointments is derived from City Charter, Chapter XVI, Section 12.1. This is the final level of administrative appeal for an employee. Pursuant to Section 34-40 of the Dallas Personnel Rules an employee has the option of having the appeal heard by a three person panel called a Trial Board (TB) or an Administrative Law Judge (ALJ). Once the employee makes this selection, it is final.

Differences between an ALJ and TB members are as follows:

1. ALJs are under contract for up to two years.
2. ALJs are compensated \$400 per hearing day. The appealing employee pays half of the cost. The City pays the other half.

TB hearings are free to the employee. The TB panel is made up of three citizen volunteers – one member of the Civil Service Board who serves as Chair of the hearing and two members of the Civil Service Adjunct Panel.

3. Pursuant to Section 2-164 of the Dallas City Code an ALJ must:
 - Be a licensed attorney who has practiced law in the State of Texas for at least three years or a person who has at least five years experience adjudicating hearings of personnel decisions; and
 - Not have been an employee or an elected or appointed officer of the city, other than a full-time or associate municipal judge, within the five years immediately preceding application.

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4. Under Section 2-163 of the Dallas City Code members of the Civil Service Adjunct Panel must:
- Have a total of at least five years experience as a volunteer or employee with a business, governmental, or nonprofit organization, that has a work staff of at least 15 persons;
 - Have a total of at least five years experience as a volunteer or employee in the administration or personnel functions of a business, governmental, or nonprofit organization; or
 - Have an accumulation of at least five years experience under the first two paragraphs of this subsection. An Adjunct Panel member may not be an employee of any other state or local jurisdiction but may be former employees of the City of Dallas.

Selection Process for ALJs (2016-17 term)

1. The Judicial Nominating Commission (JNC) is responsible for vetting (ALJ) applicants and making recommendations to the City Council for appointment
2. Public advertisement of the position took place from September 11 – September 26, 2015. In addition, copies of the advertisement were sent to area colleges, community organizations, law specific publications and associations, chambers of commerce and churches. There were 37 applicants.
3. The JNC met on November 11, 2015 to review the applications and resumes. It voted to interview 7 candidates.
4. The JNC convened on December 8, 2015 to conduct interviews. It recommended five candidates for appointment including three of the four incumbent judges. The fourth did not apply.

Demotion/Discharge Hearings

Functions of the ALJ are governed by Section 34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE of the Dallas Personnel Rules. It is a quasi-judicial process that is conducted in two phases.

In Phase I, the trial board, by majority vote, or the administrative law judge shall determine, by a preponderance of the evidence, whether the employee committed any of the alleged rule violations.

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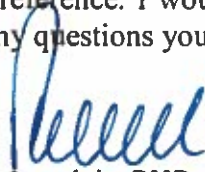
If the trial board, by a majority vote, or the administrative law judge determines that the employee committed none of the alleged rule violations, the trial board or administrative law judge may take whatever action is just and equitable, and the hearing will be closed.

If the trial board, by majority vote, or the administrative law judge determines that the employee committed at least one of the alleged rule violations, the hearing will proceed to Phase II.

In Phase II, the trial board or the administrative law judge shall hear evidence concerning the appropriateness of the discipline imposed for the sustained rule violations.

The trial board, by majority vote, or the administrative law judge may either sustain, reverse, modify, or amend the disciplinary action as is determined just and equitable, provided that the disciplinary action must be sustained if a reasonable person could have taken the same disciplinary action against the employee.

Copies of relevant sections of the City Charter, City Code, and Personnel Rules are attached for your reference. I would be happy to furnish additional information as requested and answer any questions you have.



Patricia Marsolais, PHR, SHRM-CP, IPMA-CP, CBM, CSSBB, CLSSS
Secretary
Dallas Civil Service Board

Attachment

- c: Honorable Mayor and Members of the City Council
- A.C. Gonzalez, City Manager
- Rosa A. Rios, City Secretary
- Warren M.S. Ernst, City Attorney
- Craig D. Kinton, City Auditor
- Daniel F. Solis, Administrative Judge
- Ryan S. Evans, First Assistant City Manager
- Jill A. Jordan, P.E., Assistant City Manager
- Eric D. Campbell, Assistant City Manager
- Joey Zapata, Assistant City Manager
- Mark McDaniel, Assistant City Manager
- Jeanne Chipperfield, Chief Financial Officer
- Sana Syed, Public Information Officer
- Elsa Cantu, Assistant to the City Manager - Mayor & Council

Dallas City Charter

Chapter XVI, Section 12.1

Ch. XVI, §12 DALLAS CITY CHARTER Ch. XVI, §14

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Prop. No. 7; Amend. of 4-6-85, Prop. No. 4; Amend. of 5-1-93, Prop. No. 8; Amend. of 11-8-05, Prop. No. 5; Amend. of 11-4-14, Prop. No. 9)

SEC. 12.1. ADMINISTRATIVE LAW JUDGE.

(a) Instead of appealing to a trial board as provided in Section 12 of this chapter, an officer or employee of the city, classified or unclassified, who has been discharged or reduced in grade may appeal to an administrative law judge in accordance with procedures established by ordinance.

(b) A person who appeals to an administrative law judge shall pay one-half of the costs attributed to having the administrative law judge conduct the appeal hearing. (Amend. of 8-12-89, Prop. No. 10)

SEC. 13. MERIT PRINCIPLE.

All appointments and promotions of city officers and employees, including classified and unclassified positions and positions exempt from the civil service, shall be made solely on the basis of merit and fitness.

Dallas City Code

Chapter 2 Administration

CITY CODE

CHAPTER 2 ADMINISTRATION

SEC. 2-163. SPECIAL QUALIFICATIONS FOR ADJUNCT MEMBERS OF THE CIVIL SERVICE BOARD.

(a) In addition to the qualifications required by the city charter and Chapter 8 of this code, each adjunct member of the civil service board must meet the following qualifications:

(1) have a total of at least five years experience as a volunteer or employee with a business, governmental, or nonprofit organization that has a work staff of at least 15 persons;

(2) have a total of at least five years experience as a volunteer or employee in the administration or personnel functions of a business, governmental, or nonprofit organization; or

(3) have an accumulation of at least five years experience under Paragraphs (1) and (2) of this subsection.

(b) Nothing in this article prohibits the appointment of a former city employee as a member or adjunct member of the civil service board.

(c) The city council shall, as nearly as may be practicable, appoint adjunct members of the civil service board that are representative of the racial, ethnic, and gender makeup of the city's population. (Ord. 20526)

SEC. 2-164. ADMINISTRATIVE LAW JUDGES: APPOINTMENT; QUALIFICATIONS; TERMINATION OF CONTRACT.

(a) By January 1 of each even-numbered year beginning with the year 1992, and whenever a vacancy occurs, the judicial nominating commission shall recommend persons to be appointed by the city council to serve as administrative law judges, as provided for in Section 12.1, Chapter XVI of the city charter. Each appointment will be made through the award of a city contract, and not less than three nor more than five persons may have contracts with the city to serve as administrative law judges at the same time. Administrative law judges shall hear appeals in accordance with Section [34-40](#) of this code.

(b) The judicial nominating commission shall recommend as administrative law judges persons selected from applicants responding to an open, public request for proposals for professional services. The judicial nominating commission shall review the applications and resumes, research applicant qualifications, and interview the applicants. If a vacancy occurs within 120 days after the appointment of any administrative law judge, for which the commission conducted interviews, the commission is not required to conduct additional interviews but may, in its discretion, recommend nominees to fill the new vacancy from applicants who were interviewed for any administrative law judge position that was filled within the preceding 120 days. The judicial nominating commission shall, as nearly as may be practicable, recruit and recommend as administrative law judges persons who are representative of the racial, ethnic, and gender makeup of the city's population.

CITY CODE

CHAPTER 2 ADMINISTRATION

(c) An administrative law judge must:

(1) be a licensed attorney who has practiced law in the State of Texas for at least three years or a person who has at least five years experience adjudicating hearings of personnel decisions; and

(2) not have been an employee or an elected or appointed officer of the city, other than a full-time or associate municipal judge, within the five years immediately preceding application.

(d) An administrative law judge will be compensated for services based on a rate established by contract with the city. At least every two years, the judicial nominating commission shall review the pay structure of the administrative law judges and recommend to the city council appropriate rate adjustments or other compensation.

(e) A person is ineligible to serve as an administrative law judge if, on two occasions within any 12-month period after appointment as an administrative law judge, the person:

(1) refuses or is unable to accept an assignment from the civil service board to conduct an appeal hearing, except when based on a challenge by a party as to the selection of the administrative law judge; or

(2) is unable to conduct an appeal hearing within the time limits required by Section [34-40](#) of this code after considering all allowable postponements and extensions.

(f) The judicial nominating commission shall periodically review and evaluate the performance of each administrative law judge and recommend to the city council whenever the contract of an administrative law judge should be terminated or not renewed. The city council may, by a majority vote and upon the recommendation of the judicial nominating commission, terminate the contract of an administrative law judge for unsatisfactory performance. Unsatisfactory performance includes, but is not limited to:

(1) failure to acquire, retain, or correctly apply knowledge of the city's personnel rules, civil service rules and procedures, or other laws and regulations governing personnel matters heard by an administrative law judge;

(2) failure to remain impartial and objective in hearing appeals and performing other duties as an administrative law judge; or

(3) failure to competently and efficiently hear appeals and perform other duties as an administrative law judge. (Ord. Nos. 20526; 21091; 22612; 22718)

SEC. 2-165. TRAINING.

(a) Every person appointed as a member or adjunct member of the civil service board or as an administrative law judge must attend a two-day training course before hearing an appeal under Section [34-40](#) of this code. The training course will include, but not be limited to:

(1) instruction in the city's personnel rules, civil service process, and civil service procedures;

(2) an orientation session concerning police and fire personnel rules and procedures;

(3) an overview session concerning civilian employees and their responsibilities at the various levels of administration; and

(4) a mock trial board or observation of an actual appeal hearing.

(b) In addition to the training course required in Subsection (a) of this section, an administrative law judge must take a refresher training course not less than 12 months nor more than 15 months after being appointed.

(c) A person who fails to attend the two-day training course within 90 days from the date of appointment as a member or an adjunct member of the civil service board or as an administrative law judge, or an administrative law judge who fails to attend the refresher training course within the time required in Subsection (b) of this section, shall forfeit that position with the city, and that position becomes vacant. (Ord. Nos. 20526; 22612)

SEC. 2-166. TRIAL BOARD RESPONSIBILITIES OF CIVIL SERVICE BOARD MEMBERS; ATTENDANCE.

(a) The chair of the civil service board shall establish a rotation procedure for selecting civil service board members and adjunct members to serve on trial boards, as provided for in Section [34-40](#) of this code. Except where conflicts of interest exist or unexpected circumstances arise, the chair shall enforce a strict rotation for service on a trial board. A member shall not request service on a particular trial board and may not serve on a requested trial board. Such a request is a violation of this section and is cause for removal of the member from the civil service board by the city council.

(b) If a member or an adjunct member of the civil service board is unable to participate on a trial board when the member's name comes up in rotation any three times within a 12-month period, that member forfeits membership on the board, and that place becomes vacant. The civil service board secretary shall keep accurate records of all rotation procedures and members' service. (Ord. 20526)

Personnel Rules

(B) contains provisions impermissible under applicable law;

(C) is unclear; or

(D) incorrectly states the disposition of the matter.

(f) Other matters.

(1) If a court of law rules on an issue involved in the grievance, the board's order must conform with the court's ruling or must be vacated in deference to the court's ruling, whichever is applicable.

(2) The board may order, with the consent of the parties, that any matters having common issues of fact be consolidated.

(3) No party or party representative shall communicate with any board member regarding the issues involved in the grievance except at the hearing.

(4) The board, by majority vote, may seek advice regarding its jurisdiction or the nature and extent of its authority from the city attorney.

(5) A party may be heard through a representative if that representative is designated:

(A) in writing filed with the secretary and served on all parties;

(B) on the record at the hearing before evidence is accepted; or

(C) through the signature of the representative on any paper filed with the secretary on behalf of the party.

(6) The secretary shall ensure that the board receives any materials filed by the parties.

(7) Any paper served by a party on the secretary must include a certificate showing service to all other parties.

(8) Service upon the city must be accomplished by serving the assistant city attorney assigned to the hearing.

(9) Nothing in this section may be construed to authorize the practice of law except as permitted by the Supreme Court of Texas.

(10) By presenting to the board (whether by signing, submitting, or later advocating) a request for a hearing, a complaint, a written or oral motion, or any other document, the party is certifying that it is acting in good faith.

(g) Nothing in this section conveys upon, implies, or intends to imply that an employee has a property interest in continued employment or a contract of employment with the city based on any right to grieve or appeal provided by this section or on the nondiscrimination policy stated in Section 34-35 of this chapter. Nothing in this section or in the nondiscrimination policy creates any right or remedy under any law or limits any existing right or remedy provided under any law. (Ord. Nos. 19340; 20988; 22195; 24873; 24930; 25051; 26182; 28024; 29480)

SEC. 34-40. APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE.

(a) General provisions, applicability, and jurisdiction.

(1) To the extent that a rule adopted by the civil service board, civil service trial boards, or administrative law judges and approved by the city council conflicts with a provision of this chapter, this chapter prevails.

(2) In this section:

(A) BOARD means the civil service board of the city.

(B) TRIAL BOARD means a civil service trial board.

(C) SECRETARY means the secretary of the civil service board, who will also serve as secretary to each trial board and each administrative law judge.

(3) This section does not apply to:

(A) a department director, an assistant department director, or other managerial personnel designated by the city council in accordance with Section 11, Chapter XVI of the city charter; or

(B) a non-civil service employee.

(4) A civil service trial board and an administrative law judge have jurisdiction to hear an appeal by an employee if the appeal:

(A) involves a demotion or discharge, unless provided otherwise in the city charter;

(B) is filed in writing with the secretary within 10 working days after the date of the employee's receipt of the letter of the last disposition of the appeal;

(C) contains the following information:

(i) the type of disciplinary action being appealed and the effective date of the action;

(ii) the specific reason the discipline is unjust or otherwise in error;

(iii) the remedy sought;

(iv) the signature of the employee; and

(v) a certificate showing the date of service to the secretary; and

(D) has a copy of the disciplinary action attached to the appeal.

(5) Designating whether an appeal is heard by a trial board or an administrative law judge.

(A) An employee must specify in the appeal filed with the secretary whether the appeal will be heard by a trial board or an administrative law judge. This choice is final.

(B) All appeals will be heard by a trial board unless otherwise specified by the appealing employee.

(C) By choosing to have a hearing before an administrative law judge, the appealing employee agrees to pay one-half of the administrative law judge's fee for the hearing, based on a rate established by contract with the city. Before a hearing will be held before an administrative law judge, the employee must deposit with the civil service board secretary a cash amount equal to one-half the estimated fee of the administrative judge as determined by the secretary based on the estimated length of the hearing. If the deposit exceeds the actual cost of the hearing, the employee shall be refunded the difference. If the deposit is insufficient to cover the actual cost of the hearing, the employee must pay the additional amount.

(b) Selection of a trial board or an administrative law judge.

(1) For hearings before a trial board, the secretary shall select trial board members according to a rotation schedule established by the chair of the civil service board. The trial board must be composed of a civil service board member and two adjunct members of the civil service board.

(2) For hearings before an administrative law judge, the secretary shall select the administrative law judge according to a rotation schedule established by the chair of the civil service board. An administrative law judge who is involved in litigation against the city may not hear an appeal.

(3) The secretary shall promptly designate a replacement if a trial board member or an administrative law judge is unable to serve at a hearing and shall inform all parties of the replacement. A substitute trial board member or administrative law judge must be selected in accordance with the rotation schedule established under Paragraph (2) of this subsection.

(4) The civil service board member serving on a trial board shall preside as the chair at any hearing before the trial board and shall make any rulings regarding evidence or procedure. The chair's rulings may be overruled or modified by a

majority vote of the other trial board members hearing the matter.

(5) The administrative law judge shall preside at any hearing before the administrative law judge and shall make any rulings regarding evidence or procedure.

(c) Prehearing deadlines.

(1) To the fullest extent possible, within fifteen working days after the date of service of the request to the secretary, as shown on the certificate attached to the request under Subsection (a)(4)(C) of this section, the secretary shall do the following:

(A) Set a hearing before a trial board or an administrative law judge within 60 to 90 calendar days after receipt of the request by the secretary; however, the secretary of the civil service board may, with the approval of the trial board chair or the administrative law judge, schedule a hearing outside of 60 to 90 calendar days from the date of the request.

(B) Prepare a "statement of questions," which must be styled, "Matter of (name of employee)" and must specify the rules alleged to have been violated as stated in the letter of demotion or discharge.

(C) Designate the trial board members who will hear the appeal or, if elected by the employee, the administrative law judge.

(D) Transmit to each party notice of the hearing, the statement of questions, and the names of the trial board members or the name of the administrative law judge, whichever is applicable.

(2) Objections.

(A) Within 10 working days after the date of service as shown on the certificate of service on the statement of questions, the parties shall file any objections to the statement of questions with the secretary.

(B) Within five working days after the date of service as shown on the certificate of service on the objections, a response may be filed.

(C) Objections may be resolved at the hearing immediately before evidence is accepted.

(3) Continuances.

(A) At least 15 working days before a hearing or two working days after a party learns of the facts requiring a continuance, whichever date is earlier, a motion for continuance of the hearing may be filed.

(B) Within five working days after the date of service as shown on the certificate of service on the motion for continuance, a response may be filed.

(C) Other than in cases in which the parties agree to abate a hearing to await the final adjudication of underlying criminal charges, the parties may agree to a continuance, in which case, the hearing will be continued for up to 60 calendar days. Agreed continuances in excess of 180 days from the date of the original setting of the hearing must be approved by the administrative law judge or the trial board chair, or his or her designee, who shall be a member of the trial board.

(D) If the parties do not agree to a continuance:

(i) for a hearing before a trial board, the continuance may be granted by a majority of the trial board members present at a meeting or hearing at which the motion for continuance is considered; or

(ii) for a hearing before an administrative law judge, the secretary shall request a ruling from the administrative law judge on the motion for continuance.

(4) Exchange of information. At least 10 working days before the hearing, each party shall:

(A) exchange witness lists;

(B) exchange exhibits;

(C) stipulate to undisputed facts;

(D) stipulate to the admissibility of exhibits; and

(E) file with the secretary a position statement that must include:

(i) a statement of the party's position on the issues in the statement of questions;

(ii) a designation of undisputed facts;

(iii) a list of witnesses and the estimated time required for the direct examination of each witness; and

(iv) a list of exhibits.

(5) Request for subpoenas. At least 30 working days before the hearing, each party may file with the secretary, and copy the opposing party, a request for subpoena of witnesses and documents, in accordance with the following:

(A) The request for subpoena of witnesses and documents must include:

(i) the name and address of each witness to be subpoenaed;

(ii) if a witness is a city employee, the name of the employee's department; and

(iii) if documents are being subpoenaed, the specific identification of books, papers, documents, or other tangible things sought to be subpoenaed.

(B) The party requesting the subpoena shall notify the subpoenaed witness of postponements, rescheduling, and appearance times.

(C) The trial board or the administrative law judge has the power to compel the attendance of witnesses and the production of testimony and evidence, to administer oaths, and to punish for contempt in the same manner as provided for municipal judges.

(D) Either party may object to a subpoena request within seven working days after receiving notice of the subpoena request. Objections to subpoenas must be in writing, submitted to the

secretary, and copied to the opposing party, who has three working days after receipt of the objections to respond in writing to the substantive reasons for the objections to the requested subpoenas.

(E) The secretary shall forward the objections and the response to the objections, if any, to the administrative law judge or trial board chair for resolution. If the trial board chair is unavailable, the objections must be ruled upon by his or her designee, who shall be a member of the trial board.

(F) Once the scope of the subpoena is determined by the administrative law judge or trial board chair, or if no objections are filed, each party shall organize and number the responsive information ("released documents") before turning it over to the secretary. The released documents must be provided within the amount of time determined by the administrative law judge or trial board chair or, if no objections are filed, in an amount of time determined by the secretary. The secretary shall release a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.

(G) The individual picking up the released documents must sign for the produced information. The requesting party has three working days to submit, in writing, any objections to the completeness of the released documents. The producing party has three working days to respond, in writing, to the substantive reasons for the requesting party's objections. The secretary shall maintain one complete copy of the released documents, to allow the administrative law judge or trial board chair to fully assess and rule on any objections to the completeness of compliance with the subpoena.

(H) The secretary shall forward the objections and any response to the objections to the administrative law judge or trial board chair for resolution. If the trial board chair is unavailable, the objections shall be ruled upon by his or her designee, who shall be a member of the trial board.

(I) Decisions rendered by the administrative law judge or trial board chair (or his or her designee, if applicable) regarding subpoenas or responsive information are final and are not subject to further appeal.

(J) After all decisions have been rendered by the administrative law judge or trial board chair regarding the scope of documents to be released pursuant to a subpoena, the secretary shall release a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.

(6) Challenge of a trial board member or an administrative law judge.

(A) At least 10 working days before the hearing, a motion to challenge a trial board member or an administrative law judge may be filed with the secretary and served upon all parties.

(B) Within five working days after the date of service as shown on the certificate of service on the motion to challenge a trial board member or an administrative law judge, a response may be filed.

(C) A challenge may not be made after the hearing begins, unless the challenge is based on:

(i) the ineligibility of a trial board member or an administrative law judge to hear the matter; or

(ii) the conduct of a trial board member or an administrative law judge during the hearing.

(D) If a challenged trial board member does not voluntarily withdraw, the trial board, by a unanimous vote, not counting the vote of the challenged member, may remove the member.

(E) If a challenged administrative law judge does not voluntarily withdraw, the administrative municipal judge of the municipal court of record may remove the member.

(F) If a challenge results in withdrawal of a trial board member or an administrative law judge, the hearing may be continued to a date certain.

(G) If a challenge results in withdrawal of a trial board member or an administrative law judge, the secretary shall

promptly designate a replacement and inform all parties of the replacement.

(H) A challenge to a substituted trial board member or administrative law judge must be submitted as soon as possible.

(7) Service of subpoenas.

(A) At least five working days before the hearing, the secretary shall cause all subpoenas to be personally served.

(B) The secretary shall designate a person to deliver the subpoenas and that person shall sign each subpoena stating that the witness was served.

(C) The subpoena of an active city employee may be served through the director of the employee's department.

(8) Computation of time.

(A) In computing any period of time prescribed in this section, the day of the act or event from which the designated period of time begins to run is not included.

(B) The last day of the time period is included, unless it is a Saturday, Sunday, or official holiday observed by the city, in which event the period runs until 5:15 p.m. of the next day that is not a Saturday, Sunday, or official holiday observed by the city.

(C) Except as otherwise specified, time periods will be calculated based on calendar days.

(d) Hearings.

(1) A hearing must be conducted in two phases, as follows:

(A) Phase I.

(i) In Phase I, the trial board, by majority vote, or the administrative law judge shall determine, by a preponderance of the evidence, whether the employee committed any of the alleged rule violations.

(ii) If the trial board, by majority vote, or the administrative law judge determines that the employee committed none of the alleged rule violations, the trial board or administrative law judge may take whatever action is just and equitable, and the hearing will be closed.

(iii) If the trial board, by majority vote, or the administrative law judge determines that the employee committed at least one of the alleged rule violations, the hearing will proceed to Phase II.

(B) Phase II.

(i) In Phase II, the trial board or the administrative law judge shall hear evidence concerning the appropriateness of the discipline imposed for the sustained rule violations.

(ii) The trial board, by majority vote, or the administrative law judge may either sustain, reverse, modify, or amend the disciplinary action as is determined just and equitable, provided that the disciplinary action must be sustained if a reasonable person could have taken the same disciplinary action against the employee.

(iii) The trial board or the administrative law judge may consider only the evidence relating to the violations sustained in Phase I and the employee's previous employment record with the city, but may not consider the employee's subsequent performance with the city.

(2) The appealing employee:

(A) may request the hearing or deliberations, which are usually open to the public, to be closed; and

(B) shall not be compensated for time away from the employee's city position while attending a hearing, unless so ordered by the trial board or the administrative law judge.

(3) The trial board or the administrative law judge may exclude:

(A) redundant, irrelevant, or cumulative evidence;

(B) evidence that is not competent or properly authenticated;

(C) any exhibit not previously exchanged; and

(D) the testimony of a witness not previously identified as a witness.

(4) The secretary shall maintain a record of the hearing and shall, at the city's expense, appoint a court reporter to make a record of the hearing.

(5) The trial board or the administrative law judge will release city employee witnesses as soon as possible to return to city business.

(6) Placing witnesses under the rule.

(A) Upon request by either party, the witnesses on both sides shall be sworn and removed from the hearing room so they cannot hear the testimony as delivered by any other witness in the case.

(B) Witnesses shall be instructed that they are not to converse with each other or with any other person about the case, other than the attorneys in the case.

(7) After the parties have rested, the trial board or the administrative law judge may request a party to produce additional evidence as the trial board or administrative law judge deems necessary to decide the issues before them.

(e) Disposition.

(1) Dismissal. An appeal must be dismissed for, but not limited to, any of the following reasons:

(A) The appealing employee fails to appear in person at the hearing, unless:

(i) good cause for the failure to appear is shown; and

(ii) the city is not unduly prejudiced.

(B) The trial board or the administrative law judge lacks jurisdiction.

(C) The appealing employee fails to pay the amount owed to the administrative law judge prior to the beginning of the hearing.

(2) Board orders.

(A) The disposition of an appeal must be reduced to writing by the secretary and transmitted to the parties within three working days after the trial board or the administrative law judge has announced the ruling. This writing is the order of the trial board or the administrative law judge.

(B) The order is final unless a motion for rehearing is filed within 10 working days after the date on the written order.

(3) Relief. The trial board or the administrative law judge may grant the prevailing party relief that is just and equitable as is consistent with the city charter and other applicable law.

(4) Costs. The trial board or the administrative law judge may not authorize payment of attorney's fees, expenses, or costs or provide payment of damages beyond payment of salary and benefits that would have ordinarily been paid to the appealing employee.

(f) Post-hearing deadlines.

(1) Motion for rehearing.

(A) Within 10 working days after the date on the written order, a motion for rehearing may be filed by either party.

(B) A motion for rehearing may be granted by the trial board or the administrative law judge only if the order:

(i) exceeds the authority of the trial board or the administrative law judge;

(ii) contains provisions impermissible under applicable law;

(iii) is unclear; or

(iv) incorrectly states the disposition of the matter.

(C) A motion for rehearing must be considered by the same trial board or administrative law judge who heard the appeal, except that if any trial board member or the administrative law judge is unavailable, the secretary shall designate a replacement.

(2) Appeals to state district court.

(A) Either party may appeal the order of the trial board or administrative law judge to state district court within one year after:

(i) the date on the last written order, if no rehearing is requested;

(ii) the date on the written order denying the rehearing, if a rehearing is requested and denied; or

(iii) the date on the written order issued after the rehearing, if a rehearing is requested and granted.

(B) The appeal to the district court must be decided upon review of the record of the hearing.

(C) An appeal by the city must be approved by the city manager and the city attorney.

(D) The appealing party shall, at its expense, furnish to the court a copy of the complete hearing record presented to the trial board or the administrative law judge, including but not limited to pleadings, hearing transcripts, exhibits, orders, and all evidence admitted during the hearing.

(E) If the appealing party fails to provide the court with any material required by Paragraph (2)(D) of this subsection, the appeal must be dismissed.

(g) Other matters.

(1) Reserved.

(2) If a court of law rules on an issue involved in the appeal, the order of the trial board