

PERSONNEL POLICY NO. 9 - GRIEVANCES AND APPEALS

9.1 GENERAL POLICY

The Tribe desires that your employment be enjoyable and meaningful. Nevertheless, the Tribe recognizes that misunderstandings and problems do occur. When they arise, you are encouraged to bring the matter to the attention of your Supervisor as soon as possible. Most problems can be resolved simply and fairly, or avoided entirely, if they are dealt with promptly.

If you find you are unable to successfully resolve the problem through informal conflict resolution and discussion, you may have certain "grievance" rights as outlined below.

- a. Grievance rights are accorded to all regular employees who have satisfactorily completed their initial trial period. The person filing a grievance shall be free from restraint, coercion, discrimination, or reprisal.
- b. A Yurok Tribe employee may only file a grievance if:
 - The employee has been demoted, or their salary has been reduced, or,
 - The employee has been suspended; or,
 - The employee has been terminated; or,
 - The employee has been affected by an administrative act that was arbitrary or capricious.
- c. Even in the above circumstance, Yurok Tribe employees may not file a grievance if:
 - They have been adversely affected by a Yurok Tribal Council approved reorganization, program modification or downsizing due to lack of funds; or,
 - The issue underlying the grievance is a charge of discrimination on the basis of race, sex, age, disability or religion (such charges should be directed to the Department Director, Human Resource Director or Executive Director).
- d. An employee may not bypass a required step and proceed with a subsequent one unless the grievance directly involves the person who would normally be the first level of review. In that case the grievance will be immediately submitted to the next level for review. An employee's failure to follow the steps set out in these Grievance Procedures will be considered insubordinate. If an employee is unsure or has questions about the grievance process, they may at any time contact HR Director or Assistant Director.

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9.2 GRIEVANCES AND APPEALS PROCEDURES

The employee must first discuss the grievance with his/her immediate Supervisor. Both parties are required to make a good faith effort to resolve the grievance informally. If the grievance cannot be resolved through informal discussions, the employee may file a grievance by completing a grievance form and submitting it to the Director of Human Resources. A grievance must be filed within ten working days of the notice of suspension, termination or arbitrary/capricious act.

The Director of Human Resources shall refer any appropriate grievances to a Hearing Officer, and inform the appropriate department Director that the grievance has been filed. This department Director would normally be the one who imposed the suspension or request for termination underlying the grievance. (For the purposes of the grievance, this department Director is called the respondent.)

9.2.1 Hearing Officers

Hearing Officers will be appointed from the Personnel Staff or Personnel Committee and is responsible for:

- a. Assembling the Hearing Panel, appointing a Chair of the Panel, and providing them with copies of the grievance and other appropriate documents. A Hearing Panel shall consist of three persons from the list of current regular Yurok Tribe employees.
- b. Making all arrangements for the hearing within fifteen working days of submission of the grievance.
- c. Counseling both the grievant and the respondent concerning the hearing and answering their questions concerning the procedures which will be followed.
- d. Presiding at the hearing.

The Hearing Officer will require each party to submit in advance of the hearing, a written statement of their position, copies of all documents to be produced, a list of witnesses who will be called, the identification of their advisor or spokesperson, if any, and any grounds which a party may have for questioning the fairness or impartiality of the Hearing Officer or any member of the Hearing Panel. Copies of any such materials should be given to the other parties involved. In his/her discretion the Hearing Officer

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may furnish any relevant documents to the panel members in advance of the hearing.

9.2.2 Hearings

Hearings shall be held in private. Either party may request that the Hearing Officer remove any member of the panel on the basis the panel member cannot be fair and impartial regarding the matter or issue. The Hearing Officer shall rule finally on all such challenges. If the Hearing Officer him/herself is challenged, the Human Resources Director shall rule finally concerning the challenge.

The Hearing Officer shall preside and rule finally on all matters of procedure. The grievant has the burden by a preponderance of the evidence to show either (a) that management's actions were based on facts, which are untrue; or (b) that management's actions were arbitrary or capricious in accordance of the law. The order of the hearing is within the discretion of the Hearing Officer, but normally would include, in order:

- A brief opening statement by the grievant.
- A brief opening statement by the respondent.
- The presentation of documentary or testimonial evidence by the grievant. The grievant documents should be marked as, "G-1", "G-2", etc. If witnesses are called, the grievant shall question the witnesses, followed by the respondent, and then the panel members. In the Hearing Officer's discretion each party and the panel may continue to question a witness in turn so long as the new and relevant testimony is being offered. Witnesses will not be allowed in the room where the hearing is taking place except when they are testifying.
- The presentation of documentary or testimonial evidence by the respondent. The respondent's documents should be marked, "R-1", "R-2", etc. The questioning of the respondent's witnesses follows the same procedure as with the grievant, except that the respondent questions their witnesses first, followed by the grievant and then the panel.
- In the Hearing Officer's sole discretion, each party may present further documents or testimony to rebut evidence from the other side.
- A closing argument (not normally to exceed ten minutes) from the grievant.
- A closing argument (not normally to exceed ten minutes) from the respondent.
- A very brief final statement from the grievant.

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The parties may present any relevant written or testimonial evidence. Each party is responsible for arranging for the attendance of their own witnesses, though either party may request the assistance of the Hearing Officer if a witness has refused to come, or if a witness' Supervisor has refused to allow them to attend. All Yurok Tribe employees are required to cooperate in grievance hearings, if their testimony is relevant. Either side may bring one advisor or spokesperson to the hearing. This advisor or spokesperson should not be a potential witness at the hearing, unless they are merely a character witness for one of the parties. The advisor may be anyone, including an attorney. Such advisors are not allowed to participate in the hearing, though they may advise the party for whom they are present. A spokesperson may be any employee from the Yurok Tribe who voluntarily agrees to be the party's spokesperson, and this spokesperson may help present the case. The Hearing Officer has the discretion to impose time limits within which each party must present their case. The Hearing Officer may require the attendance of witnesses or the production of documents other than those presented by the parties.

9.2.3 Hearing Panel

The Hearing Panel shall then deliberate in private. As stated above, the grievant has the burden to show that the department Director's actions were based on facts which were untrue, or that management's actions were unreasonably harsh. In considering these questions, the panel should remember several points.

- a. The grievant has the burden to prove their case by a preponderance of the evidence. By saying that the grievant has the burden of proof, we mean that management does not have to prove that their actions were appropriate; rather, the grievant must prove that they were inappropriate. For the grievant to prove this, their evidence must amount to a "preponderance of the evidence". This phrase simply means that the evidence in favor of a point more convincing than the evidence against it. In other words, if the weight of the evidence tips the scales in favor of the grievant, even slightly, then the evidence does not depend on how many witnesses or documents a side presents, but on how convincing and believable those witnesses and documents are.
- b. A grievant past misconduct may be relevant if it has been documented and forwarded to Human Resources for inclusion in their personnel file.

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- c. While progressive discipline is often appropriate, it is not required. For instance, just because a grievant has not been suspended or even warned, this does not mean that they cannot be discharged.
- d. The panel is not to decide whether they would have handled the situation in question the same way as management did. Rather, they should decide whether the underlying facts are true, and if so, whether the actions taken by management were consistent with policies, and also whether these actions were reasonable under the circumstances. It is inevitable that different Directors will impose different discipline for the same offenses. So long as each Director's decision is reasonable, this does not violate policies, and should not form a basis for recommending that the manager decision be overturned.

The Hearing Panel is charged with making recommendation to the Human Resource Director based on the evidence presented at the hearing. The panel's recommendation shall be based on the findings and opinions of any two members of the panel. If any member disagrees with the recommendation of the panel as a whole, they should explain their dissent in the recommendation. The recommendation must be issued within five working days of the close of the hearing.

The Human Resource Director shall forward the Panel's recommendations, along with his/her own to the Executive Director within five working days. Executive Director may be present at Hearing. The Executive Director shall within five working days rule finally on the matter. If the grievance is against the Executive Director the Tribal Council will issue the final ruling. The Grievant may appeal the decision of the Executive Director to Tribal Council. The Tribal Council may choose to hear the appeal or not. If the Tribal Council chooses not to hear the appeal the decision of the Executive Director is final.