

**POLICY NUMBER:**

APM- 2 - 97

DATE:

August 28, 1997

ISSUED BY:

Edward Marquez

City Manager

# CITY OF MIAMI



REVISIONS

REVISED SECTION

Created

DATE OF REVISION

08/28/97

## ADMINISTRATIVE POLICY

**SUBJECT:**

**NAME CLEARING HEARINGS**

**PURPOSE:** To provide procedures for the notification and conduct of a name-clearing hearing.

**The Policy will be as Follows:**

When a non-permanent City employee (e.g., part-time, temporary, probationary, unclassified) is terminated and the employee contends that, in relation to the termination false statements that are damaging to the employee's reputation have been made public, the procedures described in this policy must be followed by every City department. The purpose of such procedures is to afford the employee<sup>1</sup> an opportunity to clear his/her name by responding to the statements. These procedures will not serve as an appeal of any disciplinary action or to gain reinstatement.

**I Applicability:**

This administrative order shall apply to all terminations of non-permanent status employees. Permanent employees will continue to be covered by Civil Service Rules and labor agreements.

**II When a Hearing Must be Offered:**

A name-clearing hearing must be offered whenever the following three conditions are met: (1) an employee is terminated; (2) the employee contends that stigmatizing statements have been placed in the employee's personnel file or otherwise made public; and (3) the employee asserts that the statements are untrue.

**III Definition of Stigmatizing Statements:**

A name-clearing hearing is not required every time a non-permanent employee is terminated. Such a hearing is required only when any statement relating to the termination "stigmatizes" the employee's reputation, and the employee denies the truth of the statements. A statement is "stigmatizing" if it involves allegations of dishonesty, immorality or other conduct which may damage the employee's reputation among associates and impair his/her ability to obtain other employment. Examples of stigmatizing statements include falsifying records, misappropriating City property or funds, mental instability or statements that the employee is untruthful, untrustworthy, and unethical or is demonstrative of poor judgment, or has committed a crime or other immoral act.

**IV Notice to Employees:**

When an employee is terminated, the department wherein the employee is terminated must notify the employee in writing that a name-clearing hearing will be arranged if the employee requests it. (A sample notification letter for unclassified, part-time, or temporary employees is attached. Notification letters to classified probationary employees should follow the same format used in the attached sample and should also comply with the requirements of Rule 9 of the Civil Service Rules and with the applicable collective bargaining agreement). The employee should sign for his/her copy of the written notification if the notification letter is presented personally. When the notification letter is not presented personally, it must be sent to the employee by certified mail and by regular mail. On the same date that the notification letter is presented or mailed to the employee by the department, the department must provide a copy of the notification letter to the Office of Labor Relations. The department must also present or mail a REQUEST FOR NAME-CLEARING HEARING form (attached) and a copy of this APM (APM-2-97) to the employee at the same time that the notification letter is mailed or presented.

#### **V** Request for Hearing:

A request for a name-clearing hearing must be filed by the employee in writing with the City's Labor Relations Officer within fifteen (15) calendar days from the effective date of the termination of employment. The failure of an employee to request this hearing on a timely basis shall be considered as a waiver of the employee's rights under this administrative policy. The terminated employee requesting a name-clearing hearing must identify (1) the specific statements that he/she contends are false, and (2) the manner in which the false statements were made public.

#### **VI** Payment:

The City will pay for the attendance of a court reporter at the name-clearing hearing. The employee requesting a name-clearing hearing shall be responsible for the cost of any transcript(s) of the proceedings requested by the employee.

#### **VII** Place of Hearing:

The requested name-clearing hearing shall be held at a place designated by the Office of Labor Relations.

#### **VIII** Selection of Hearing Officer:

The hearing officer will be a City of Miami Department Director identified by the City Manager to serve in this capacity. The hearing officer will not be the Director of the Department from which the employee was terminated.

#### **IX** The Hearing:

**A** Upon receipt of an employee's timely request for a name-clearing hearing, the Office of Labor Relations shall schedule a hearing within sixty (60) calendar days. A hearing officer shall preside over these hearings.

**B** The conduct of the hearing shall be informal. The hearing will not consist of or result in the formulation of any conclusions or the reevaluation or nullification of any particular employment action or any recommendations in that regard. The sole purpose of the hearing is to provide an opportunity for an employee to clear his/her name. The employee requesting the name-clearing hearing must provide in writing specific statements the employee contends are false and damaging to the employee's reputation. The employee shall be allowed to present testimony and documents to support the employee's allegations that the statements in question are untrue. In

addition to accepting live testimony, the hearing officer may also accept written statements and other documents which are relevant to the proceeding. The hearing officer shall ensure that a record of the hearing is recorded. The Office of Labor Relations will arrange the attendance of a court reporter at every name-clearing hearing.

**X Conclusion of the Hearing:**

Within thirty (30) calendar days after the hearing, the hearing officer will issue a written report summarizing the evidence presented. The hearing officer's report shall state clearly that the report has no bearing or effect on the employee's status with the City. A copy of the hearing officer's report and a copy of the transcript of the name-clearing proceeding (if the employee provides a copy of such transcript to the Office of Labor Relations) shall be placed in the employee's personnel files located in the Department of Human Resources and in the employee's departmental personnel file and any investigative files on the employee. The hearing officer's report and the transcript where such transcript is provided must be placed in the above-mentioned files immediately.

**XI Statement that Hearing was Held:**

The cover of every file containing such report (and transcript where provided by the employee) must bear the following statement signed by the head of the department maintaining custody of such file:

It is hereby certified that on     (date)    , a name-clearing hearing was held at the request of     (name)    . This file contains a report prepared by the hearing officer who presided over the hearing (and a transcript of the name clearing proceeding).

\_\_\_\_\_

Director, \_\_\_\_\_

Date: \_\_\_\_\_

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**CITY OF MIAMI**

**REQUEST FOR NAME-CLEARING HEARING**

(Please type or print)

1. NAME: \_\_\_\_\_
2. DATE OF TERMINATION: \_\_\_\_\_
3. POSITION OR JOB FROM WHICH YOU WERE TERMINATED: \_\_\_\_\_
4. SPECIFIC STATEMENT(S) YOU





complete the attached REQUEST FOR NAME-CLEARING HEARING form and, within the 15-day period referred to above, submit the completed form to the City of Miami Office of Labor Relations located at 444 S.W. 2<sup>nd</sup> Avenue, Suite 733, Miami, Florida 33130.

At the time you received this letter, and the attached REQUEST FOR NAME-CLEARING HEARING form, you also received a copy of APM-2-97. Please review these documents carefully. The name-clearing hearing is not an appeal of the termination to which this letter refers and will not result in reinstatement to the position from which you were terminated.

Sincerely,

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LBR: 7/97