

#### 14.1 MATTERS WHICH MAY BE APPEALED

- A. A permanent employee may appeal only the following actions:
1. Dismissal;
  2. Demotion for disciplinary reasons;
  3. Reduction in pay for disciplinary reasons;
  4. Suspension;
  5. Termination as set forth in Merit System Rule 11.5 B. through D.
- B. Matters not specifically stated in this Rule cannot be appealed. Employees on initial probation, permanent employees laid off, employees hired under the provisions of the Trainee Program, intermittent employees, and employees who are exempt from the Merit System, as provided in the Merit System Ordinance, may not appeal.

#### 14.2 APPEAL PROCEDURE

##### A. Filing the Appeal

Appeals to the Commission must be filed with the Human Resources Department in writing within ten (10) calendar days of receipt of notice of an appealable action. If all attempts to deliver the notice fail, the right to appeal expires seventeen (17) calendar days from the date of the appealable action. In the absence of good cause, failure to file a timely appeal results in denial of the appeal due to lack of jurisdiction.

1. The appeal shall state the basis of the appeal and the remedy requested. The Appellant's department shall be the Respondent. Human Resources shall serve a copy of the appeal on the Respondent.
2. Respondent may file an answer to the appeal with Human Resources. Human Resources shall send copies to the Appellant and the Commission.
3. Respondent may serve an amended notice of suspension, demotion, reduction in pay, or dismissal prior to the beginning of the appeal hearing. In accordance with Merit System Rule 12.1 B, a pre-action meeting to discuss the specifics of the additional charges shall be held prior to serving the amended notice.

4. The Appellant may submit a written request to Human Resources to withdraw the appeal at any time prior to the decision by the Commission.

B. Hearing Officers/Commission

Appeals may be heard by a Hearing Officer, who shall be a Commission member, or by the Commission, as determined by the Chair, and in accordance with appeal hearing guidelines adopted by the Commission.

C. Time for Hearing

Within twenty (20) calendar days after receiving the appeal, the Commission shall set a date for a hearing of the appeal.

D. Notice of Hearing; Continuance

1. Written notice of the time, date, place of hearing and the name of the Hearing Officer, if applicable, shall be mailed by Human Resources to the Appellant and Respondent at least fourteen (14) calendar days before the date of such hearing.
2. Either Respondent or Appellant may request in writing that a hearing set pursuant to these Rules be continued.
3. Failure to request a continuance in conformance with these Rules, and subsequent failure by either party to appear at the time and place set for hearing, may result in dismissal of the case upon motion of either party, or on motion of the Hearing Officer/Commission.
4. A hearing may be continued by the Hearing Officer or, if the hearing is to be conducted by the Commission, by the Chair or designee.

E. Nature of Hearing

1. Each hearing shall be held pursuant to ARS §38-431 and ARS §11-356 and in accordance with appeal hearing guidelines adopted by the Commission. The technical rules of evidence and court procedure shall not apply to the proceedings, except that irrelevant, immaterial, incompetent, or unduly repetitious evidence, or evidence protected by the rules of privilege recognized by law, may be excluded.

2. All testimony at the hearings shall be recorded manually or by mechanical or electronic device. The Commission shall pay all charges incurred in connection with the presence of a court reporter or the utilization of mechanical or electronic devices, excluding, however, the costs of the preparation of all or any part of any transcript. The cost of a copy or copies of any such transcription shall be paid by the party or parties ordering the same.
3. In the event there is a dispute as to the Commission's jurisdiction to hear the appeal, the Commission shall decide the jurisdiction issue prior to hearing the appeal.
4. The Commission may request the Chair of the Board of Supervisors to issue subpoenas to compel attendance of any person and the production of any books, papers, or any other evidence relating to any investigation or hearing authorized by these Rules in accordance with the power of the Board pursuant to ARS §11-218. Pursuant to ARS § 12-2212, any member of the Commission may issue subpoenas to compel the attendance of witnesses and/or the production of documentary evidence. In the event that any person fails to appear and/or produce a document in response to said subpoena, any member of the Commission may, by affidavit setting forth the facts, apply to Superior Court for relief.
5. Upon the motion of any Appellant or Respondent, any witnesses not at the time under examination may be excluded from the hearing room. The Appellant, Respondent, their attorneys, or other representatives, shall not be excluded.
6. Witnesses other than employees, who are subpoenaed to attend a hearing or investigation, are entitled to the same fee as is allowed witnesses in civil cases of the State of Arizona. If a witness is subpoenaed by any Hearing Officer on his/her own motion, fees and mileage may be paid from funds of the Commission upon presentation of a duly executed claim. If a witness is subpoenaed upon request of the Appellant or Respondent, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to County employees subpoenaed as witnesses shall be limited to payment of mileage, if appropriate, by the party requesting the witness.

### 14.3 DEPOSITIONS; DISCOVERY

#### A. Depositions

If a witness does not reside within Pima County or within one hundred (100) miles of the place where the hearing or investigation is to be held, is out of state, or is too infirm to attend the hearing or investigation, any party, at his/her own expense, may cause a deposition to be taken. If the presence of a witness cannot be procured at the time of the hearing or investigation, the deposition may be used in evidence by either party or the Commission.

#### B. Discovery by Appellant

Upon Appellant's written request, received by the Respondent not less than seven (7) business days before the hearing, with a copy of said request to the Commission, any Appellant in any appeal before the Commission shall be entitled to receive, subject to payment of reasonable expenses, not less than four (4) business days before the hearing, copies of the following documents:

1. The Appellant's entire personnel file, including any personnel file or files retained by offices other than Human Resources;
2. All memoranda, writings, other documents or printed or recorded materials prepared by or for the Respondent as a result of the events underlying the disciplinary action which is the subject of the appeal, except those which are protected by privilege. In the event any such memoranda, writings, or other documents are claimed by the Respondent to be privileged, the Respondent shall identify each such memorandum, writing, or other document, and inform the Commission and the Appellant;
3. Any and all documents which the Respondent intends to utilize as an exhibit at the hearing.

#### C. Discovery by Respondent

Upon Respondent's written request, received by the Appellant not less than seven (7) business days before the hearing, with a copy of said request to the Commission, any Respondent in any appeal before the Commission shall be entitled to receive, subject to payment of reasonable costs, not less than four (4) business days before the hearing, copies of the following documents:

1. All memoranda, writings, or other documents or printed or recorded materials prepared by or for the Appellant as a result of the events

underlying the disciplinary action and pending appeal, except those which are protected by privilege. In the event any such memoranda, writings, or other documents are claimed by the Appellant to be privileged, the Appellant shall identify each such memorandum, writing, or other document, and inform the Commission and the Respondent.

2. Any and all documents which the Appellant intends to utilize as exhibits at the hearing.

D. Non-Compliance

Failure to comply with the discovery requirements may result in postponement of the hearing and/or exclusion of evidence.

E. Pre-hearing Conference

After the discovery called for in sections B. and C. above, but not less than two (2) business days before the hearing, the parties shall meet to identify witnesses and exhibits, agree to admissibility of exhibits, to stipulate to those facts not in dispute, and to discuss possible settlement. In the absence of good cause, the failure by either party to cooperate in such a conference may result in the exclusion of evidence, the cancellation of the hearing by the Hearing Officer, chair, the chair's designee, or Commission, and/or the granting of other relief by the hearing officer, chair, the chair's designee, or Commission, including the dismissal or granting of the appeal. Any decisions by the hearing officer, chair or chair's designee must be written and served within ten (10) business days and shall advise the parties of the right to file a written request for reconsideration by the commission, within ten (10) business days. If a written request for reconsideration is timely filed, the commission shall consider the matter and issue a written decision affirming or overruling the decision of the hearing officer, chair, or designee.

14.4 Decision by Commission

A. Motion to Dismiss

1. An appeal may be dismissed on motion of respondent for good cause including:
  - a. The action taken against the appellant is not appealable under section 14.1(A).
  - b. The appellant has no right to appeal under section 14.1(B).

- c. The appellant did not timely file the appeal under section 14.2(A).
    - d. The appellant did not cooperate in the pre-hearing conference under section 14.3(E).
    - e. The respondent has voluntarily withdrawn the disciplinary action.
    - f. The commission otherwise lacks jurisdiction to hear the appeal.
  2. The appellant shall have ten (10) business days after mailing of the motion to respond. After the appellant has submitted a response, or if, after ten (10) business days no response has been filed, the motion to dismiss may be granted by the hearing officer, or, if the hearing is to be conducted by the commission, by the chair or designee. The hearing officer, chair, or designee shall submit a written decision on the motion to dismiss and serve the decision on all parties. The written decision must advise the parties of the right to request, in writing, within ten (10) business days, reconsideration by the commission.
  3. Within ten (10) business days of mailing of the decision, either appellant or respondent may request reconsideration by the commission. If the motion to dismiss is granted, and no request for reconsideration is timely filed, the decision of the hearing officer, chair, or designee shall become a final decision of the commission.
  4. If a party timely files a request for reconsideration, the commission shall consider the motion to dismiss and shall issue a written decision affirming or overruling the decision of the hearing officer, chair, or designee.
  5. The commission shall not consider the merits of the appeal until the written decision on the motion to dismiss is final.
- B. If, after the hearing, the Commission determines that there was just cause for the action imposed, then the order shall be affirmed. If the Commission determines that there was not just cause for the action taken either: (1) because some or all of the charges were not proven to the satisfaction of the Commission; and/or (2) whether or not all of the charges were proven, the action imposed was, in the sole discretion of the Commission, too severe, then the order shall be revoked or modified. The Commission shall have the power to direct appropriate remedial action and shall do so after

taking into consideration just and equitable relief to the employee in the best interest of the County and the public.

C. Deductions from Back Pay Award

If an employee has been dismissed or suspended without pay, and, upon appeal, the Commission revokes or modifies said disciplinary order, and said employee is ordered reinstated with back pay, any interim earnings or amounts earnable with reasonable diligence, including unemployment compensation, shall be deducted from the back pay award. The back pay award, reduced by the amounts specified herein, shall be determined at a hearing before the Commission.

D. Compliance of Appointing Authority

Within ten (10) business days of a notice of decision by the Commission revoking or modifying any order of disciplinary action, the Appointing Authority shall comply with the Commission's decision, and shall render a report to Human Resources.

E. Judicial Review

The decisions of the Commission shall be final and shall be subject to judicial review only as provided in ARS § 12-901 *et seq.* The decision of the Commission shall not be deemed final for purposes of initiating judicial review under ARS § 12-901 *et seq.* until an order as to the amount of back pay, if any, has been duly made.