



RULE 9 - APPEAL FROM DISCIPLINARY ACTIONS

9.1 EMPLOYEE ACTIONS

A classified, regular status employee may appeal an action on the grounds that the disciplinary action was arbitrary, capricious or without factual basis. Any action appealed under previous Merit System Rules will follow the rules in effect at the time the appeal was filed.

A. Actions Which May be Appealed:

- suspension
- involuntary demotion
- dismissal

B. Actions Which May Not Be Appealed

1. Actions involving:
 - reallocation or removal of County equipment/vehicles
 - compensation
 - classification schedules
 - work schedules
 - classes of positions
 - personnel records
 - performance appraisal
 - verbal counseling
 - employee counseling statement
 - letter of reprimand
 - special observation periods
 - layoff
 - inability to perform duties
 - work location
2. Actions that are grievable under the formal grievance procedure (Merit System Rule 8.2).
3. Suspension or involuntary demotion in lieu of termination in which the employee has voluntarily forfeited appeal rights in writing.
4. Employees on probation of any type do not have appeal rights.
5. Final decision of the Merit Commission on a appeal hearing.



9.2 EMPLOYEE APPEAL PROCEDURE

Every appeal must be filed, in writing, through the Human Resources Director within ten (10) calendar days of service of written notification of suspension, involuntary demotion or dismissal. Service shall be considered complete when the notice is delivered personally, transmitted by email or fax or placed in first class mail addressed to the respondent's last known address. The appeal shall state in detail why the employee believes the decision was arbitrary, capricious or without factual basis. The appeal must state all relevant facts, the identity of all persons or departments involved in the matter and the remedy requested. The Human Resources Director shall furnish a copy of the appeal to all respondents.

Should the appellant wish to withdraw his/her appeal, the appellant may submit a written request to the Hearing Officer or Merit Commission through the Human Resources Director to withdraw the appeal at any time prior to the decision by the Merit Commission or hearing by the assigned Hearing Officer.

9.3 EMPLOYEE APPEAL ASSIGNED TO HEARING OFFICER

The employee appeal shall be assigned to a Hearing Officer for a scheduled hearing within twenty (20) calendar days of receipt of the employee appeal. Hearing Officers shall be qualified by training and/or knowledge of merit system principles to hear appeals and conduct hearings. The assigned Hearing Officer shall be the representative of the Merit Commission with full authority to grant or refuse extensions of time, to set such proceedings for hearing, to conduct the hearing, issue subpoenas and to take any action in connection with the proceedings which the Merit Commission itself is authorized to take by law or by these Merit System Rules.

9.4 HEARING

A. Time for Hearing:

The hearing on an appeal shall commence within twenty (20) calendar days from receipt by the Human Resources Department unless the time is extended by mutual agreement, or for other good cause as determined by the Hearing Officer. The parties shall agree upon the anticipated length of the hearing in advance and schedule the initial hearing date(s) accordingly.

B. Notice of Hearing:

Written notice of the time, date, and place of hearing shall be served by the Human Resources Director to the appellant, counsel for the appellant, the respondent and County Attorney's Office at least seven (7) calendar days before the date of such hearing. Cochise County must receive written notification from appellant giving full release for all correspondence to be sent directly to counsel. Service shall be considered complete when the notice is delivered personally, transmitted by email or fax or placed in first class mail addressed to the appellant's last known address.



C. Failure to appear:

Failure to appear at the time and place set for a hearing, unless a continuance has been granted, may result in dismissal of the case or other appropriate remedy on motion of the party in attendance and/or as determined by the Hearing Officer.

D. Rescheduling of a Hearing:

The respondent or appellant may request that a hearing, set pursuant to these Merit System Rules, be rescheduled to a different date. Such a request shall be submitted in writing to the Hearing Officer through the Human Resources Director with a copy to the other party and counsel, at least five (5) calendar days prior to the date set for the hearing. The Hearing Officer may, for good cause, grant a rescheduling for a hearing. The rescheduled date shall be within ten (10) calendar days to the previously scheduled hearing date, unless mutually agreed to by the parties.

E. Nature of Hearing:

Each hearing shall be noticed pursuant to A.R.S. §38-431 et seq., and shall be held in open session. The appellant or the respondent may represent themselves, or may employ legal representation, or may have other representation of their own choice. The hearing shall be informal, hearsay shall be permitted, and technical rules of evidence 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. The parties may submit stipulations (facts that are undisputed by either party), in advance of the hearing, to the Human Resources Department. Objections to evidence must be made orally prior to the Hearing Officer's acceptance of evidence or such objections shall be deemed to be waived. The parties may stipulate to have the matter submitted on the record as opposed to providing oral testimony at the hearing. All testimony at the hearings shall be recorded. Parties requesting a transcript of the hearing shall bear the costs.

As provided by Merit System Rule 9.5, the assigned Hearing Officer shall prepare findings of fact and conclusions of law and a recommended decision on the employee appeal. The decision shall be filed through the Human Resources Director to the Merit Commission within ten (10) working days from the conclusion of the hearing. Copies of the findings of fact and conclusions of law shall be provided to the appellant, appellant's counsel, the respondent and the County Attorney's Office. Cochise County must receive written notification from appellant giving full release for all correspondence to be sent directly to counsel.



All subsequent motions or any objections to the findings of fact and conclusions of law shall be filed in writing to the Merit Commission through the Human Resources Director no later than five (5) working days following receipt of the findings of fact and conclusions of law. Copies of motions and objections must be provided to the opposing party and its counsel. The opposing party may respond to the motions or objections within ten (10) working days of receipt of the motions or objections. Any motions or objections received outside of the required time frame shall not be accepted.

Motions and/or objections may be heard by the Merit Commission or by the assigned Hearing Officer at the sole discretion of the Chairman of the Merit Commission.

F. Power of Subpoena:

The Hearing Officer on behalf of the Merit Commission, may 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 Merit System Rules in accordance with the power of the Merit Commission pursuant to A.R.S. §11-354 and 12-2212(B).

G. Exclusion of Witnesses:

At the request of either party, the assigned Hearing Officer shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of (1) a party or (2) an officer or employee of a party designated as a representative, or (3) a person whose presence is shown by a party to be essential to the presentation of the case.

H. Witness Fees:

Witnesses, other than County employees, who are subpoenaed to attend a hearing are entitled to the same fee as is allowed witnesses in civil cases of the State of Arizona. If a witness is subpoenaed by the Hearing Officer on behalf of the Merit Commission on its own motion, fees and mileage may be paid from funds of Cochise County 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 County authorized mileage, if appropriate, by the party requesting the witness.

I. Deposition:

If the presence of a witness at the scheduled hearing cannot be arranged, either party, at the party's own expense may arrange a deposition to be taken. The deposition may be used in evidence by either party or the Hearing Officer to the same extent that the witness would have been allowed to testify in the hearing.



J. Continuance of a Hearing:

1. The respondent or appellant may request to extend the time of any continuance by mutual agreement. The Hearing Officer has full authority to grant or refuse a request for an extension of time. In addition, the Hearing Officer may extend the continuance for any length of time necessary to avoid conflicts with other obligations.
2. If the hearing is not concluded at the end of the day set for hearing and no continuance date has previously been established, the assigned Hearing Officer shall set a date for continuance of the hearing that shall be no more than ten (10) working days thereafter. If the parties are unable to mutually agree on a continuance date within that time frame, the assigned Hearing Officer shall set a date for continuance of the hearing.

K. Withdrawal of an Appeal:

The appellant may submit a written request to the Hearing Officer through the Human Resources Director to withdraw the appeal at any time prior to the decision by the Merit Commission or assigned Hearing Officer.

9.5 PROPOSED FINDINGS OF FACT AND DECISION OF THE HEARING OFFICER

The Hearing Officer shall prepare proposed findings of fact, conclusions of law and a decision on the employee appeal. The decision from the Hearing Officer shall be filed through the Human Resources Director to the Merit Commission within ten (10) working days from the conclusion of the hearing.

A. The formal finding of facts and conclusions of law submitted by the parties may include:

1. a ruling upon each such finding proposed by the appellant and the respondent; and/or
2. prepared findings which the assigned Hearing Officer may adopt as submitted.

B. The Hearing Officer may choose to:

1. adopt his or her own findings, or
2. accept the findings of one of the parties in its entirety, or
3. adopt a compilation of findings from the submissions of his or her own findings or the parties' findings.

C. If after the hearing, the Hearing Officer determines that suspension without pay, demotion or dismissal action from which the appeal was taken was arbitrary, capricious or without factual basis or that evidence for the action is insufficient or does not exist, the Hearing Officer shall recommend that the appeal be sustained.



After taking into consideration just and equitable relief to the appellant and considering the best interests of the County and the public, the Hearing Officer may recommend to the Merit Commission to reinstate the appellant, with or without back pay, and in such amounts of back pay deemed appropriate under the circumstances.

Otherwise, the Hearing Officer shall render a recommendation that the appellant's appeal be denied. All recommended decisions by the Hearing Officer are subject to Merit Commission review and action before becoming final.

9.6 MERIT COMMISSION REVIEW

The Human Resources Director shall send a copy of the Hearing Officer's recommendation, the formal finding of facts and conclusions of law, and any exhibits or other submitted documentation from the appeal hearing to each Merit Commission member. Merit Commission members may request that the Human Resources Director make an audio recording of the appeal hearing available for review. Each Merit Commission member will review the Hearing Officer's decision and any of the additional materials provided to them.

Within ten (10) calendar days of the receipt of Hearing Officers response of formal finding of facts and conclusions of law the Human Resources Director will schedule a meeting with the Hearing Officer and the Merit Commission members to review the formal finding of facts and conclusions of law that the Hearing Officer used to render his decision. The Merit Commission will meet in open session unless there is a motion to meet in executive session. The Merit Commission shall render a decision to:

- accept the Hearing Officer's recommended decision by a majority quorum of the Merit Commission members; the Merit Commission's decision is final; or
- reject the Hearing Officer's recommended decision by a majority quorum of the Merit Commission members. In this event, the Merit Commission would render their own decision.

If a quorum of the Merit Commission members is not present, the meeting shall be rescheduled by the Human Resources Director within ten (10) working days of the receipt of the Hearing Officer's decision, unless extended by mutual agreement of the parties for good cause not to exceed an additional twenty (20) working days.

If no quorum can be gathered within twenty (20) working days, the recommendation of the Hearing Officer shall be forwarded to the County Administrator for final determination.

9.7 FINAL DECISION OF MERIT COMMISSION AND ORDER

Within thirty (30) working days from the conclusion of the hearing, the Merit Commission shall issue an order of the final decision of the hearing. A copy of the order shall be sent by certified mail to the appellant, counsel of the appellant and to the respondent at the addresses given at the hearing or to a representative designated to receive same.



The Merit Commission may authorize the Chairman of the Merit Commission or the Human Resources Director to sign the written order on behalf of the Merit Commission.

The recommendations of the Hearing Officer and the decision the Merit Commission shall be final, cannot be further appealed internally and shall be subject only to administrative review as provided in A.R.S. § 12-901, et seq.

9.8 IMPLEMENTATION OF THE ORDER

In consultation with the Human Resources Department, the Department Director of the appellant shall take action as directed by the order of the Merit Commission within ten (10) working days of the order.