

RULE 10 - APPEALS

10.01 MATTERS WHICH MAY BE APPEALED

A regular employee who is suspended, involuntarily demoted, dismissed, and to the limited extent provided by the Resolution and Rules, separated by a reduction in force may appeal to the Commission.

10.02 APPEAL

- A. The appeal shall be in writing and filed with the Director or designee, as ex officio Clerk of the Commission, not later than ten business days following the date of personal delivery or the mailing, via certified mail, of the final decision of the appointing authority. The appeal shall be considered filed when received by the Director.
- B. The appeal shall state the facts upon which it is based and the action requested of the Commission. The appeal shall provide in sufficient detail the necessary facts and identities of all persons or departments concerned in a manner that the Commission may understand the nature of the situation and appeal. Unless the appeal names some other respondent, the appointing authority who initiated the appealable action shall be considered the respondent. A copy of such appeal shall be forwarded by the Director to the appointing authority of the employee and to the Commission.

10.03 ANSWER

No answer to the appeal is required. If an answer is filed prior to the hearing, a copy thereof shall be sent by the Director or hearing officer to the appellant. If no answer is filed, every relevant and material allegation of the appeal is in issue, but in any case, irrelevant and immaterial issues may be excluded.

10.04 HEARING OFFICERS

An appeal may be assigned by the Commission or its chairperson to a hearing officer for hearing. Hearing officers assigned shall be individuals who have training and knowledge of merit system principles. When appeals are assigned to hearing officers, they shall be the authorized representative of the Commission and are fully authorized and empowered to grant or refuse extensions of time, to set such proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings which the Commission itself is authorized to take by law or by these Rules other than issuing the final findings of fact, conclusions of law and order. No assignment of an appeal to a hearing officer shall preclude the Commission or its chairperson from withdrawing such assignments and conducting the hearing itself or from reassigning an appeal to another hearing officer. The employee or Appointing Authority may request a change of hearing officer. On the first request of a party, the request shall be granted. All other requests, including subsequent requests may be granted only upon a showing that a fair and impartial hearing cannot be obtained due to the prejudice so the assigned hearing officer. The Commission shall decide whether a showing of prejudice has been made.

10.05 TIME FOR HEARING

Every hearing shall be scheduled to commence within 20 calendar days from receipt of an appeal by the Commission unless the time is extended upon mutual consent of the parties or upon good cause shown to the assigned hearing officer.

10.06 NOTICE OF HEARING

Written notice of the time, date, place of the initial hearing of an appeal and the name of the hearing officer, if any, shall be served by the Director on the appellant and the respondent at least seven calendar days before the date of such hearing. This notice shall be delivered personally or by certified mail.

10.07 NATURE OF HEARING

Hearings shall be closed to the public, unless the appellant requests an open hearing. The appellant may appear personally, produce evidence, or be represented by legal counsel, or a lay representative, of his or her choosing. The hearing shall be informal 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. All testimony at the hearing shall be recorded manually or by recording device and becomes public information at the conclusion of taking testimony.

10.08 EXCLUSION OF WITNESSES

Upon the motion of any appellant or respondent, the hearing officer may exclude from the hearing room any witnesses not at the time under examination; parties to the proceedings, or their attorneys or other person representing them, shall not be excluded.

10.09 DISTRICT EMPLOYEES CALLED AS WITNESSES

District employees called as witnesses to attend a hearing shall be paid their base pay rate for the time spent.

10.10 WITNESS FEES FOR OTHER THAN DISTRICT EMPLOYEES

Witnesses, other than employees, when subpoenaed to attend a hearing are entitled to the same fee as is allowed witnesses in civil cases in courts of record. If a witness is subpoenaed by the hearing officer, fees and mileage may be paid upon presentation of a duly executed claim against the District. 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.

10.11 DEPOSITIONS

If a witness does not reside within the District or within 100 miles of the place where the hearing is to be held, is out of the state, or is too infirm to attend the hearing, parties thereto at their own expense may cause a deposition to be taken in compliance with the applicable provision of the state rules of civil procedure. If the presence of a witness cannot be procured at the time of hearing, the deposition may be used in evidence by either party or the Commission.

10.12 DUTIES OF THE HEARING OFFICER

At the conclusion of the hearing, hearing officers shall prepare proposed findings of fact and conclusions of law in a form acceptable to the Commission. A copy of the proposed findings and conclusions shall be filed by the hearing officer with the Commission within 35 days of the case being submitted for decision. The hearing officer may be requested to be present during the consideration of the case by the Commission and, if requested, shall assist and advise the Commission.

10.13 CONTINUANCES

Requests for continuances shall be granted by the hearing officer only if compelling cause can be demonstrated. Each side may request and be granted one continuance due to calendaring conflicts.

10.14 FILING OF WRITTEN OBJECTIONS

Both appellant and respondent shall receive copies of the findings of fact, conclusions of law and recommendations of the hearing officer. The parties shall have ten days from receipt of the hearing officer's report to file written objections (not post-hearing evidence) to the hearing officer's report. A copy of the written objections shall be provided to the parties.

10.15 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Commission shall, upon receipt of the hearing officer's report and any written objections, make written findings of fact, conclusions of law and issue an order as soon as practicable at a scheduled Commission meeting. A copy shall be sent by certified mail to the appellant and the respondent at the addresses given at the hearing or to a representative designated to receive same, or hand delivered.

10.16 WITHDRAWAL OF AN APPEAL

The appellant may submit a written request to withdraw an appeal at any time prior to the decision by the Commission.

10.17 DECISION BY COMMISSION

A majority of the Commission members present at the meeting may adopt the hearing officer's report in its entirety, or modify it, or may itself decide the case upon the record, with or without taking additional evidence. If, after the hearing, a majority of the Commission members present at the meeting where the vote is taken, determine that the action appealed from was arbitrary or taken without reasonable cause, the appeal shall be sustained; otherwise the appeal shall be dismissed. The Commission shall have the power to determine the amount of back wages and leave accruals, where appropriate, and shall do so after taking into consideration just and equitable relief to the employee and the best interests and effectiveness of the District service.

10.18 COMPLIANCE OF APPOINTING AUTHORITY

- A. In the event the Commission orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay for such period and in such amounts as the Commission deems proper under the circumstances giving due consideration, among other things, to any time delays requested by the appellant throughout the course of the appeal.
- B. The findings and decisions of the Commission shall be final and shall be subject only to administrative review as provided in ARS § 12-901 et seq.
- C. The appointing authority has 35 days from the date of the decision of the Commission to either file for an administrative review or to take such measures as are necessary to comply with the decision of the Commission.