

RULE 13 - Grievance and Appeal Procedure

13.1 General

- A. If an employee complaint of unlawful discrimination or harassment based upon religious affiliation, race, national origin, age, sex, handicapped or veteran's status is not resolved through the Personnel Policy 01.04, Unlawful Harassment, the employee may file a grievance with the Commission.
- B. If an employee complaint alleges improper suspension, demotion, reduction in pay, or dismissal on any grounds including alleged unlawful discrimination, the Appeal Process shall be used.

13.2 Grievance Procedure

- A. Within ten (10) calendar days after the employee has been informed of the remedial action taken in response to an allegation of unlawful harassment or discrimination filed under Personnel Policy & Procedure # 01.04, the employee may grieve the action by requesting a review of the determination by the Pinal County Employee's Merit System Commission. The employee must request the review and relief requested on the Pinal County Grievance form and submit it to the Director. The Commission shall designate one of its members to investigate and hear the complaint and provide the commission with a report. The commission shall review the report on the complaint and issue a final determination in writing upholding or reversing the report. The Director shall furnish a notice of the final determination to the employee and the Appointing Authority within ten (10) calendar days of the determination by the Commission.
- B. The time requirements set forth for complaints in these Rules are mandatory and may not be waived or extended. If the Appointing Authority fails to meet the time requirements, the employee has the right to take the grievance to the next step. If the employee fails to meet the time requirements, the grievance shall be considered withdrawn and no further action will be taken by the Appointing Authority or the Commission. In the event the prescribed deadline falls on a non-working day, the deadline shall be 5:00 p.m. of the next regularly scheduled working day of the Human Resources Department.

13.3 Appeals

A. Matters That May be Appealed

- 1. A Regular Status employee, except as otherwise provided in these Rules, may Appeal an action resulting in dismissal, demotion, reduction in pay, or suspension on any grounds including alleged unlawful discrimination. Within ten (10) calendar days of receipt of written notice of the action Respondent may serve an amended notice of disciplinary suspension, demotion, or dismissal prior to the beginning of the Appeal hearing.
- 2. Matters not specifically stated in this Rule cannot be appealed.

13.4 Appeal Procedure

- A. **Filing the Appeal.** Appeals to the Commission must be filed with the Director in writing within ten (10) calendar days of the receipt of written notice of demotion, disciplinary suspension, or termination. In the event the prescribed deadline falls on a non-working day, the deadline shall be 5:00 p.m. of the next regularly scheduled working day of the Human Resources Department. Failure to file a timely Appeal is a jurisdictional defect and the Commission will not hear such Appeal. The Appeal shall state the facts upon which it is based and the remedy requested. Within 10 days of the hearing, or at the time the names of witnesses are submitted for subpoena, the appellant shall state the reason each witness is being called and the testimony being offered. The Appellant's Appointing Authority shall be considered the Respondent. The Director shall forward a copy of the appeal to the Respondent.

B. **Initial Determination of Jurisdiction.** The Director, in conjunction with appointed counsel for the merit commission, shall make an initial determination of whether or not the Commission has jurisdiction over the appeal under these rules.

1. If it is determined by the Director that the Commission does not have jurisdiction the Director shall so notify the employee in writing.

2. If it is determined that the Commission does have jurisdiction the Hearing shall be scheduled in accordance with these rules.

Any party disputing this initial determination of jurisdiction must file written notification with the Director within ten (10) calendar days of receipt of the notice from the Director. The dispute shall be heard in accordance with Rule 13.4(l)(2).

C. **Answer to Appeal.** The Respondent need file no answer to the Appeal. If the answer is filed prior to the hearing, the Director shall send a copy to the Appellant.

D. **Hearing Officers.** The Commission or its chair may assign appeals to a Commission member who shall be the Hearing Officer. When an Appeal is so assigned, the Hearing Officer shall be the authorized representative of the Commission and is fully empowered to grant or refuse extensions of time, to set the proceedings for hearings, to conduct the hearing, and to take action in connection with the proceedings which the Commission itself is authorized to take by law or by these Rules other than making the final findings and decisions. No assignment of an Appeal to a Hearing Officer shall preclude the Commission or its chair from withdrawing it and conducting the hearing itself or from reassigning an Appeal to another Hearing Officer. The Hearing Officer shall prepare and submit a Hearing Officer's report. Said report shall be submitted to the Director for transmittal to the Commission not less than fifteen (15) working days prior to the Commission meeting during which action on the Appeal is to be taken. Copies of the Hearing Officer's report shall, upon receipt by the Director, be mailed to all members of the Commission and to the employee and the Appointing Authority, and their respective representatives. Written objections to the Hearing Officer's report may be submitted no less than five (5) working days prior to the Commission meeting. The Commission may, at its discretion, take further testimony or hear arguments at the Commission meeting.

E. **Time for Hearing.** Within twenty (20) calendar days of receipt of the Appeal, the Director shall set a date for a hearing of the Appeal.

F. **Notice of Hearing.** Written notice of the time, date, place of hearing, and the name of the Hearing Officer, may be mailed or delivered personally by the Director to the Appellant and the Respondent. If the notice is mailed it shall be mailed at least ten (10) calendar days before the date of such hearing. If this notice is delivered personally, written acknowledgment of the time of receipt by the employee shall be obtained or verified.

G. **Continuance of Hearing**

1. Either Respondent or appellant may request that a hearing set pursuant to these Rules be continued. Such a request must be submitted to the Clerk of the Commission, in writing five (5) calendar days prior to the date set for the hearing. The Clerk of the Commission must send copies to all concerned parties, together with an Order for Continuance to be signed by a member of the Commission so designated by the Commission to sign such orders.

2. 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 shall be grounds for dismissal of the case upon motion of either party or on motion to the Commission or to the Hearing Officer.

H. **Place of Hearing.** Appeals shall be heard in Florence, unless a request is filed to have the Appeal heard in another location within the County. Both parties and the Hearing Officer or Commission must agree to such a request.

I. **Nature of Hearing**

1. Each hearing shall be held pursuant to A.R.S. § 38-431 and shall be open unless the Commission determines there is good cause to close the hearing pursuant to A.R.S. § 11-356(E). Any party may represent him\herself or be represented by legal counsel. 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 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 party or parties ordering the transcription shall pay the cost of a copy or copies of any such transcription.
2. On any Appeal hearing, in the event that there is a dispute as to the jurisdiction of the Commission to hear said case, the Hearing Officer or the Commission shall first take evidence with respect to said jurisdictional question. If the Hearing Officer or the Commission concludes that the Commission has jurisdiction to hear the Appeal, then they shall proceed to take evidence on all remaining issues. In the event that the Hearing Officer or the Commission concludes that the Commission is without jurisdiction, then they shall terminate said hearing and take no further evidence.

J. **Power of Subpoena.** The Hearing Officer or Commission may request the chairman 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 A.R.S. § 11-218.

1. Discovery: Apart from the requirements of A.R.S. § 11-218, each party may provide discovery to a requesting party upon a written request of the requesting party made not less than ten (10) business days before the date set for hearing, with a copy of the discovery request provided to the Chair or assigned Hearing Officer. A party shall provide the requested discovery to the requestor within five (5) business days of receipt of the request. Discovery includes the following documents:
 - a. The Appellant's entire personnel file, including any personnel file or files retained by offices other than the County Human Resources Department;
 - b. All memoranda, writings, other documents or printed or recorded materials prepared by or for the Appellant or 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 a party to be privileged, the party claiming privilege shall identify each such memorandum, writing, or other document, and inform the Chair, assigned Hearing Officer, and the other party;
 - c. Any and all documents which the Appellant or Respondent intends to utilize as an exhibit at the hearing, subject to the rules of relevance and privilege set forth above.
 - d. If either the Appellant or Respondent offers as evidence any document not previously provided to the other party, the Chair or assigned Hearing Officer may exclude the evidence or postpone the hearing to give the other party an opportunity to review the document.

- K. **Exclusion of Witnesses.** Upon the motion of any Appellant or Respondent, the Hearing Officer or Commission may exclude from the hearing room any witnesses not at the time under examination but a party to the proceedings. The Appellant, Respondent, their attorneys or other representatives, shall not be excluded.
- L. **Witness Fees.** 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 any Hearing Officer on his/her own motion subpoenas a witness, 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 requesting party shall pay the fees and mileage of the witness. Reimbursements to County employees subpoenaed as witnesses shall be limited to payment of mileage, if appropriate, by the party requesting the witness.
- M. **Depositions.** If a witness does not reside within Pinal 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 its 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, either party or the Commission may use the deposition in evidence.
- N. **Proposed Findings of Fact.** Both appellant and Respondent shall have the right to file with the Commission or its Hearing Office, at any time prior to the hearing, proposed findings of fact. The Commission or its Hearing Officer shall include a ruling upon findings of fact proposed by any party in its findings of fact.
- O. **Findings of Fact; Conclusions of Law; and Order.** The Commission shall make written findings of fact, conclusions of law and an order within twenty (20) working days from the conclusion of the hearing. Copies shall be sent to the Appellant and Respondent at their addresses listed in the commission records or to their legal counsel, if any. In the event the Commission orders the Appellant to be reinstated, it may also award back pay for such periods and in such amounts, as the Commission deems appropriate under the circumstances.
- P. **Withdrawal of an Appeal.** The Appellant may submit a written request to withdraw the Appeal at any time prior to the decision by the commission. Such request shall be filed with the Director.
- Q. **Decision by Commission.** If, after the hearing, a majority of the Commission determines that the appealed action was arbitrary or taken without reasonable cause, the action shall be revoked or modified. Otherwise the action shall be affirmed.
- R. **Compliance of Appointing Authority.** Within ten (10) working 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 the Director.
- S. **Administrative Review.** The findings and decisions of the Commission shall be final and shall be subject only to administrative review as provided in A.R.S. § 12-901, *et seq.*