

## RULE 22 – Grievance and Appeal Procedure

22.1 General. The grievance procedure is a means through which employees may obtain consideration of grievances or problems in matters over which the Appointing Authority has complete or partial jurisdiction and for which redress is not provided elsewhere in these Rules. The purpose of the grievance procedure is to afford employees a written and systematic means of obtaining further consideration of grievances after every reasonable effort has failed to resolve them through informal discussions initiated with their immediate supervisor.

- 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 procedures outlined in Rule 4, Discrimination in Employment, the employee may file a grievance with the Commission in accordance with Rule 22.2.
- B. If the grievance alleges misinterpretation or misapplication of the Rules, departmental work rules, unsafe or unhealthy working conditions, a grievance may be filed in accordance with Rule 22.3.
- C. 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.

22.2 Grievance Procedure for claims of discrimination or harassment.

- 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 Rule 4, the employee may grieve the action by requesting a review of the determination by the Gila County Personnel Commission. The employee must request the review and relief requested on the Gila 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.

22.3 Grievance Procedure for other issues.

- A. The grievance procedure may not be used:
  - 1. By employees on original probation, except in cases alleging illegal discrimination or compelled participation in any election campaign for public office or partisan political activity.

2. For matters involving compensation, classification schedules, classes of positions, personnel records, performance appraisals, reprimands or employee counseling.
  3. For matters involving dismissal, demotion, or suspension.
- B. All time frames specified on the form shall be met. If the immediate supervisor or department head fail to meet the time frame 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 deemed abandoned.
- C. The four steps of the Grievance Procedure are as follows:
1. Using the "Employee Grievance Form," the employee shall state the grievance and the remedy requested. A copy shall be given to the immediate supervisor and a copy sent to the Director within five (5) working days of the incident giving rise to the grievance. The immediate supervisor shall respond in the designated portion of the form and send a copy to the employee and the Director within five (5) working days of receipt.
  2. If the employee disagrees with the supervisor's response, the Grievance Form shall be sent to the Appointing Authority within five (5) working days of the supervisor's response to Step 1. The Appointing Authority shall respond by completing the designated section of the form and sending a copy to the employee and the Director within five (5) working days of receipt of the employee's Step 2 grievance. If the employee disagrees with the Appointing Authority's response and desires to continue the grievance process, the specific reason shall be indicated on the form. The employee may then proceed to Step 3.
  3. Within five (5) working days of receipt of the Appointing Authority's response, the employee shall submit the Grievance Form to the Director. The Director shall complete his/her section of the form by making a recommendation and return it to the employee, with a copy to the Appointing Authority, within five (5) working days of receipt of the employee's Step 3 grievance. If the employee or Appointing Authority disagrees with the recommendation of the Director at Step 3, and desires to continue the grievance process, the employee or Appointing Authority shall indicate the disagreement on the Grievance Form. An appeal to Step 4 must be filed within ten (10) working days of receipt of notice of action taken by the Director.
  4. The Grievance Form shall be resubmitted to the Director who will notify the Personnel Commission within five (5) working days. The Appointing Authority or designee shall be considered the respondent and shall be served with a copy of the form.

## 22.4 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.

## 22.5 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 Personnel 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 ten (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 Personnel 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 22.5(H)(2).
- C. Answer to Appeal. The Respondent need not file an answer to the appeal. If an answer is filed prior to the hearing, the Director shall send a copy to the Appellant. Within ten (10) days of the hearing, or at the time the names of witnesses are submitted for subpoena, the respondent shall state the reason each witness is being called and the testimony being offered.

- 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. Every hearing on an appeal shall commence within twenty (20) calendar days from receipt by the Director, unless the time is extended by mutual agreement, or for other good cause as determined by the Commission.
- 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 Clerk of the Commission 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 the 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 in writing to the Clerk of the Commission 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. Nature of Hearing

1. Each hearing shall be held pursuant to A.R.S. §38-431 and shall be closed unless the Appellant requests an open hearing as provided by A.R.S. §11-356. 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.
- I. 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.
- J. 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.
- K. 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.

- L. Depositions. If a witness does not reside within Gila 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, the deposition may be used in evidence by either party or the Commission.
- M. Proposed Findings of Fact. Both Appellant and Respondent shall have the right to file with the Commission or its Hearing Officer, 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.
- N. 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.
- O. 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.
- P. Decision by Commission. If, after the hearing, a majority of the Commission determines that the appealed action was arbitrary or capricious, the action shall be reversed. Otherwise, the action shall be affirmed.
- Q. 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.
- R. 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.*
- S. Law enforcement officers right to representation, right to evidence on appeal, and right to change of hearing officer or administrative law judge are in accordance with A.R.S. §38-1101. Law enforcement officer means an individual, other than a probationary employee, who is certified by the Arizona Peace Officer Standards and Training board or who is a detention officer or correction officer and who is employed by this state or a political subdivision of this state.