



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: March 17, 2020

Title: Proposed revisions to Merit System Rules 8 and 14

Introduction/Background:

Proposed Revisions to Merit System Rule 8, Promotion, Demotion, Reappointment, Open Range Reappointment, Reassignment and Detail; Merit System Rule 14, Merit System Commission Appeals

Discussion:

MSR 8 - Promotion, Demotion, Reappointment, Open Range Reappointment, Reassignment and Detail

8.1 (B) Removes the requirement for an employee serving initial probation to complete six months of probation before being eligible to apply for a promotion within their current department.

MSR 14 - Merit System Commission Appeals

- 14.3 (E) Adds language to permit the cancellation of a hearing by the Commission Chair or Chair's Designee; Adds language to permit the granting of other relief by the Hearing Officer, Chair, or Chair's Designee.
- 14.4 (A) Adds a new subsection A which establishes a procedure for submitting a Motion to Dismiss; Subsequent sections renumbered.

Conclusion:

The proposed changes have been approved by the Pima County Merit System Commission and Law Enforcement Merit System Council.

Recommendation:

That the Board of Supervisors approve Merit System Rules 8 and 14 modifications as outlined above to become effective upon approval.

Fiscal Impact:

None

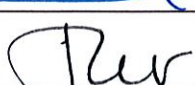
Board of Supervisor District:

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Department Director Signature/Date:  2/27/2020

Deputy County Administrator Signature/Date:  2/27/2020

County Administrator Signature/Date:  2/27/2020

8.1 PROMOTION

- A. Departments are encouraged to fill all vacancies by promotion.
- B. An employee serving initial probation shall be eligible to apply for promotion only within the current department, ~~and only after successful completion of six months of initial probation, except that Pima County Corrections Officers serving initial probation shall be eligible to apply for Deputy Sheriff at any point during initial probation.~~
- C. Promotions shall be competitive and the selection made from applicants who have been identified/certified by Human Resources.
- D. Failure of promotion probation may result in involuntary demotion or layoff of a permanent employee.

8.2 DEMOTION

A. Involuntary

- 1. A permanent employee who fails to successfully complete promotion probation may be involuntarily demoted to a position with the same classification and to the same salary previously held. The demoted employee shall be placed into his/her previous position if the position is vacant. If the previous position has been filled on a permanent basis, the employee shall be placed into a vacant position in the current department with the same classification and salary previously held. If such a placement action cannot be made, the employee shall be laid off from the classification to which demoted and within the present department.
- 2. An employee serving initial probation who promotes within the same department and who subsequently fails to successfully complete promotion probation, may be involuntarily demoted to his/her previous position if the position is vacant. If the previous position has been filled on a permanent basis, the employee may be placed into a vacant position in the current department with the same classification and salary previously held. If such a placement action cannot be made, the employee shall be terminated for failure to successfully complete initial probation.
- 3. A Corrections Officer who promotes and is appointed to serve as a Deputy Sheriff while on initial probation and who subsequently fails to successfully complete initial probation as a Deputy Sheriff, shall be involuntarily demoted to Corrections Officer with the same salary previously held as a Corrections Officer, or may be terminated for failure to successfully complete initial probation.

4. An employee demoted or terminated under this section shall have no right of appeal.
5. An employee may be involuntarily demoted for a disciplinary reason in accordance with Rule 12.

B. Voluntary

1. If an employee makes a written request for a voluntary demotion within his/her current department, the Appointing Authority may make the demotion non-competitively if the employee meets the minimum qualifications. An employee demoted under this section shall have no right of appeal.
2. An employee may voluntarily demote through the competitive process. An employee serving initial probation shall be eligible to apply for voluntary demotion only after successful completion of initial probation. The employee shall have no right of appeal.
3. If an employee sustains a job-related injury or illness which precludes working in the current classification, the Appointing Authority may, upon written request of the employee, grant the employee a demotion non-competitively if the employee meets the minimum qualifications. An employee demoted under this section shall have no right of appeal.

8.3 REAPPOINTMENT

- A. An employee may be offered reappointment competitively within the same department to a position of another classification with the same starting salary as the classification currently held; or to a position in another department of any classification with the same starting salary as the classification currently held. An employee serving initial probation shall be eligible to apply for reappointment only within the current department and only after successful completion of six months of initial probation.
- B. An employee may be offered reappointment non-competitively within the County system at the discretion of the County Administrator.
- C. At the discretion of the County Administrator, in consultation with Risk Management, an employee may be offered reappointment non-competitively within the County system to a position of the same classification, or another classification with the same or lower starting salary, if the employee has sustained a work-related injury precluding the employee from working in the current assignment. The employee must satisfactorily meet the minimum qualifications and physical requirements, with or without reasonable accommodation, for the reappointment.

RULE 8 - PROMOTION, DEMOTION, REAPPOINTMENT,
OPEN RANGE REAPPOINTMENT,
REASSIGNMENT AND DETAIL

Effective Date: xx

- D. The County Administrator may offer an employee a reappointment non-competitively within the County system if Human Resources determines that the employee is a qualified individual with a disability, who is seeking reappointment to a position for which he/she is qualified, as an accommodation for his/her disability.

8.4 OPEN RANGE REAPPOINTMENT

- A. An employee may be offered an open range reappointment competitively from or to a position with a discrete grade to or from a position with an open salary range. An employee serving initial probation shall be eligible to apply for open range reappointment only within the current department and only after successful completion of six months of initial probation.
- B. An employee may be offered an open range reappointment non-competitively within the County system at the discretion of the County Administrator.
- C. At the discretion of the County Administrator, in consultation with Risk Management, an employee may be offered an open range reappointment non-competitively within the County system to a position of the same classification, or another classification with the same or lower starting salary, if the employee has sustained a work-related injury precluding the employee from working in the current assignment. The employee must satisfactorily meet the minimum qualifications and physical requirements, with or without reasonable accommodation, for the open range reappointment.
- D. The County Administrator may offer an employee an open range reappointment non-competitively within the County system if Human Resources determines that the employee is a qualified individual with a disability, who is seeking open range reappointment to a position for which he/she is qualified, as an accommodation for his/her disability.

8.5 REASSIGNMENT

- A. An Appointing Authority has the authority to make competitive or non-competitive reassignments within the department.
- B. The County Administrator may offer an employee a reassignment non-competitively if Human Resources determines that the employee is a qualified individual with a disability, who is seeking reassignment to a position for which he/she is qualified, as an accommodation for his/her disability.

8.6 DETAIL

- A. When the services of an employee are needed temporarily for more than fifteen (15) work days in a position other than the position to which regularly assigned, the employee may be non-competitively detailed to that position for a period of up to six (6) months. An Appointing Authority may renew a detail assignment for up to an additional six (6) months with the approval of the Human Resources Director.
- B. An employee is eligible for detail into a non-tested classification only if that employee meets the minimum qualifications of the classification upon detailing or upon completion of the detail assignment. An employee is eligible for detail into a tested classification only if he/she meets the minimum test scores prior to beginning the detail assignment. Unclassified, temporary and intermittent employees and employees in trainee status are not eligible to serve detail assignments.
- C. A detail assignment may be ended by the Appointing Authority at any time, at which point the employee will be returned to his/her regularly assigned position and salary. An employee whose detail assignment has ended shall have no right of appeal.

8.7 EFFECTIVE DATE

The effective date for actions defined in Rule 8 requiring the County Administrator's approval shall be the first day of the following pay period unless otherwise addressed in policy or by Board of Supervisors directive.

The effective date for actions defined in Rule 8 not requiring County Administrator approval shall be the first day of a pay period, unless otherwise addressed in policy.

The effective date for actions resulting from probation failure, to include, but not limited to involuntary demotion, shall be the date of service of notice of probation failure to the employee.

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.

A.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.

B.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.

C.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.

D.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.