



**Rules of
Office of Administration
Division 20—Personnel Advisory Board and
Division of Personnel
Chapter 4—Appeals, Investigations, Hearings and
Grievances**

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**Title 1—OFFICE OF
ADMINISTRATION****Division 20—Personnel Advisory
Board and Division of Personnel
Chapter 4—Appeals, Investigations,
Hearings and Grievances****1 CSR 20-4.010 Appeals**

PURPOSE: This rule prescribes the circumstances under which examination applicants and employees may file appeals with the Personnel Advisory Board and establishes the procedures for the hearing of those appeals.

(1) Appeals of examination applicants and employees are provided under the following circumstances:

(A) Rejection of Examination Applications. An applicant whose request for admission to any examination has been rejected by the director may appeal by filing the appeal with the board in writing within fifteen (15) days of the mailing of the notice of rejection by the director and in any event before the holding of the examination. The board's decision on all matters of fact shall be final. Pending consideration of the appeal, the director shall review the initial determination and shall have discretion to admit the applicant to the examination, but admission shall not constitute the assurance of a passing grade in the rating of education and experience (see section 36.390, RSMo);

(B) Appeal From Examination Ratings. Any applicant who has taken an examination and who feels that s/he has not been dealt with fairly in any phase of the examination process may request that the director review the case. This request for review of any examination must be filed in writing with the director within thirty (30) days after the date on which notification of the results of the examination was mailed to the applicant. A candidate may appeal the decision of the director in writing to the board. This appeal must be filed with the board within thirty (30) days after date on which notification of the decision of the director was mailed to the applicant. The board's decision with respect to any changes shall be final and shall be entered in the minutes. A correction in the ratings shall not affect a certification or appointment which may have already been made from the register;

(C) Appeals of Removal From Register. An eligible whose name has been removed from a register for any of the reasons specified in section 36.180 or 36.240, RSMo may appeal to the board for reconsideration. This appeal must be filed in writing at the office of the board within thirty (30) days after the date on

which notification was mailed to the applicant. The director shall refer the appeal with all pertinent information to the board. The board after investigation shall make its decision which shall be recorded in the minutes and the eligible shall be notified accordingly by the director; and

(D) Appeals From Dismissal, Demotion or Suspension. Any regular employee who is dismissed, demoted involuntarily for cause or suspended for more than five (5) days may appeal in writing by filing the appeal with the board on the form prescribed in 1 CSR 20-4.010(3)(A)1. within thirty (30) days after the effective date of the personnel action, setting forth in substance the reasons for claiming that the dismissal, suspension or demotion was for political, religious or racial reasons or not for the good of the service. Upon appeal, both the appealing employee and appointing authority whose action is reviewed shall have the right to be heard and to present evidence at a hearing which, at the request of the appealing employee, shall be public. At the hearing of the appeals, rules commonly controlling the techniques of presenting relevant, competent and material evidence shall not apply. After the hearing and consideration of evidence for and against a suspension or demotion, the board shall approve or disapprove the action and in the event of a disapproval, the board shall order the reinstatement of the employee to the classification, pay range and increment formerly held and payment to the employee of such salary as had been lost by reason of suspension or demotion. After the hearing and consideration of the evidence for and against a dismissal, the board shall approve or disapprove this action and may make any one (1) of the following appropriate orders:

1. Order the reinstatement of the employee to the classification, pay range and increment formerly held and the payment to the employee part or all of such salary as had been lost by reason of the dismissal;

2. Sustain the dismissal of the employee, unless the board finds that the dismissal was based upon political, social or religious reasons, in which case it shall order the reinstatement of the employee to the classification, pay range and increment formerly held and the payment to the employee of such salary as had been lost by reason of his/her dismissal; or

3. Except as provided in this rule, the board—

A. May sustain the dismissal but may order the director to recognize re-employment rights for the dismissed employee under 1 CSR 20-3.030(6) in an appropriate class(es); or

B. May take steps to effect the transfer of the employee to a comparable classification, pay range and increment in another location, division or department (see section 36.390, RSMo).

(2) Authority in the Conduct of Investigations and Hearings. In connection with the review of an appeal or for any other purpose necessary to determine the adherence to and effect of the law and these rules, the board and the director may conduct such investigations as are necessary. Any investigation involving the production of records or reports by a division shall be conducted in such manner as to cause the least possible disruption or inconvenience to the division in the conduct of its regular work. The board, each member of the board and the director shall have power to administer oath, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by this law. Any person who shall fail to appear in response to a subpoena or to answer any question or to produce any books or papers pertinent to any such investigation or hearing or who shall knowingly give false testimony shall be guilty of a misdemeanor (see section 36.400, RSMo).

(3) Appeals Must Be Submitted and Hearings Conducted Following the Procedures and Guides Provided in this Rule.

(A) Appeal submission and preparation for hearing are governed by the following provisions:

1. Appeals shall be written. The appeal may be filed by fax, by mail, or by other delivery to the board's office. The written appeal must provide substantially the following information: appellant's name; appointing authority and agency; the type of disciplinary action appealed; the effective date of the disciplinary action; the appellant's reason for appealing the disciplinary action; the appellant's response to the reasons given by the appointing authority; names of witnesses to be subpoenaed if a hearing is granted; a detailed description of any books, papers, or records to be subpoenaed, along with their location, and a statement of the reasons that the items are needed for the hearing; the name, address, telephone number, and signature of the appellant's attorney, if any; and the appellant's signed acknowledgement and certification of truth for the information supplied in the written appeal;

2. The appellant may file the appeal on the form for appeal prescribed by the board. The information required for completion of that form shall be deemed sufficient to satisfy the requirement for a written appeal. The



board will provide to the appellant or to the appointing authority, on request, a copy of the current form for appeal. The appointing authority shall deliver a copy of the form to an employee receiving any appealable disciplinary action. The completed form or other written appeal must be received at the office of the board within thirty (30) days after the effective date of the disciplinary action appealed. A copy of the appellant's contentions set out in the appeal will be furnished to the appointing authority;

3. A party may file a document by—

A. Registered or certified mail. A document filed by registered or certified mail is deemed filed on the date that it is delivered to and received by the board;

B. Electronic facsimile transmission (fax). A document filed by fax is deemed filed at the time the board receives a fax of the complete document, provided that the original of the document is sent to the board and received within ten (10) business days of the fax. If a document arrives by fax after 5:00 p.m. and before 12:00 midnight or on a Saturday, Sunday, or legal holiday, it is filed on the board's next business day, unless the board orders otherwise;

(I) The time controlling when a fax arrives at the board's office is the board's fax machine's journal;

(II) The person fax filing a document bears the risk of loss in transmission, nonreceipt, or illegibility. If the document is not received or is materially illegible, the document is deemed not filed and totally null and void for all purposes;

(III) Any party or attorney who lists a fax number on a letterhead or pleading in the case file or in a telephone or professional directory or otherwise shall be deemed to have consented to receive service of documents by fax from the board or any other party or attorney; or

C. Any other method. A document filed by any method other than registered mail, certified mail, or fax is deemed filed on the date the board receives the document in its office;

4. A party filing by fax shall—

A. Notify the board in advance, if possible, of its intention to file the document by fax;

B. Fax the document to the board's dedicated fax number;

C. Fax the document, if possible, to all other parties having electronic facsimile equipment. If unable to fax, a party shall notify all other parties of its intention to file the document by fax. The notice need not be in writing. A good faith attempt at compliance with this notice requirement shall satis-

fy the requirements of this subparagraph. This subparagraph does not apply to fax filing of the original appeal;

D. Send the original signed document to the board;

E. Certify in the documents—

(I) The method of notice used to fulfill the requirements of subparagraph (3)(A)4.C. of this rule; and

(II) Compliance with the requirements of subparagraph (3)(A)4.D. of this rule; and

F. Send a copy of the document to all other parties except when filing the original appeal;

5. Appellants may represent themselves and handle their own cases but shall have the right to be represented by duly licensed attorneys. A party to an appeal cannot be represented by anyone other than a duly licensed attorney except that the appointing authority may appear by an employee in the agency. If either party intends to employ and be represented by an attorney, that party promptly shall notify the Personnel Advisory Board of the name and address of his/her attorney;

6. Either party may request a subpoena for a witness at a deposition or the hearing and a subpoena duces tecum (documents) for a deposition (related to the witness being deposed) or subpoena duces tecum for the hearing;

A. A subpoena duces tecum must be requested sufficiently in advance so that it can be received from the board and served by the requesting party at least thirty (30) days in advance of the deposition or the hearing. Any subpoena duces tecum for the hearing requested and served more than sixty (60) days in advance of the hearing shall be due two (2) weeks prior to the hearing date and may be provided to the requesting party by mail rather than in person;

B. A subpoena for a witness to a deposition with no accompanying subpoena duces tecum must be requested sufficiently in advance and served upon the witness by the requesting party at least seven (7) days in advance of the deposition;

C. A subpoena for a witness to a hearing with no accompanying subpoena duces tecum must be requested sufficiently in advance and served upon the witness by the requesting party at least three (3) days in advance of the hearing.

D. The requesting party shall provide the name and address of any witness subpoenaed. The requesting party shall provide a detailed description of any records to be subpoenaed and a statement of what is intended to be proved by the records. Service of the

subpoena is to be effected in accordance with section 536.077, RSMo.

E. A party may contest a subpoena by filing a Motion To Quash Subpoena and shall set out the reasons why the subpoena should be quashed. If the subpoena that is the subject of the Motion To Quash Subpoena was served seven (7) days or less prior to the hearing, a pre-hearing conference with the hearings officer assigned to the case will be immediately scheduled by the board.

7. Upon the acceptance of an appeal, the appellant and appointing authority or their representatives may meet with the Personnel Advisory Board, at a time and place set by the board for a prehearing conference to determine the facts at issue. At the prehearing conference, both parties may stipulate on mutually agreed matters relevant to the disciplinary action or the appeal may be resolved by agreement of the parties. If, during the prehearing conference, the case is not resolved and the appeal goes forward to a hearing before the Personnel Advisory Board, the board may confine the hearing to the law and facts at issue as stipulated by mutual agreement of the parties to the appeal. All parties are required to provide the board with a current address and telephone number. If the appellant fails to provide the board with a current address and telephone number and cannot be reached to schedule a prehearing conference, or does not participate in the prehearing conference after receiving written notice of the date, time, and location of the prehearing conference, it shall be deemed that the appellant no longer wishes to proceed with the appeal and is withdrawing the appeal;

8. All motions or other pleadings by the parties shall be submitted in writing with a copy served or mailed to the opposing party. Parties to an appeal may amend their pleadings as a matter of course at any time before a responsive pleading is filed and served, or if the pleading is one to which no responsive pleading is required and the action has not been set for hearing, the party may so amend it at any time within thirty (30) days after it is filed. Otherwise, a party may amend a pleading only by leave of the Personnel Advisory Board or by written consent of the adverse party; and leave shall be given freely when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Personnel Advisory Board otherwise orders; and



9. Service of filings other than the original appeal:

A. Unless otherwise provided by these rules or by other law, any party to a proceeding before the board or any person who seeks to become a party shall serve upon all attorneys of record and unrepresented parties a copy of any document or item the party files;

B. Methods of service.

(I) A person may service a document on an attorney by:

(a) Delivering it to the attorney;

(b) Leaving it at the attorney's office with a secretary, clerk, or attorney associated with or employed by the attorney served;

(c) Mailing it to the attorney's last known address; or

(d) Facsimile transmitting (faxing) it to the attorney's last known fax number;

C. Any document or item filed shall contain or be accompanied by a certification of how and when the filing party has met the provisions of subparagraph (3)(A)9.A. of this rule; and

D. The requirements of this paragraph shall not apply to an original appeal.

(B) Hearings Procedure. The conduct of hearings before the Personnel Advisory Board is subject to the following provisions:

1. Hearings will be held in the Office of the Personnel Advisory Board in Jefferson City, Missouri, unless a different location is specified by action of the board;

2. If no prehearing conference has been held, the board will make a determination of what questions are at issue based upon the notice of the disciplinary action and the appellant's contentions in the appeal prior to the taking of testimony. The hearing shall be confined to and come within the scope of law and facts that the board has determined to be at issue. The board may exclude evidence which is purely cumulative;

3. The person who imposed the discipline is to attend the hearing. If that person is not the appointing authority, it must be the subordinate to whom authority has been delegated. The person who imposed the discipline does not have to attend the hearing if:

A. The appellant has waived his or her attendance;

B. The parties agree to present his or her testimony by other means such as stipulation, affidavit, or testimony over the telephone or if either party wishes to present the testimony by deposition; or

C. He or she is unable to attend the hearing and the absence of his or her testi-

mony would not unduly prejudice the appellant;

4. If the person who imposed the discipline is unavailable to provide his or her testimony for the hearing and the board determines that not having this testimony unduly prejudices the appellant, then the board may disapprove the appellant's discipline;

5. When the appointing authority is required to appear, he or she is not required to stay for the entire hearing. Rather, the appointing authority must only appear so that the appellant can ask him or her questions;

6. The person conducting the hearing will read a statement citing the appropriate sections of the merit system law applicable to appeals;

7. The person conducting the hearing will read the charges of the appointing authority and the contentions of the appellant. By agreement these documents may be inserted in the record without reading before commencing the taking of testimony;

8. All witnesses will be sworn or affirmed. When possible, witnesses will stand to be sworn or affirmed;

9. The Personnel Advisory Board, on request of either party or on its own motion, may order that the witnesses be separated so as to preclude any witness, other than the parties and their attorneys, from hearing the testimony of other witnesses. When requested by the appellant, only one (1) person in addition to counsel shall remain in the room to represent the appointing authority;

10. The appointing authority will be required to present his/her case first. Experience has shown this method gives the board a clearer and quicker picture of the issues. This is not a shift of the burden of proof, but is only the burden of going ahead with the proof;

11. The Personnel Advisory Board may take notice of its rules, the class specifications, official records of the Personnel Division, and the pay plan without the necessity of an offer in evidence;

12. The Personnel Advisory Board may fix the total time to be allowed for oral argument;

13. At the hearing, the entire proceedings will be recorded. After the board announces its findings of fact, conclusions of law, and decision and order, or at an earlier time if the board determines that the interest of efficient administration would be served, a copy of the recording will be made available to either party. The board will not transcribe the recording to written form. The cost of a transcription will be borne by the requesting party. The transcription may be performed by any commercial business or agency selected

by the requesting party. The board will forward directly to the selected business or agency a copy of the recording;

14. No rehearing, which includes any post-hearing motion other than a Nunc Pro Tunc, Request for Attorney's Fees, or Motion for Back Pay, shall be granted from a final decision of the Personnel Advisory Board. Should such a post-hearing motion be filed, it shall be deemed denied by the board and no ruling from the board is necessary; however, at any time prior to issuance of the decision, the board may require the production of additional documents and records, the presentation of additional testimony after prior notification to both parties, or both;

15. When the board issues an order dismissing an appeal or its findings of fact, conclusions of law, and decision, that order is a final decision on the merits and may be appealed as provided in Chapter 536, RSMo. A motion for attorney's fees, if any, is due to the board within thirty (30) days of its dismissing an appeal or its findings of fact, conclusions of law, and decision. The filing of a petition for judicial review or the fact that back pay has not been determined does not stay the thirty (30)-day requirement for filing the motion for attorney's fees with the board.

16. An appeal set for hearing may be continued by the Personnel Advisory Board for cause deemed sufficient or by consent of both parties to the appeal. However, a continuance will not be granted except for compelling cause or to serve the ends of justice. If an appellant requests and is granted a continuance, the Personnel Advisory Board, in its discretion, may deny the appellant any compensation for that portion of time lost by reason of the continuance made at the request if the appellant's appeal is finally sustained. If an appeal scheduled for hearing is not reached, it shall be reset and given precedence over any subsequent appeal;

17. The finding of the board will be announced in writing subsequent to the hearing. Parties will be notified by letter sent by certified mail. The finding will be made as provided in section 36.390(5), RSMo; and

18. As appropriate and where no specific rule governs the issue, the Personnel Advisory Board will utilize the rules of the civil procedure for guidance.

(C) Special Hearing Procedures. In the hearing of appeals from disciplinary actions and in the conduct of other appeals or investigations authorized under these rules or the merit system law, the board or the chairman of the board may delegate responsibility for the conduct of investigations and the hearing of appeals provided under any section of the law to a member of the board or to a hearing



officer designated by the board. The hearing officer shall have the power to administer oaths, subpoena witnesses, and compel the production of records pertinent to any hearing or investigation. The hearing officer may take any action in connection with the hearing or investigation which the board itself is authorized to take by law other than making the final decision and appropriate order. When a hearing has been completed, the individual board member or the hearing officer who conducted the hearing shall prepare a summary of the hearing and the evidence and recommend a findings of fact, conclusions of law, decision and appropriate order for approval of the board. The board may adopt such recommendations in whole or in part, require the production of additional testimony, reassign the case for rehearing or may conduct itself a new or additional hearing as is deemed necessary prior to rendering a final decision (see section 36.390, RSMo). Whenever this rule uses the term Personnel Advisory Board or board, the same shall apply to a member of the board or a hearing officer who has been delegated the responsibility to conduct the investigation or hear the appeal.

(4) Mediation.

(A) Upon the filing of a request for mediation by both parties, or upon a request for mediation by both parties made at the pre-hearing telephone conference that establishes the hearing date of a disciplinary appeal, mediation services may be provided by a hearings officer, a board member, or a neutral third party for the purpose of attempting a resolution of the appeal.

(B) The Personnel Advisory Board may order that mediation proceed in a disciplinary case before any further proceeding in such case.

(C) A written application for mediation services should include the case number, the name of each party and a brief explanation of the case.

(D) If the mediator is also a hearings officer or a board member, that hearings officer or board member shall be disqualified from conducting an evidentiary hearing relating to that particular case and shall not make any communication regarding the mediation discussions in the case to any board member or the hearings officer appointed to preside in the case. Further, such a board member shall not vote or otherwise participate in the decision on such a disciplinary appeal.

(E) If necessary, the hearings officer presiding over the case may stay the case pending mediation. In no event, however, shall mediation take over two (2) months. If a case

cannot be resolved in that amount of time, it shall proceed to hearing. The parties, however, are always free to settle an appeal, and the appellant is always free to withdraw the appeal even should mediation efforts fail to resolve an appeal.

(F) Failure to appear and participate in good faith in mediation shall be grounds for sanctions including dismissal or default of the noncompliant party.

(G) Should there be any cost charged by a third party mediator, the cost shall be divided evenly between the parties unless the Personnel Advisory Board orders otherwise.

AUTHORITY: sections 36.060 and 36.070, RSMo 2000. Original rule filed July 9, 1947, effective July 19, 1947. Amended: Filed April 19, 1968, effective April 29, 1968. Amended: Filed June 20, 1969, effective June 30, 1969. Amended: Filed April 23, 1974, effective May 2, 1974. Amended: Filed Dec. 8, 1975, effective Dec. 19, 1975. Emergency amendment filed Sept. 13, 1979, effective Sept. 28, 1979, expired Jan. 25, 1980. Amended: Filed Oct. 12, 1979, effective Jan. 15, 1980. Amended: Filed June 2, 1988, effective Oct. 1, 1988. Amended: Filed Nov. 16, 1993, effective July 30, 1994. Amended: Filed July 21, 1994, effective Feb. 26, 1995. Amended: Filed March 15, 2004, effective Sept. 30, 2004. Amended: Filed Jan. 17, 2006, effective July 30, 2006. Amended: Filed Oct. 16, 2006, effective April 30, 2007. Amended: Filed Aug. 15, 2008, effective Feb. 28, 2009.*

**Original authority: 36.060, RSMo 1945, amended 1971, 1979, 1993, 1995 and 36.070, RSMo 1945, amended 1979, 1995.*

1 CSR 20-4.020 Grievance Procedures

PURPOSE: This rule requires the establishment of a grievance procedure, states its objectives and defines management responsibility for its implementation.

(1) Grievance Procedure Established. The settlement of differences within the classified service between management and employees shall be provided through the establishment of an orderly grievance procedure in each division of service subject to the State Personnel Law.

(A) The established grievance procedure in any division of service shall apply to employment conditions and related matters over which the appointing authority has complete or partial jurisdiction and for which redress is not provided by the personnel law, rules or procedures.

(B) The grievance procedure shall not apply in instances where the grievance involves personnel transactions or administrative decisions of the appointing authority for which the personnel law or rules provide a specific appeal to the Personnel Advisory Board or review by the personnel director.

(C) The responsibility and authority of appointing authorities to create, promulgate and enforce operational policies for the efficient and effective operation of the divisions of service is not altered by the ability of employees to use the grievance process to question the application of these policies or to seek clarifications or modifications of them.

(2) Objectives of Grievance Settlements. To every extent possible, the grievance procedure shall be designed to—

(A) Resolve the grievance quickly;

(B) Settle the disagreement informally at the employee-supervisor level when possible;

(C) Correct, if possible, the cause of the grievance to prevent future similar complaints; and

(D) Assure fair and equitable treatment of all employees and to promote harmonious relations generally among employees, supervisors and administrative staff.

(3) Management Responsibility. Each appointing authority shall prepare and submit to the personnel director for review, for the purpose of ascertaining conformance with this rule, formal written procedures for submission of grievances by employees and for prompt and orderly consideration and determination of the grievances by supervisors and administrators. The appointing authority shall be responsible for carrying out the provisions of the grievance procedure.

(A) The grievance procedures of each division of service shall distinguish between issues subject to review by the personnel director or the Personnel Advisory Board and other matters subject to the grievance procedure. If there are separate procedures for filing internal complaints of discrimination, sexual harassment, retaliation for grievances or other matters, these shall also be identified.

(B) The grievance procedure shall include the following minimum provisions:

1. Except where the agency has a separate procedure as stated in subsection (3)(A), the procedure shall begin with the immediate supervisor and, if not resolved to the satisfaction of the grievant at the beginning or succeeding steps, shall end with the appointing authority;

2. The procedure shall require that the grievance and responses be in written form



beginning at the first step, unless agreed to by both parties. A copy of all written responses will be delivered to the grievant. A copy of all written grievances and responses will be filed with the appointing authority or his/her designated representative;

3. The procedure shall include specific time frames for filing and responding to grievances at each step. The procedure may include a method of extending time frames initiated by the grievant or management, or both;

4. The procedure shall include a provision prohibiting retaliation or harassment for filing a grievance and for investigating charges of alleged retaliation or harassment. Each agency must give employees alleging retaliation for grievances an opportunity to address this allegation to a higher level than the alleged incident;

5. The procedure shall permit group as well as individual grievances;

6. The procedure shall allow the grievant reasonable time off from duty for attendance at formal grievance hearings; and

7. The procedure shall include a method for informing all employees of the existence of the grievance procedure and for providing a copy of the grievance procedure and appropriate forms to employees desiring to file a grievance.

AUTHORITY: section 36.070, RSMo 2000. Original rule filed Dec. 8, 1975, effective Dec. 19, 1975. Amended: Filed Dec. 1, 1992, effective July 8, 1993. Amended: Filed Sept. 16, 2002, effective March 30, 2003. Amended: Filed April 14, 2005, effective Nov. 30, 2005.*

**Original authority: 36.070, RSMo 1945, amended 1979, 1995.*