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Amendments to Civil Service Rules [HRMN Amendments]
Grievances, Technical Complaints, and Appeals
 Revision **A** (November 14, 2000)

Added text is underlined. Deleted text is ~~struck through~~

These proposed amendments are further amendments to the Civil Service rules previously approved on May 18, July 20, September 27, and October 3, 2000. The previously approved amendments are scheduled to take effect when HRMN is implemented (in early 2001). If approved, these further amendments will become effective at the same time.

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Chapter 1: Basic

RULE 1-2: SEVERABILITY AND CAPTIONS

- (a) Severability. If a court of competent jurisdiction finds that any rule or the application of any rule to any person or circumstances is invalid, such invalidity does not affect the remaining rules or applications of the rules that can be given lawful effect. These rules are declared to be severable.
- (b) Captions. The captions are not part of a rule and cannot be used to construe the rule more broadly or narrowly than the text indicates.

Chapter 2: Employment Provisions

RULE 2-5: DISCIPLINE

2-5.1 Discipline

- (a) Authorized. An appointing authority may discipline a classified employee for just cause.
- (b) Just cause. Just cause includes, but is not limited to, the following:
- (1) Failure to carry out the duties and obligations imposed by the employer, a departmental work rule, or law, including the civil service rules and regulations.
 - (2) Conduct unbecoming a state employee.
 - (3) Unsatisfactory service or performance.

1 (c) **Forms of discipline.** Permissible discipline includes, but is not limited to, the following:

2 (1) Written reprimand.

3 (2) Unsatisfactory performance rating.

4 (3) Reduction in pay.

5 (4) Suspension without pay.

6 (5) Demotion.

7 (6) Dismissal from the classified service.

8 (d) **Imposing discipline.** The appointing authority shall impose discipline in a manner consistent
9 with the civil service rules and regulations and any applicable departmental work rules. When
10 appropriate, an appointing authority shall use corrective measures and progressive discipline.
11 However, if an infraction is sufficiently serious, an appointing authority has the discretion to
12 impose any discipline, up to and including dismissal, provided the discipline is not arbitrary and
13 capricious.

14 (e) **Notice of mandatory dismissal for first offense.** If an appointing authority establishes a
15 mandatory dismissal penalty for a first offense, it must give prior written notice of the mandatory
16 penalty to its employees.

17 **2-5.2 Disciplinary Conference**

18 (a) **Disciplinary conference required.** If an appointing authority is contemplating discipline that
19 includes dismissal, demotion, suspension, or reduction in pay, the appointing authority shall
20 schedule a disciplinary conference. The appointing authority shall notify the employee in
21 writing of the conference, charges, and possible penalties. If the employee fails to attend the
22 disciplinary conference, the employee waives the right to a conference.

23 (b) **Disciplinary conference not required.** An appointing authority is not required to hold a
24 disciplinary conference in any of the following circumstances:

25 (1) The appointing authority imposes discipline other than dismissal, demotion, suspension, or
26 reduction in pay.

- 1 (2) The appointing authority suspends an employee for investigation, as provided in rule 2-5.4.
- 2 (3) The appointing authority suspends an employee charged with a crime, as provided in
3 rule 2-5.5.
- 4 (4) The employee is not on an approved leave of absence and has failed to report for work for 3
5 or more consecutive scheduled work days.

6 **2-5.3 Representation**

7 An employee who is scheduled for a disciplinary conference may be represented at the conference by
8 a person authorized in rule 8-8 [Representation]. The charged employee is responsible for notifying
9 the employee's representative of the conference. The conference will not be unreasonably delayed
10 due to the representative's unavailability.

11 **2-5.4 Suspension for Investigation**

12 An appointing authority may suspend an employee with or without pay for up to 7 calendar days to
13 conduct an investigation. On or before the end of the 7-day suspension, the appointing authority shall
14 (1) reinstate the employee, (2) schedule a disciplinary conference, (3) discipline the employee, or
15 (4) extend the investigative suspension with pay. If the appointing authority extends the investigative
16 suspension, a disciplinary conference is not required, but the appointing authority shall give the
17 employee written notice of the reasons for the extension.

18 **2-5.5 Suspension for Criminal Charges**

19 If an employee is charged with a criminal offense, the appointing authority may suspend an employee
20 with or without pay. The appointing authority is not required to hold a presuspension disciplinary
21 conference before imposing the suspension, but shall give the employee written notice of the
22 suspension. However, at the request of the employee, the appointing authority shall meet with the
23 employee to review the suspension. The suspension may remain in effect while the criminal charges
24 are pending or the appointing authority may schedule a disciplinary conference and impose discipline
25 before the criminal charges are resolved.

~~RULE 2-5: DISMISSAL, DEMOTION, OR SUSPENSION~~

~~2-5.1: Disciplinary Conference~~

~~When an appointing authority considers it necessary to dismiss, demote, or suspend an employee, the appointing authority shall provide written notice of any claimed violations and possible penalties. The appointing authority shall schedule a disciplinary conference, subject to the employee's availability. The appointing authority may withhold a penalty determination until after the disciplinary conference. If the employee fails to attend the disciplinary conference, the employee has waived the right to the conference.~~

~~2-5.2: Representation~~

~~The employee for whom the disciplinary conference is held is entitled to representation of the employee's choice, except as otherwise limited by the civil service rules or regulations. A fellow employee representative employed by the same principal department and the same subagency is entitled to administrative leave to attend the disciplinary conference. It is the responsibility of the employee to notify the employee's representative of the conference. The conference will not be unreasonably delayed because of the representative's unavailability.~~

~~2-5.3: Causes~~

~~An employee in the classified service may be dismissed, demoted, or suspended for any of the following reasons:~~

~~(a) Failure to carry out the duties and obligations imposed by these rules and by agency management.~~

~~(b) Conduct unbecoming a state employee.~~

~~(c) Unsatisfactory service.~~

~~2-5.4: Suspension During Investigation~~

~~An appointing authority may suspend an employee during an investigation. The suspension must be superseded by a disciplinary suspension, dismissal, or reinstatement within 7 calendar days unless extended by the appointing authority. The appointing authority shall give the employee written notice of the extension and the reasons for the extension. Any extension shall be with pay.~~

~~2-5.5: Suspension for Criminal Charges~~

~~An appointing authority may suspend an employee who has been charged with a criminal offense. The suspension may be with or without pay. The appointing authority may continue the suspension until the criminal charges are resolved. The appointing authority is not required to hold a presuspension disciplinary conference, but shall give the employee written notice of the suspension.~~

1 **RULE 2-6: DRUG AND ALCOHOL TESTING**

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3 * * *

4 **2-6.4 Penalties**

5 **(a) Classified employees.**

6 **(1) All employees.** An appointing authority shall impose discipline, up to and including
7 dismissal, for violation of this rule. An appointing authority shall prescribe in its
8 departmental work rules the range of penalties, including any mandatory penalties, for
9 violating this rule.

10 **(2) Employee selected for test-designated position.** An employee selected for a test-
11 designated position is prohibited from serving in the test-designated position until the
12 employee has submitted to and passed a preappointment drug test. If the employee fails or
13 refuses to submit to the drug test, interferes with a test procedure, or tampers with a test
14 sample, the following occurs:

15 **(~~a1~~)** The employee cannot be appointed, promoted, assigned, recalled, or otherwise placed
16 in the test-designated position.

17 **(~~b2~~)** The employee is removed from all applicant pools for test-designated positions and is
18 disqualified from any test-designated position for a period of 3 years.

19 **(~~c3~~)** If the employee interferes with a test procedure or tampers with a test sample, the
20 employee may also be disciplined as provided in subsection (a)(1).

21
22 * * *

1 RULE 2-7: CONFLICT OF INTEREST

2 2-7.1 Prohibitions [No change]

3 2-7.2 Departmental ~~Procedures~~ Work Rules

4 An appointing authority may issue departmental ~~procedures-work rules~~ that define with
5 particularity acts prohibited by this rule. A departmental ~~procedure-work rule~~ is effective
6 after approval by the state personnel director.

8 RULE 2-9: WHISTLEBLOWER PROTECTION ~~DISCLOSURE OF~~ 9 ~~VIOLATIONS~~

10 *[Title amendment only. No change in text.]*
11
12

13 RULE 2-12: WAIVED RIGHTS LEAVE OF ABSENCE

14 (a) Approval and extension. An appointing authority may grant a waived rights leave of absence
15 without pay for up to one year to an employee if the employee has the equivalent of at least 6
16 months full-time employment at the time the leave is granted. Any extension beyond one year
17 requires the written approval of the state personnel director.

18 (b) Ineligible employees. An employee in a limited-term appointment who has not achieved status
19 in an indefinite appointment is not eligible for a waived rights leave of absence, unless
20 authorized in writing by the state personnel director.

21 (c) Operation. An employee granted a waived rights leave of absence cannot carry any annual
22 leave balance during the leave. An employee on a waived rights leave has no right to return to
23 the position formerly occupied or to an equivalent position upon expiration of the leave. If the
24 employee returns to the classified service before the expiration of the waived rights leave

1 through normal selection processes, the employee is not considered to have had a break in
2 service.

- 3 **(d) Separation.** If the employee does not return to the classified service before or upon the expi-
4 ration of the leave, the employee is separated.
-

6 ~~RULE 2-18: APPEALS~~

7 ~~2-18.1: Civil Service Appeals Procedures~~

8 ~~The state personnel director shall issue regulations governing procedures for grievances, technical~~
9 ~~appeals, labor relations appeals, and the employment relations board.~~

10 ~~2-18.2: Subpoena~~

11 ~~The following conditions regulate the appearance of witnesses and production of documents for civil~~
12 ~~service hearings and, when subpoenas are deemed essential to a fair hearing, govern the issuance,~~
13 ~~service, revocation, and compliance with subpoenas:~~

14 ~~**(a) Classified employees.** A classified employee, as a part of the employee's duties, shall appear as~~
15 ~~directed by a civil service adjudicating officer, without issuance of a subpoena.~~

16 ~~**(b) Requirements.** Upon a showing of necessity, an adjudicating officer, upon the officer's own~~
17 ~~motion or on the written petition of a party, may issue a subpoena for relevant and material~~
18 ~~evidence. The subpoena may require the attendance and testimony of a person and the pro-~~
19 ~~duction of evidence, including books, records, papers, correspondence, or documents possessed~~
20 ~~by or under a person's control.~~

21 ~~**(c) Applications and review.** When a hearing is not in session, an application for a subpoena is~~
22 ~~acted on by the adjudicating officer assigned to the case. In the absence of the assigned~~
23 ~~adjudicating officer, an application for a subpoena when a hearing is not in session may be acted~~
24 ~~on by the assigned scheduling officer or by the director of the hearings division. The assigned~~
25 ~~adjudicating officer may review the grant or denial of a subpoena at the hearing. During a hear-~~
26 ~~ing, an application for a subpoena is filed with the assigned adjudicating officer.~~

27 ~~**(d) Service, proof.** A subpoena may be served at any place within Michigan. A subpoena~~
28 ~~commands the person to whom it is directed to attend and give testimony, to produce the things~~
29 ~~designated, or to give a deposition. The party requesting the subpoena is responsible for service~~
30 ~~of the subpoena. An individual of suitable age and discretion who is not a party to the grievance~~
31 ~~or other dispute must personally serve the subpoena. Verified proof of service must be filed~~
32 ~~with the adjudicating officer.~~

33 ~~**(e) Time limits.** Within 24 hours after service of the subpoena on the person to whom it is directed,~~
34 ~~the requesting party must mail a copy of the subpoena to each named party to the grievance.~~

1 ~~(f) **Costs.** The cost of service, witness, and mileage fees is borne by the party who requests the~~
2 ~~subpoena. However, when a subpoena is issued upon motion of the adjudicating officer, the cost~~
3 ~~is borne by the department of civil service. Witness and mileage fees are the same as are paid to~~
4 ~~witnesses in the Michigan circuit court.~~

5 ~~(g) **Revocation.** A person served with a subpoena who does not intend to comply shall, within 5~~
6 ~~workdays after the date of service of the subpoena, petition in writing to revoke the subpoena. A~~
7 ~~petition to revoke, if made before the hearing, must be filed with the director of the hearings~~
8 ~~division, who shall refer the petition to the adjudicating officer for ruling. A petition to revoke~~
9 ~~filed during a hearing must be filed with the adjudicating officer. A copy of the petition to~~
10 ~~revoke must be served upon the party at whose request the subpoena was issued. The~~
11 ~~adjudicating officer or the director of the hearings division shall give prompt notice of the filing~~
12 ~~of a petition to revoke to the party at whose request the subpoena was issued. The adjudicating~~
13 ~~officer shall revoke a subpoena if (1) the evidence required to be produced does not relate to the~~
14 ~~matter in issue, (2) the subpoena does not describe the evidence with sufficient particularity, or~~
15 ~~(3) the subpoena is invalid for any other legally sufficient reason.~~

16 ~~(h) **Compliance.** If a person does not comply with a subpoena, the party who requested the~~
17 ~~subpoena may file a petition for an order requiring compliance in the circuit court for Ingham~~
18 ~~County or the county in which the hearing is held. Pending or in lieu of court enforcement~~
19 ~~action, the adjudicating officer may adjourn the hearing or take whatever other action deemed~~
20 ~~appropriate, including, but not limited to, presuming that the evidence or testimony of a witness~~
21 ~~would be adverse to any party who is responsible for the failure or refusal of a witness to testify.~~
22 ~~However, a party who requests a subpoena is not required to call that witness or present the~~
23 ~~witness for cross-examination.~~

24 ~~2-18.3: Appeal to Commission~~

25 ~~(a) **Appeal.** An employee dismissed for cause from the classified service may appeal as of right to~~
26 ~~the civil service commission from a final decision of a civil service hearing officer upholding the~~
27 ~~dismissal. In all other cases, including grievance arbitration, an appeal may be taken to the~~
28 ~~commission by a party only upon application and leave granted.~~

29 ~~(b) **Bases for granting leave.** In the discretion of the civil service commission, leave may be~~
30 ~~granted in any matter that involves an allegation of (1) a violation of article 11, section 5, of the~~
31 ~~constitution, (2) a violation of a civil service rule or regulation, or (3) an abuse of discretion. An~~
32 ~~appeal from arbitration is governed by the commission policy on deferral to arbitration.~~

33 ~~(c) **Final judgment by commission.** The employment relations board shall hear all appeals on~~
34 ~~behalf of the civil service commission and shall file a final recommendation with the civil~~
35 ~~service commission. A final recommendation of the board becomes effective as the judgment or~~
36 ~~decision of the commission if approved by the commission. If the commission does not approve~~
37 ~~the recommendation, the commission (1) may remand the matter to the board or other tribunal~~
38 ~~for further action, (2) may issue a final judgment or decision of the commission that modifies or~~
39 ~~vacates the judgment or decision of the board, or (3) may take any other action within the power~~
40 ~~of the commission.~~

1 ~~2-18.4: Commission May Assume Jurisdiction~~

2 ~~The commission reserves the authority to assume jurisdiction of any proceeding at any time before~~
3 ~~final action by the board and to take appropriate action.~~

4 ~~2-18.5: Attorney Fees and Interest~~

5 ~~The following provisions apply to all civil service grievance and technical appeal proceedings:~~

6 ~~(a) Attorney fees. A monetary award cannot be made for attorney fees, witness fees, costs, or other~~
7 ~~expenses.~~

8 ~~(b) Interest on award. An employee may be awarded interest on a back pay award only if the~~
9 ~~employee proves by clear and convincing evidence that the damages resulted from intentional,~~
10 ~~malicious, or unconscionable prolongation of the proceedings by the appointing authority.~~
11 ~~Interest is calculated from the earliest filing of the grievance or technical appeal at the rates for~~
12 ~~interest on a money judgment in a civil action in the revised judiciary act, Michigan Compiled~~
13 ~~Laws (MCL) §600.6013(6), as amended.~~

14 ~~(c) Offer of settlement. If an appointing authority makes a bona fide, reasonable written offer of~~
15 ~~settlement in a grievance or technical appeal, no interest is allowed beyond the date the written~~
16 ~~offer of settlement is rejected by the grievant. An offer of settlement that is not accepted within~~
17 ~~21 calendar days after the offer is made is considered rejected. A bona fide, reasonable written~~
18 ~~offer of settlement is an offer of settlement that is at least 90 percent of the amount of back pay~~
19 ~~award, calculated as of the date the settlement offer is made.~~

23 Chapter 3: Selection

26 RULE 3-3: APPOINTMENTS AND JOB CHANGES

27 3-3.1 Process

28 All appointments, promotions, and job changes in the classified service must be made in accordance
29 with the civil service rules and regulations. Any person appointed or promoted must be certified as
30 qualified in accordance with and subject to the se civil service rules and ~~applicable~~ regulations. The
31 state personnel director shall administer the certification of all appointments and promotions.

3-3.2 Demotion

(a) **Notice.** If an appointing authority intends to demote an employee, the appointing authority shall give prior written notice of the specific reasons for the demotion to the employee.

(b) **Conditions.** An appointing authority may demote an employee under any of the following circumstances:

(1) ~~If an~~ The employee is not performing satisfactorily.

(3) ~~If an~~ The employee's position is reclassified downward.

(4) ~~If~~ The demotion is requested by the employee and approved by the appointing authority.

(5) ~~If~~ The position occupied by the employee is abolished.

(6) ~~If~~ The employee is displaced by the return to duty of another employee entitled to the position.

(7) ~~If~~ The employee is displaced by another employee with more seniority during a reduction in force.

(8) ~~If~~ The employee does not receive a satisfactory ~~ily complete a~~ probationary service rating, ~~as authorized in rule 3-5.3(b). period.~~

* * *

RULE 3-5: PROBATION AND STATUS

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3-5.4 Satisfactory Service; Notice

If an employee's ~~performs satisfactorily service~~ during the probationary period is satisfactory, the appointing authority shall give notice to the employee and the department of civil service within 28 calendar days after the probationary period ends.

3-5.5 Grievance of Probationary Dismissal or Demotion

(a) **Probationary employee without status.** A probationary employee without status who is dismissed may grieve the dismissal only within the departmental steps of the civil service grievance procedure. The employee cannot appeal a final determination of the appointing authority to the department of civil service or the civil service commission unless the employee was dismissed in violation of rule 1-8 [Prohibited Discrimination] or rule 2-9 [Whistleblower Protection].

(b) **Employee with status ; rescision of appointment and demotion.** A probationary employee with status whose appointment is rescinded and who is demoted to a classification level not less than the level occupied at the time of the appointment may grieve the rescision and demotion as provided in the regulations. ~~In any grievance hearing, the appointing authority must first articulate the reasons for rescinding the appointment. However, the employee has the burden of proving by a preponderance of the evidence that the rescision and demotion were arbitrary and capricious or violated rule 1-6 [Merit, Efficiency, and Fitness] or 1-8 [Prohibited Discrimination].~~ This subsection is not applicable to the revocation of an appointment authorized in rule 3.6 [Revocation of Appointment].

(c) **Dismissal of employee with status.** A probationary employee with status who is dismissed from the classified service may grieve the dismissal as provided in the regulations. ~~In any grievance hearing, the employer has the burden of proving by a preponderance of the evidence that it had just cause to dismiss the employee.~~

3-5.6 Status

An employee who has been appraised, qualified, properly appointed on an indefinite or limited-term basis, and who has satisfactorily completed the probationary period has status while the employee remains continuously employed in the classified service. An employee who has attained status and later accepts an appointment to a position at a different classification level continues to have status at the former classification level while the employee remains continuously employed in the classified service. An employee whose appointment is vacated under rule 3-6 [Revocation of Appointment] cannot earn status at that classification and classification level or credit for qualification purposes.

RULE 3-6: REVOCATION OF APPOINTMENT

1
2 **(a) Review of appointments.** Every appointment in the classified service is expressly subject to
3 review by the department of civil service. If the department determines that an appointment
4 violated a civil service rule or regulation, the department may order corrective action, including
5 revocation of the appointment.

6 **(b) Methods of review.** The department of civil service may review any appointment as part of the
7 department's audit function or as the result of a technical appointment complaint.

8 **(1) Audit review.**

9 **(A) Revocation of appointment.** If the department of civil service audits an appointment
10 and determines that the selection, appointment, or certification violated a civil service
11 rule or regulation, the department may order corrective action, including revocation of
12 the appointment. The department shall give written notice of the revocation to the
13 appointing authority and the employee whose appointment is revoked.

14 **(B) Subsequent technical complaint.** An employee whose appointment is revoked, or the
15 employee's appointing authority, may file a technical appointment complaint regarding
16 a staff revocation order within 14 calendar days after the date the revocation order was
17 issued. If a timely technical appointment complaint is filed, the revocation order is
18 automatically stayed pending a decision or further order of the technical review officer.

19 **(2) Technical appointment complaint by candidate.**

20 **(A) Technical appointment complaint authorized.** If an unsuccessful candidate files a
21 timely technical appointment complaint under rule 8-2 and the technical review officer
22 determines that the challenged appointment violated a civil service rule or regulation,
23 the officer may order corrective action, including revocation of the challenged
24 appointment.

25 **(B) Notice to incumbent.** If a technical appointment complaint is filed, the incumbent
26 employee whose appointment is being challenged in the complaint is entitled to notice
27 of the complaint and an opportunity to defend the appointment. If the technical review
28 officer revokes an incumbent employee's appointment, that incumbent employee is

1 bound by the determination of the technical review officer, including revocation of the
2 employee’s appointment.

3 (c) Effect of revocation of appointment. When the department of civil service or a technical
4 review officer revokes an appointment, the employment status of the employee whose
5 appointment is revoked is determined as follows:

6 (1) Employee with continuing status. If the employee had continuing status at the time of the
7 appointment, the employee is to be retained in a position within the principal department or
8 autonomous agency that appointed the employee at a classification and level in which the
9 employee had continuing status at the time of the appointment. If no such position is
10 available within the department or agency at the time of the revocation, the employee may
11 exercise employment preference.

12 (2) Employee without continuing status. If the employee had no continuing status in the
13 classified service at the time of the appointment, the appointing authority shall separate the
14 employee from state employment, unless the employee has otherwise been properly
15 appointed to another position.
16

Chapter 4: Classification

RULE 4-6: SENIOR EXECUTIVE SERVICE (SES)

* * *

4-6.2 Conditions of Employment

(a) **Performance pay.** All positions in the senior executive service are included in a performance-pay program.

1 **(b) Qualifications ; limited appointment.** A position in the senior executive service must be filled
 2 by a qualified person under a senior executive service agreement approved by the state personnel
 3 director. The agreement must provide for a limited-term appointment, the duration of which
 4 cannot exceed 2 years.

5 **(c) Lateral job changes.** An employee in a senior executive service position may receive a lateral
 6 job change to another senior executive service position. A lateral job change within the
 7 employee’s own department or autonomous entity is grievable cannot be grieved unless it only if
 8 the employee alleges that the lateral job change violates rule 1-8 [Prohibited Discrimination] or
 9 rule 2-9 [Whistleblower Protection].

10 **(d) Removal during term.** During the term of an appointment and before the expiration of the term
 11 of appointment, an employee may be removed only (1) for cause, including unsatisfactory
 12 performance, or (2) if the position is abolished. A senior executive dismissed before the
 13 expiration of the term of appointment may appeal the dismissal through the civil service
 14 grievance ~~and~~ appeal procedure. However, no damages may be awarded for any period after the
 15 date of expiration of the term of appointment.

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 17 * * *
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19 **RULE 4-7: SENIOR EXECUTIVE MANAGEMENT ASSISTANT**
 20 **SERVICE (SEMAS)**

21 * * *

22 **4-7.2 Conditions of Employment**

23 **(a) Performance pay.** All positions in the senior executive management assistant service are
 24 included in a performance-pay program.

25 **(b) Qualifications ; limited appointment.** A position in the senior executive management assistant
 26 service must be filled by a qualified person under a senior executive management assistant
 27 service agreement (SEMAS agreement) approved by the state personnel director. The agreement
 28 must provide for a limited-term appointment, the duration of which cannot exceed 2 years.

1 (c) **Lateral job changes.** An employee in a senior executive management assistant position may
 2 receive a lateral job change to another senior executive management assistant position. A lateral
 3 job change within the employee’s own department or autonomous entity is grievable ~~cannot be~~
 4 ~~grieved unless it only if the employee alleges that the lateral job change~~ violates rule 1-8
 5 [Prohibited Discrimination] or rule 2-9 [Whistleblower Protection].

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 7 * * *

9 **RULE 4-8: EQUITABLE CLASSIFICATION PLAN (ECP)**
 10 **GROUP 4**

11
 12 * * *

13 **4-8.2: Conditions of Employment in Group 4**

- 14 (a) **Performance pay.** All positions in ECP Group 4 are included in a performance-pay program.
- 15 (b) **General.** Positions in Group 4 are subject to the civil service rules and regulations applic able to
 16 nonexclusively represented employees, except as specifically modified for Group-4 positions.
- 17 (c) **Lateral job changes.** An employee in a Group-4 position may receive a lateral job change to
 18 any other Group-4 position within the employee’s principal department. A lateral job change is
 19 grievable only if the employee alleges that the lateral job change ~~it~~ violates ~~civil service~~-rule 1-8
 20 [Prohibited Discrimination] or rule 2-9 [Whistleblower Protection].

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23

Chapter 5: Compensation

RULE 5-3: COMPENSATION SCHEDULES

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5-3.4 Operation of Compensation Schedules

An employee in the classified service cannot be paid less than the minimum nor more than the maximum authorized in the compensation plan, unless authorized by the state personnel director.

* * *

(c) Performance-pay programs.

* * *

(3) Grievances regarding performance-pay programs. Performance-pay awards are discretionary. An employee is not authorized to appeal a final performance-pay grievance determination unless an appeal is specifically permitted in this rule or the applicable regulations.

(A) Grievance and appeal permitted. An employee aggrieved by any of the following performance-pay actions may file a grievance and appeal the final determination of the appointing authority to the department of civil service:

(1) The employee receives a performance rating recognized by the department of civil service as of less than ~~“meets expectations,” “fully competent,” or other equivalent~~ satisfactory ~~rating~~.

(2) The employee’s pay is reduced.

1 (3) The appointing authority does not rate the performance of the employee at least
2 once annually.

3 (4) The performance-pay action is alleged to violate ~~article 11, section 5, of the~~
4 ~~constitution or~~ rule 1-8 [Prohibited Discrimination] or rule 2-9 [Whistleblower
5 Protection].

6 (B) **Grievance appeal prohibited.** In all other cases, an appointing authority is
7 permitted, but not required, to authorize an employee aggrieved by a performance-pay
8 action to file a grievance within the department’s grievance procedure. However,
9 unless expressly authorized in subsection (c)(3)(A), the employee cannot appeal a
10 final performance-pay grievance determination of the appointing authority to the
11 department of civil service. By way of example only, the following performance-pay
12 actions cannot be appealed to the department of civil service:

13 (1) The amount of a performance-pay award.

14 (2) The failure to be awarded a performance-pay award.

15 (3) The distribution of a performance-pay award between a base salary adjustment
16 and a lump sum award.

17 (4) A performance evaluation rating recognized by the department of civil service as
18 satisfactory. at or above “meets expectations,” “fully competent,” or other
19 equivalent satisfactory rating.

20 (5) The performance evaluation or performance-pay award of another employee.

21 (6) The decision to include a position into, or exclude a position from, a perform-
22 ance-pay program.

23 (7) The performance-pay program itself, including, for example, the performance
24 standards, departmental evaluation methods, rating categories, and departmental
25 salary-range subdivisions.

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2 Chapter 6: Employee-employer

3 Relations

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6 **RULE 6-3: COMMISSION AUTHORITY**

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8 **6-3.7 Application of Civil Service Rules and Regulations**

9 **Nonexclusively represented employees.** The rates of compensation for all classifications
10 and other conditions of employment for nonexclusively represented employees are
11 established in the civil service rules and regulations. An appointing authority may establish
12 (1) individual levels of compensation within the rates fixed by the civil service commission
13 for each classification and grade and (2) ~~individual departmental~~ work rules that are not
14 inconsistent with the constitution, ~~or~~ applicable law, ~~including and~~ the civil service rules and
15 regulations.

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Chapter 7: Disbursements for Personal Services

RULE 7-5: PROCEDURE: PRIOR WRITTEN APPROVAL BY CIVIL SERVICE STAFF

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7-5.3 ~~Appeal of~~Complaint Regarding Technical Decision

11 An interested party who participated at the staff review may file a technical disbursement complaint
12 ~~appeal~~ as provided in rule 8-2, 2-19. The ~~appeal-technical complaint~~ must be received by the depart-
13 ment of civil service and all other interested parties within 14 calendar days after the date the
14 technical disbursement decision is mailed.

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Chapter 8: Grievances, Technical Complaints, and Appeals

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RULE 8-1: GRIEVANCES AND GRIEVANCE APPEALS

8-1.1 Grievance Authorized

22 An employee may file a grievance with an appointing authority, as authorized in the civil service
23 rules and regulations.

8-1.2 Time Limits

A grievance must be filed in writing with the appointing authority within 14 calendar days after the employee knew of or, in the exercise of reasonable diligence, should have known of the circumstances giving rise to the grievance.

8-1.3 Types of Grievances

(a) Types of grievances. A grievance must allege that the employee is aggrieved by one or more of the following actions of the appointing authority:

- (1) Discrimination prohibited by rule 1-8 [Prohibited Discrimination].**
- (2) Reprisal prohibited by rule 2-9 [Whistleblower Protection].**
- (3) Discipline without just cause.**
- (4) The abolition or creation of a position.**
- (5) An arbitrary and capricious lateral job change resulting in substantial harm.**
- (6) An action that substantially harmed the employee and violated (1) a civil service rule or regulation, (2) a departmental work rule, or (3) an enforceable written grievance settlement permitted by the civil service rules or regulations.**

(b) Limitation on grievances.

- (1) Lateral job changes.** A grievance regarding a lateral job change imposed for disciplinary reasons may be grieved only under the provisions of subsections (a)(2), (a)(3), or (a)(5), as appropriate.
- (2) Technical appointment complaints excluded.** A complaint by an unsuccessful candidate regarding a technical appointment decision or arising out of the selection, appointment, or certification of a candidate may only be filed directly with the department of civil service under the exclusive technical appointment complaint provisions in rule 8-2 [Technical Complaints].

8-1.4 Grievance Decision by Appointing Authority

The appointing authority shall review the grievance and issue a written grievance decision, as provided in the regulations. If the appointing authority fails to answer the grievance within the time permitted in the regulations, the appointing authority is deemed to have denied the grievance.

8-1.5 Appeal of Grievance Decision to Department of Civil Service

Grievance appeal authorized. Subject to any other limitations in the civil service rules or regulations, a grievant may appeal a final grievance decision of an appointing authority to the department of civil service if the grievance alleged any of the following:

- (a) A tangible adverse employment action resulting from discrimination prohibited in rule 1-8 [Prohibited Discrimination].**
- (b) A tangible adverse employment action resulting from reprisal prohibited by rule 2-9 [Whistleblower Protection].**
- (c) Dismissal, demotion, suspension, or reduction in pay, without just cause.**
- (d) A tangible adverse employment action caused by the abolition or creation of a position.**
- (e) An arbitrary and capricious lateral job change resulting in substantial harm.**
- (f) Denial of compensation to which the grievant was entitled under the civil service rules and regulations.**
- (g) An unsatisfactory service rating issued without just cause.**
- (h) A less-than-satisfactory overall performance-pay evaluation issued without just cause.**
- (i) An action that substantially harmed the employee and violated (1) a civil service rule or regulation, (2) a departmental work rule, or (3) an enforceable written grievance settlement permitted by the civil service rules or regulations.**

8-1.6 Limitations on Grievances and Grievance Appeals

Except as authorized in rules 8-1.5(a) and 8-1.5(b), the rights of an employee to grieve and to appeal a final grievance decision authorized in these rules are subject to the following further limitations:

- 1 (a) **Probationary employee.** A probationary employee cannot appeal the final grievance decision
2 of the appointing authority regarding any of the following:
- 3 (1) A probationary service rating.
- 4 (2) A decision to extend an employee's probationary term.
- 5 (3) If the employee did not have status at the time of the probationary appointment, a decision
6 by the appointing authority to dismiss the employee during the probationary period or
7 within 28 calendar days after the end of the probationary period.
- 8 (b) **SES or SEMAS employee without prior status.** A member of the senior executive service
9 (SES) or the senior executive management assistant service (SEMAS) who (1) is separated from
10 state employment at the expiration of an appointment and (2) did not have prior status at the time
11 of appointment to the SES or the SEMAS, cannot grieve or appeal the separation.
- 12 (c) **Reprimands, counseling, and training.** An employee cannot file a grievance appeal regarding
13 a reprimand, counseling, or a requirement to participate in training.
- 14 (d) **Employee on limited-term appointment.** An employee serving in a limited-term position
15 whose appointment is terminated during or at the end of the term of appointment cannot grieve
16 or appeal the termination.
- 17 (e) **Employee whose appointment is revoked.** An employee whose appointment is revoked in
18 compliance with rule 8-2 [Technical Complaints] cannot file a separate grievance or appeal the
19 revocation outside of the procedures authorized in rule 8-2.
- 20 (f) **Management rights.** Unless specifically authorized in the civil service rules or regulations, an
21 employee cannot grieve or appeal the employer's exercise of any of the rights reserved to
22 management in rule 6-4 [Management Rights].

23 **8-1.7 Civil Service Grievance Appeal Procedures**

- 24 (a) **Regulations.** The state personnel director shall issue regulations governing the grievance appeal
25 and arbitration procedures.

- 1 (b) **Referral.** If a grievance appeal is not administratively dismissed under rule 8-3 [Summary
2 Dismissal], a hearing officer or arbitrator shall conduct an expeditious review in accordance with
3 the civil service rules and regulations.
- 4 (1) **Hearing officer.** Unless the grievant elects arbitration under subsection (b)(2), the
5 grievance appeal is referred to a hearing officer designated or appointed by the state
6 personnel director.
- 7 (2) **Arbitration alternative.** As an alternative to the referral provided in subsection (b)(1), the
8 grievant may elect to have a grievance appeal heard by an arbitrator.
- 9 (A) **Cost.** The grievant and the appointing authority shall share the cost of the arbitration
10 equally.
- 11 (B) **Applicable rules and regulations.** An arbitrator shall decide a grievance appeal
12 under the same civil service rules and regulations that would be applicable if the
13 grievance appeal were heard by a hearing officer, except as otherwise specifically
14 provided in the regulations governing arbitration.
- 15 (c) **Decision.** At the conclusion of the grievance appeal, the adjudicating officer shall issue a
16 written decision setting forth findings of fact, conclusions of law, and remedial orders, if any.
- 17 (1) **Attorney fees and costs prohibited.** An adjudicating officer cannot award attorney fees,
18 witness fees, costs, or other expenses.
- 19 (2) **No interest on award.** An adjudicating officer cannot award interest on any monetary
20 award.
- 21 (3) **Limitation on damages for limited-term appointments.** An adjudicating officer cannot
22 award to a grievant in a limited-term appointment, the senior executive service, or the
23 senior executive management assistant service, any damages for any period after the date of
24 expiration of the grievant's term of appointment.

8-1.8 Further Appeal to Commission Authorized

A party that appeared and participated in a grievance appeal, including an arbitration, may file a further appeal of the final decision of the adjudicating officer to the civil service commission, as provided in the civil service rules and regulations.

8-1.9 Effective Date of Decision of Adjudicating Officer; Automatic Stay; Exception

(a) Effective date. A grievance appeal decision is final and binding on the parties 29 calendar days after the date the decision is issued, unless either (1) the decision provides for a later effective date or (2) a party files a further appeal to the civil service commission within 28 calendar days after the date the decision is issued. If a party files a timely appeal to the civil service commission within 28 calendar days after the date the decision was issued, the effective date of the decision is automatically stayed pending further order of the employment relations board or civil service commission.

(b) Exception; grievant's reinstatement ordered. If a final decision of an adjudicating officer orders an appointing authority to reinstate a grievant who had been dismissed for cause, the appointing authority, as a condition of further appeal to the civil service commission, shall either (1) reinstate the grievant or (2) restore the grievant's base pay and medical, dental, and vision group insurance. The appointing authority shall continue the reinstatement or payment of base pay and benefits while the appeal to the commission is pending, as provided in the civil service regulations.

RULE 8-2: ~~2-19~~ TECHNICAL COMPLAINTS APPEAL PROCESS

8-2.12-19.1 Complaint Regarding Appeal of Technical Decision Authorized

An authorized person individual, appointing authority, or organization directly affected and aggrieved by a technical decision may file a technical complaint appeal within 14 calendar days after the date of mailing of the technical decision. The technical appeal must be filed with the department of civil service, as provided in this rule and the regulations.

1 **(a) Technical classification complaint.** An employee directly affected by a technical classification
2 decision, or the employee's appointing authority, may file a technical classification complaint.

3 **(b) Technical qualification complaint.** An employee directly affected by a technical qualification
4 decision, or the employee's appointing authority, may file a technical qualification complaint.

5 **(c) Technical disbursement complaint.** An interested party authorized in rule 7-5.3 may file a
6 technical disbursement complaint.

7 **(d) Technical appointment complaint.**

8 **(1) After rescission of appointment.** If, as the result of an audit, the department of civil service
9 rescinds the appointment of an employee, the employee or the employee's appointing
10 authority may file a technical appointment complaint.

11 **(2) After denial of appointment.** An unsuccessful candidate who alleges that the selection,
12 appointment, or certification process for the position violated a civil service rule or
13 regulation may file a technical appointment complaint.

14 **8-2.2 Time Limits**

15 **(a) Technical appointment complaint.** An unsuccessful candidate who alleges that the selection,
16 appointment, or certification process for a position violated a civil service rule or regulation must
17 file a technical appointment complaint with the department of civil service within the following
18 time limits:

19 **(1) Notice mailed.** If the appointing authority mailed or delivered notice to the candidate that
20 the candidate was removed from the selection process or that another person was appointed
21 to the position, the candidate must file the technical appointment complaint no later than 14
22 calendar days after the later of (1) the effective date of the challenged appointment or (2)
23 the date of the notice.

24 **(2) No notice mailed.** If the appointing authority does not mail or deliver notice to the
25 candidate, the candidate must file the technical appointment complaint within 6 months
26 after the effective date of the challenged appointment.

1 **(b) Other technical complaints.** A technical classification complaint, technical qualification
2 complaint, or technical disbursement complaint must be filed within 14 calendar days after the
3 date the civil service staff issued the original technical decision.

4 **2-19.2—Administrative Denial of Appeal**

5 ~~The department of civil service may administratively dismiss a technical appeal without prior notice~~
6 ~~or hearing for any of the following reasons:~~

7 ~~(a)The department of civil service lacks jurisdiction over a necessary party or over the subject matter~~
8 ~~of the technical appeal.~~

9 ~~(b)The technical appeal is untimely.~~

10 ~~(c)Another pending action involves the same parties and substantially the same or similar claims.~~

11 ~~(d)The technical complainant is not authorized to file a technical complaint.~~

12 **2-19.3—Civil Service Technical Appeal Procedures**

13 ~~If the technical appeal is not administratively dismissed, it is referred to a technical appeal officer for~~
14 ~~disposition. The technical appeal officer shall conduct an expeditious review in accordance with civil~~
15 ~~service rules and regulations. The technical appeal officer shall decide the matter based on the~~
16 ~~departmental records and the written submissions of interested persons. The technical appeal officer~~
17 ~~is not authorized to conduct a hearing, but may meet with the technical complainant and other~~
18 ~~interested persons to review and discuss the appeal. The technical appeal officer shall issue a written~~
19 ~~technical appeal decision.~~

20 **8-2.3 Civil Service Technical Review**

21 **(a) Referral to technical review officer.** If the technical complaint is not administratively
22 dismissed under rule 8-3 [Summary Dismissal], a technical review officer shall conduct an
23 expeditious review in accordance with the civil service rules and regulations.

24 **(b) Technical review procedures.**

25 **(1) Hearing not authorized** A technical review officer is not authorized to conduct a hearing.

26 **(2) Technical appointment complaint; certified question.** If the technical review officer
27 determines that a technical appointment complaint raises a genuine issue as to any material
28 fact that cannot be adequately determined under the technical complaint procedures, the
29 technical review officer may certify one or more questions of fact to a hearing officer to

1 conduct a hearing and issue a recommended decision to the technical review officer, as
2 provided in the civil service regulations.

- 3 **(3) Technical review decision.** At the conclusion of the technical review, the technical review
4 officer shall issue a final technical review decision setting forth the review officer's material
5 findings of fact, conclusions of law, and remedial orders, if any. The final technical review
6 decision shall be based on (1) the technical expertise of the review officer, (2) the civil
7 service rules and regulations, (3) departmental records, and (4) the documents and written
8 submissions of the parties. In a review of a technical appointment complaint, the technical
9 review officer shall also consider the written recommendation of the hearing officer on any
10 certified question of fact.

11 ~~2-19.4 — Further Appeal~~

12 ~~A person who participated in the technical appeal and is directly affected and aggrieved by the~~
13 ~~decision of a technical appeal officer may file an application for leave to appeal with the civil service~~
14 ~~commission.~~

15 8-2.4 Further Appeal to Commission Authorized

16 An interested party in a technical review proceeding may file an appeal of a final technical review
17 decision, including a summary dismissal of the technical complaint, to the civil service commission,
18 as provided in the civil service rules and regulations.

19 8-2.5 Effective Date of Decision of Technical Review Officer

20 **(a) Technical classification or qualification review.** A final technical review decision on a
21 technical classification or qualification complaint is effective immediately upon issuance, unless
22 a different effective date is specified in the decision.

23 **(b) Technical disbursement review.** A final technical review decision on a technical disbursement
24 complaint is effective as follows:

25 **(1) Request approved**

26 **(A) If an initial civil service staff decision approving a request became effective under**
27 **rule 7-5.2 [Effective Date of Staff Decision], a decision of a technical review officer**

1 also approving the request is effective immediately and the appointing authority may
2 continue to make disbursements for the personal services until the civil service
3 commission or a court of competent jurisdiction rules otherwise.

4 **(B)** If civil service staff initially denied a request, a technical review decision approving a
5 request is effective 15 calendar days after the date the decision is issued, unless a later
6 date is specified in the decision. An interested party intending to appeal the technical
7 review decision to the civil service commission may file a request that the state
8 personnel director order the effective date of the decision stayed pending appeal. The
9 request for a stay must be filed within 14 calendar days after the date the technical
10 review decision is issued. The director may stay the effective date of the technical
11 review decision pending appeal to the commission if the director determines that (1) it
12 is unlikely that the request meets any of the standards for approval and (2) a stay is in
13 the best interests of the classified service.

14 **(2)** **Request denied.** If civil service staff initially approved a request, a technical review
15 decision disapproving the request is final and binding on the parties 29 calendar days after
16 the date the decision is issued, unless either (1) the decision provides for a later effective
17 date or (2) an interested party files a timely application for leave to the civil service
18 commission within 28 calendar days after the date the decision was issued. If an interested
19 party files a timely application for leave to appeal, the effective date of the technical review
20 decision is automatically stayed and the appointing authority may continue to make
21 disbursements for the personal services until the civil service commission or a court of
22 competent jurisdiction rules otherwise.

23 **(c)** **Technical appointment complaint.** A technical review decision on a technical appointment
24 complaint is final and binding on the parties 29 calendar days after the date the decision was
25 issued unless either (1) the decision provides for a later effective date or (2) an interested party
26 files a further appeal to the civil service commission within 28 calendar days after the date the
27 decision. If a party files a timely application for leave to appeal, the effective date of the
28 decision is automatically stayed pending further order of the employment relations board or civil
29 service commission.

8-2.6 Exclusive Technical Appointment Reviews

(a) The technical appointment review is the exclusive proceeding for any candidate or employee, including an exclusively represented employee, to bring a complaint that arises out of (1) the selection, appointment, or certification of a candidate for a position in the classified service or (2) the rescission of an appointment after a department of civil service audit. A candidate, employee, and appointing authority are prohibited from using either the civil service grievance process provided in rule 8-1 [Grievances and Grievance Appeals] or a negotiated grievance process permitted by rule 6-9.6 [Negotiated Grievance Procedures]. This exclusive procedure is not applicable when a collective bargaining agreement permitted in rule 3-4 [Relation to Collective Bargaining] authorizes a different procedure regarding a reassignment, transfer, layoff, or recall.

(b) If a technical appointment complaint is filed, the technical appointment review is the exclusive proceeding in which an incumbent employee whose appointment is challenged may appear and defend the employee's own selection, appointment, or certification. An incumbent employee whose appointment is challenged and who is given notice of the technical appointment complaint and the opportunity to appear and defend the appointment in the technical appointment review is bound by the final technical appointment decision. The incumbent employee cannot later file a separate technical complaint or grievance regarding either (1) the incumbent employee's original selection, appointment, or certification or (2) the result of the technical appointment decision, including revocation of the incumbent employee's appointment.

RULE 8-3: SUMMARY DISMISSAL OF GRIEVANCE APPEAL OR TECHNICAL COMPLAINT

A civil service adjudicating officer may summarily dismiss a grievance appeal or technical complaint for any of the following reasons:

- (a) **Not authorized.** The grievant or technical complainant is not authorized to file the grievance, grievance appeal, or technical complaint.
- (b) **Lack of jurisdiction.** The department of civil service lacks jurisdiction over a necessary party or over the subject matter of the grievance appeal or technical complaint.

- 1 (c) Untimeliness. The grievance, grievance appeal, or technical complaint was not filed timely.
- 2 (d) Another action pending. Another civil service action has been initiated between the same
- 3 parties involving substantially the same grievance or technical complaint.
- 4 (e) Barred by prior claim. Substantially the same grievance or technical complaint was
- 5 adjudicated to finality in another action between the same parties.

6 RULE 8-4: CONSTITUTIONAL COMPLAINT

7 A person who claims that an action of the civil service commission or the department of civil service

8 violates article 11, section 5, of the constitution may file a complaint with the state personnel director.

9 The complaint must be filed within 14 calendar days after the time the person knew, or in the exercise

10 of reasonable diligence, should have known, of the violation. If timely and properly filed, the state

11 personnel director shall investigate the complaint. The director may make such inquiries and hold

12 such hearings as may be necessary to investigate the complaint. The director shall issue a written

13 answer to the complaint. The final decision of the state personnel director may be appealed to the

14 civil service commission, as provided in the civil service rules and regulations.

15 RULE 8-5: SUPERINTENDING CONTROL BY STATE PERSONNEL

16 DIRECTOR

17 Without prior notice to the parties or the adjudicating officer, the state personnel director may issue

18 an order temporarily staying further action on any matter pending before an adjudicating officer.

19 After notice to the parties and an opportunity to be heard, the state personnel director may exercise

20 superintending control over any adjudicating officer on any pending matter, including, but not limited

21 to, a grievance appeal or technical complaint.

1 **RULE 8-6: ENFORCEMENT OF DECISION OF ADJUDICATING**
2 **OFFICER**

3 After a decision of an adjudicating officer becomes effective, every party shall promptly and fully
4 comply with the decision and any remedial orders, unless otherwise ordered by the state personnel
5 director, employment relations board, or civil service commission.

6 **RULE 8-7: APPEAL TO CIVIL SERVICE COMMISSION**

7 **8-7.1 Appeal to Civil Service Commission**

8 When authorized in the civil service rules, a party aggrieved by the final decision of an adjudicating
9 officer may appeal the decision to the civil service commission. An appeal to the commission must
10 be filed with the employment relations board, as provided in the civil service rules and regulations.
11 Unless an administrative officer recommends dismissal of the appeal as provided in rule 8-7.4
12 [Summary Dismissal of Claim or Application], the employment relations board shall make a
13 recommendation to the commission as provided in rule 6-10.4 [Duties].

14 **8-7.2 Claim and Application**

- 15 **(a) Further appeal as of right by employee.** An employee with status who was dismissed for just
16 cause may appeal as of right from a final decision of an adjudicating officer upholding the
17 dismissal. The state personnel director shall provide for an expedited appeal procedure in the
18 regulations.
- 19 **(b) Further appeal as of right by appointing authority.** An appointing authority that dismissed
20 an employee for just cause may appeal as of right from a final decision of an adjudicating officer
21 reinstating the employee. The state personnel director shall provide for an expedited appeal
22 procedure in the regulations.
- 23 **(c) Further appeal by application and leave granted.** A party aggrieved by any other final
24 decision of an adjudicating officer may appeal to the civil service commission upon application
25 and leave granted.

8-7.3 Time Limits for Appeal to Commission

- (a) Time limits for appeal to commission. A claim of appeal or an application for leave to appeal must be received by the employment relations board within 28 calendar days after the date the final decision of the adjudicating officer is issued.
- (b) Proof of service. The party filing the appeal must serve a copy of the claim or application on all other parties and provide proof of the service within 3 calendar days after the claim or application is filed with the board.
- (c) Late filing. If a claim or application is not filed timely, the claim or application must be accompanied by an affidavit setting forth either good cause or special extenuating circumstances for the delay.
- (1) The administrative officer may accept a claim or application up to 28 calendar days late if the appellant demonstrates good cause for the delay that was not due to the appellant's own negligence.
 - (2) The administrative officer may accept a claim or application filed more than 28 calendar days but less than one year late if the appellant demonstrates special extenuating circumstances for the delay.
 - (3) A claim or application filed more than one year late cannot be accepted or considered under any circumstances.

8-7.4 Summary Dismissal of Claim or Application

A civil service administrative officer may recommend that the civil service commission summarily dismiss a claim or application for any of the following reasons:

- (a) Not authorized. The appellant is not authorized to file the appeal.
- (b) Lack of jurisdiction. The department of civil service or the civil service commission lacks jurisdiction over a necessary party or over the subject matter of the appeal.
- (c) Untimeliness. The claim or application is untimely.

1 **(d) Another action pending.** Another civil service action has been initiated between the same
2 parties involving substantially the same matter.

3 **(e) Barred by prior claim.** Substantially the same matter was adjudicated to finality in another
4 action between the same parties.

5 **8-7.5 Grounds for Granting an Application for Leave to Appeal**

6 **(a) Procedure.** If an administrative officer does not recommend summary dismissal of the
7 application for leave to appeal, the employment relations board shall consider the application as
8 provided in rule 6-10.4(b) [Duties] and the applicable regulations.

9 **(b) Grounds for granting leave to appeal.** In the discretion of the civil service commission, leave
10 to appeal may be granted in any matter in which it is alleged that (1) the decision of the
11 adjudicating officer is erroneous, (2) the decision violates article 11, section 5, of the constitution
12 or is otherwise contrary to law, including the civil service rules and regulations, or (3) the
13 question presented is of major significance to the classified service.

14 **8-7.6 Decision by Civil Service Commission**

15 The civil service commission shall review and act on the recommendation of the administrative
16 officer or the employment relations board, as provided in rule 6-10.5 [Final Action by the
17 Commission].

18 **8-7.7 Effective Date of Decision of Commission**

19 A decision of the civil service commission is effective when issued unless a different effective date is
20 specified in the decision.

21 **8-7.8 Commission May Assume Jurisdiction**

22 The civil service commission reserves the authority to assume jurisdiction and to take appropriate
23 action in any proceeding at any time before the employment relations board issues its final
24 recommendation.

8-7.9 Appeal of Final Commission Decision to Circuit Court

(a) Service of complaints and petitions for review. If authorized by law, a party may file a petition for review of a final decision of the civil service commission in the Michigan circuit court. Any complaint or petition filed affecting any decision or interest of the commission must name the commission as a party and must be served on the commission at the office of the state personnel director in Lansing, Michigan.

(b) Settlement of claims and lawsuits. No person may settle or authorize a settlement of any claim or lawsuit affecting any decision or interest of the civil service commission without the express prior consent of the state personnel director or the director's designee. The commission is not bound by any settlement of any claim or lawsuit affecting any decision or interest of the commission if the state personnel director or the director's designee did not give express prior consent to the settlement.

RULE 8-8: REPRESENTATION OF EMPLOYEES

A classified employee who is scheduled for a disciplinary conference or who appears as a party in a civil service proceeding may choose to be represented as provided below:

(a) Nonexclusively represented employee. A nonexclusively represented employee may be represented only by one of the following:

(1) An employee or agent of a limited-recognition organization.

(2) An attorney.

(3) Another nonexclusively-represented classified employee.

(A) If the representative is an employee of the same principal department or autonomous entity (and agency of convenience, if any) as the charged employee, the appointing authority shall release the representative from regularly scheduled work without loss of pay or leave credits to attend the disciplinary conference or civil service proceeding.

(B) If the representative is an employee of a different principle department, autonomous entity, or agency of convenience than the charged employee, the representative may be

absent from the workplace to attend the disciplinary conference or the civil service proceeding only if the representative's appointing authority has approved annual or personal leave.

(b) Exclusively represented employee. An exclusively represented employee may be represented only by one of the following:

(1) An employee or agent of the employee's exclusive representative.

(2) An attorney.

Chapter 9: Definitions

RULE 9-1: DEFINITIONS

Unless the context clearly provides otherwise, the following terms in the civil service rules and regulations are defined as follows:

* * *

9-1.2 Adjudicating Officer

Adjudicating officer means the state personnel director or other civil service administrative officer, technical review officer, hearing officer, arbitrator, or other officer authorized to make a decision reviewable by the civil service commission.

9-1.3 Administrative Officer

Administrative officer means the state personnel director or a person authorized by the state personnel director to take administrative action on matters filed with the department of civil service or the civil service commission.

* * *

1 9-1.17 Candidate

2 *Candidate* means a qualified person who requested to be considered for appointment to a specific
3 position in the classified service and who was considered by the appointing authority.

4 * * *

5 9-1.29 Continuing Status

6 *Continuing status* means status achieved during the current continuous period of employment in the
7 classified service.

8 * * *

9 9-1.53 Good Cause

10 *Good cause* means an acceptable excuse for failing to file or take other required action timely. *Good*
11 *cause* does not include a person's own carelessness, negligence, or inattention to the filing or other
12 requirements.

13 * * *

14 9-1.55 Grievance

15 *Grievance* means a complaint, authorized in rule 8-1, filed by a classified employee regarding an
16 action by an appointing authority.

17 * * *

19 9-1.56 Hearing Officer

20 *Hearing officer* means a person authorized by the state personnel director to administer oaths and
21 conduct hearings as provided in the civil service rules and regulations.

22 * * *

1 **9-1.63 55 Interested Party**

2 **(a) Interested party, in a review of a technical disbursement decision,** means a party that file~~s~~ a
3 request or a written appearance in the initial civil service staff review of athe request.

4 **(b) Interested party, in any other technical review, means a party that filed a technical complaint or**
5 **a written appearance in the technical complaint review proceeding.**

6 * * *

7 **9-1.83 76 Party**

8 **(a) Party, in a grievance appeal, means any of the following:**

9 **(1) The employee who file d the grievance.**

10 **(2) The appointing authority that issued the final grievance decision being appealed.**

11 **(b) Party, in a technical classification review, means any of the following:**

12 **(1) An employee whose classification is directly affected by a technical classification decision.**

13 **(2) The appointing authority of an employee in subdivision (b)(1).**

14 **(3) Any other interested person with a demonstrable special interest in the technical**
15 **classification decision that is granted permission to participate in the review.**

16 **(c) Party, in a technical qualification review, means any of the following:**

17 **(1) An employee whose qualifications and fitness for a position in the classified service is**
18 **directly affected by a technical qualification decision.**

19 **(2) The appointing authority of an employee in subdivision (c)(1).**

20 **(3) Any other interested person with a demonstrable special interest in the technical**
21 **qualification decision that is granted permission to participate in the review.**

22 **(d) Party, in a review of a technical disbursement decision,** means any of the following:

23 **(1) The~~An~~ appointing authority that files a request to contract for personal services.**

- 1 (2) An exclusive representative of a classified employee with a direct interest in the technical
2 disbursement decision.
- 3 (3) A nonexclusively represented classified employee with a direct interest in the technical
4 disbursement decision.
- 5 (4) A limited recognition organization appearing on behalf of a classified employee with a
6 direct interest in the technical disbursement decision.
- 7 (5) The office of the state employer.
- 8 (6) Any other person or organization ~~(1)~~ with a demonstrable special interest in ~~a~~the technical
9 disbursement decision, ~~(2)~~ who (1) petitions to participate in the civil service staff review;
10 and ~~(3)~~ ~~who~~ is authorized by the department of civil service to participate in the review.
- 11 (e) **Party, in a review of a technical appointment decision, means any of the following:**
- 12 (1) An unsuccessful candidate who files a technical appointment complaint.
- 13 (2) An employee whose appointment is revoked by the department of civil service in an audit
14 review.
- 15 (3) An employee whose appointment is challenged in a technical appointment complaint.
- 16 (4) The appointing authority of an employee whose appointment is revoked in an audit review
17 or challenged in a technical appointment complaint.

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19 * * *

20 **9-1.112 Special Extenuating Circumstances**

21 **Special extenuating circumstances** means a compelling excuse for the failure to file a matter timely
22 that arises out of one of the following:

- 23 (a) An intentionally or fraudulently misleading action by an appointing authority or party that
24 prevented the filing.
- 25 (b) Serious physical or mental incapacity of the person that prevented the filing.

1 (c) Extraordinary unforeseen circumstances outside the control of the person that prevented the
2 filing.

3 * * *

4 9-1. 121 ~~113~~ Technical Complaint

5 *Technical complaint* means a written complaint that a technical decision ~~(1) violates article 11,~~
6 ~~section 5, of the constitution, (2) violate~~ds a civil service rule or regulation or was arbitrary and
7 capricious, (3) lacks a rational basis, or (4) is an abuse of discretion.

8 9-1. 122 ~~114~~ Technical Complainant

9 *Technical complainant* means any of the following persons when directly affected and aggrieved by
10 a technical decision:

- 11 (a) An applicant for employment.
- 12 (b) A classified employee.
- 13 (c) An appointing authority.
- 14 (d) The office of the state employer.
- 15 (e) Any other person or organization specifically authorized by civil service rule or regulation to file
16 a technical complaint.

17 9-1. 123 ~~115~~ Technical Decision

18 *Technical decision* ~~includes means each of the following individual decisions:~~

19 ~~(a) an individual decision by staff of the department of civil service made under the civil service~~
20 ~~commission's constitutional power~~ *Technical classification decision* means a civil service staff
21 ~~decision to classify~~ing a all positions in the classified service, ~~according to their respective duties~~
22 ~~and responsibilities,~~

23 ~~(b) Technical qualification decision means a civil service staff decision to determine~~ing the
24 qualifications and fitness of a all candidates for a positions in the classified service, ~~or~~

1 (c) *Technical disbursement decision* means a civil service staff decision ~~to approve~~ing or
2 disapproveing disbursements for personal services.

3 (d) *Technical appointment decision* means (1) a decision of an appointing authority appointing a
4 candidate to a position in the classified service or (2) a decision of civil service staff certifying or
5 revoking an appointment to a position in the classified service.

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