

# REGULATION

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| <b>SPDOC No.</b><br>07-14   | <b>Effective Date:</b><br>October 7, 2007   | <b>Index Reference:</b><br>Technical Complaints | <b>Regulation Number:</b><br><b>8.04</b>                   |
| <b>Issued By:</b><br>Technical Complaints   | <b>Rule Reference:</b><br>Rules 1-6 (Merit, Efficiency, and Fitness)<br>3-7 (Revocation of Appointment)<br>8-3 (Technical Complaints)<br>8-4 (Summary Dismissal of Grievance Appeal or Technical Complaint) |   | <b>Replaces:</b><br>Reg. 8.04<br>(CS-6940, March 18, 2001) |
| <b>Authority:</b> Regulations are issued by the State Personnel Director under authority granted in the Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations are subordinate to the Commission Rules. |   |   |  |
| <b>Subject:</b><br><b>TECHNICAL APPOINTMENT COMPLAINTS</b>  |   |   |  |

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## **1. PURPOSE**

This regulation establishes standards and procedures for filing and processing of technical appointment complaints authorized in rules 3-6 and 8-3.

## **2. CIVIL SERVICE COMMISSION RULE REFERENCE**

Note: This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted below) may apply. The complete, current version of the Rules can be found at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs).

### ***Rule 1-6 Merit, Efficiency, and Fitness***

*All appointments and promotions to positions in the classified service, all measures for the control and regulation of employment in classified positions, and all separations*

*from classified positions shall be based on merit, efficiency, and fitness, as provided in the civil service rules and regulations.*

### **Rule 3-7      Revocation of Appointment**

#### **3-7.1      Review of Appointments**

*Every appointment in the classified service is expressly subject to review by civil service staff. If the state personnel director determines that an appointment violated a civil service rule or regulation, the director may order corrective action, including revocation of the appointment.*

#### **3-7.2      Methods of Review**

*Civil service staff may review any appointment as part of the civil service audit function or as the result of a technical appointment complaint.*

##### **(a)      Audit review.**

- (1)      Revocation of appointment.** *If civil service staff audits an appointment and determines that the selection, appointment, or certification violated a civil service rule or regulation, the state personnel director may order corrective action, including revocation of the appointment. The director shall give written notice of the revocation to the appointing authority and the employee whose appointment is revoked.*
- (2)      Subsequent technical complaint.** *An employee whose appointment is revoked, or the employee's appointing authority, may file a technical appointment complaint regarding a revocation order within 14 calendar days after the date the revocation order was issued. If a timely technical appointment complaint is filed, the revocation order is automatically stayed pending a decision or further order of the technical review officer.*

##### **(b)      Technical appointment complaint by candidate.**

- (1)      Technical appointment complaint authorized.** *If an unsuccessful candidate files a timely technical appointment complaint under rule 8-3 [Technical Complaints] and the technical review officer determines that the challenged appointment violated a civil service rule or regulation, the officer may order corrective action, including revocation of the challenged appointment.*
- (2)      Notice to incumbent.** *If a technical appointment complaint is filed, the incumbent employee whose appointment is being challenged in the complaint is entitled to notice of the complaint and an opportunity to defend the appointment. If the technical review officer revokes an incumbent employee's appointment, that incumbent employee is bound by the determination of the technical review officer, including revocation of the incumbent employee's appointment.*

### **3-7.3 Effect of Revocation of Appointment**

*When the state personnel director or a technical review officer revokes an appointment, the employment status of the employee whose appointment is revoked is determined as follows:*

- (a) **Employee with continuing status.** If the employee had continuing status at the time of the appointment, the employee is to be retained in a position within the agency that appointed the employee at a classification and level in which the employee had continuing status at the time of the appointment. If no such position is available within the agency at the time of the revocation, the employee may exercise employment preference.*
- (b) **Employee without continuing status.** If the employee had no continuing status in the classified service at the time of the appointment, the appointing authority shall separate the employee from state employment, unless the employee has otherwise been properly appointed to another position.*

## **Rule 8-3 Technical Complaints**

### **8-3.1 Complaint Regarding Technical Decision Authorized**

*An authorized individual, appointing authority, or organization may file a technical complaint with civil service technical review staff, as provided in this rule and the regulations.*

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

- (1) **After revocation of appointment.** If, as the result of a civil service audit, a person's appointment is revoked, the person or the person's appointing authority may file a technical appointment complaint.*
- (2) **After denial of appointment.** An unsuccessful candidate who alleges that the selection, appointment, or certification process for the position violated a civil service rule or regulation may file a technical appointment complaint.*

### **8-3.2 Time Limits**

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

- (1) **Notice mailed.** If the appointing authority mailed or delivered notice to the candidate that the candidate was removed from the selection process or that another person was appointed to the position, the candidate must file the technical appointment complaint no later than 14 calendar days after the later of (1) the effective date of the challenged appointment or (2) the date of the notice.*
- (2) **No notice mailed.** If the appointing authority does not mail or deliver notice to the candidate, the candidate must file the technical*

*appointment complaint within 6 months after the effective date of the challenged appointment.*

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### **8-3.3 Civil Service Technical Review**

**(a) Referral to technical review officer.** *If the technical complaint is not administratively dismissed under rule 8-4 [Summary Dismissal], a technical review officer shall conduct an expeditious review in accordance with the civil service rules and regulations.*

**(b) Technical review procedures.**

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

**(2) Technical appointment complaint; certified question.** *If the technical review officer determines that a technical appointment complaint raises a genuine issue as to any material fact that cannot be adequately determined under the technical complaint procedures, the technical review officer may certify one or more questions of fact to a hearing officer to conduct a hearing and issue a recommended decision to the technical review officer, as provided in the civil service regulations.*

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

### **8-3.4 Further Appeal to Commission Authorized**

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

### **8-3.5 Effective Date of Decision of Technical Review Officer**

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

### **8-3.6 Exclusive Technical Appointment Reviews**

- (a) **Exclusive proceeding.** *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 revocation of an appointment after a 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] 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 3-5 [Relation to Collective Bargaining] authorizes a different procedure regarding a reassignment, transfer, layoff, or recall.*
- (b) **Incumbent employee.** *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 8-4 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 adjudicating officer lacks the authority to consider the grievance appeal or technical complaint under the civil service rules and regulations for either of the following reasons:*
- (1) *The grievant or technical complainant is not authorized to file the grievance, grievance appeal, or technical complaint.*
  - (2) *The subject matter of the grievance, grievance appeal, or technical complaint is not reviewable in the forum selected.*
- (b) **Lack of jurisdiction.** *Civil service staff or the civil service commission lacks jurisdiction over a necessary party or over the subject matter of the grievance appeal or technical complaint.*
- (c) **Untimeliness.** *The grievance, grievance appeal, or technical complaint was not filed timely.*
- (d) **Another action pending.** *Another civil service action has been initiated between the same parties involving substantially the same grievance or technical complaint.*
- (e) **Barred by prior claim.** *Substantially the same grievance or technical complaint was adjudicated to finality in another action between the same parties.*

- (f) **Failure to respond.** A grievant or technical complainant fails to respond to a deficiency notice issued by civil service staff, as provided in the civil service rules and regulations.

### 3. **DEFINITIONS**

#### A. Civil Service Commission Rule Definitions

1. **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.
2. **Candidate** means a qualified person who requested to be considered for appointment to a specific position in the classified service and who was considered by the appointing authority.
3. **Good cause** means an acceptable excuse for failing to file or take other required action timely. Good cause does not include a person's own carelessness, negligence, or inattention to the filing or other requirements.
4. **Interested party**, in any other technical review, means a party that filed a technical complaint or a written appearance in the technical complaint review proceeding.
5. **Party** means any of the following persons or organizations:  
\*.\*.\*
  - (e) **Party**, in a review of a technical appointment decision, means any of the following:
    - (1) An unsuccessful candidate who files a technical appointment complaint.
    - (2) An employee whose appointment is revoked by civil service staff in an audit review.
    - (3) An employee whose appointment is challenged in a technical appointment complaint.
    - (4) The appointing authority of an employee whose appointment is revoked in an audit review or challenged in a technical appointment complaint.
6. **Technical complainant** means any of the following persons when directly affected and aggrieved by a technical decision:
  - (a) An applicant for employment.
  - (b) A classified employee.
  - (c) An appointing authority.
  - (d) The office of the state employer.
  - (e) Any other person or organization specifically authorized by civil service rule or regulation to file a technical complaint.

7. **Technical complaint** means a written complaint that a technical decision (1) violated article 11, section 5, of the Michigan constitution, (2) violated a civil service rule or regulation, or (3) was arbitrary and capricious.
8. **Technical decision** includes each of the following individual decisions:

\* \* \*

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

#### **B. Additional Definitions as used in this Regulation**

1. **Appointee** means a classified employee whose appointment is (1) vacated by Civil Service staff or (2) challenged by an unsuccessful candidate for the position.
2. **Appointing authority** means the appointing authority that made the disputed appointment.

### **4. STANDARDS**

#### **A. Filing of Complaints.**

1. In accordance with rule 3-7.2, an employee whose appointment is revoked as the result of a Civil Service audit or an unsuccessful candidate directly affected by a technical appointment decision may file a technical complaint with Civil Service, Technical Complaints. The complaint must be submitted using the Technical Appointment Complaint form (CS-212d). The complainant must simultaneously file a copy of the complaint with the appointing authority that made the disputed appointment and file a proof of such service with Technical Complaints.
2. **Complaint.** The complaint must include the following:
  - a. All information required in part A of the Technical Appointment Complaint form (CS-212d) for each complainant and any representative.
  - b. A clear and concise description of the technical appointment decision being questioned.
  - c. A complete statement of why the technical appointment decision (1) violated article 11, section 5 of the Michigan Constitution; (2) violated a Civil Service rule or regulation; or (3) was arbitrary and capricious.
  - d. Any documentary evidence that the complainant believes supports the technical complaint.
  - e. A clear statement of the desired outcome of the complaint. The outcome must be within the authority of Civil Service staff to grant.
  - f. The signature and email address of each complainant.
3. **Time Limitations for Filing Technical Complaints.** To be timely, the complaint must be received by Civil Service, Technical Complaints within 14

calendar days of the later of the effective date of the technical appointment decision or the mailing date of notice of the decision. If notice of the decision was not sent, a complaint must be filed within 6 months after the effective date of the appointment.

4. **Extension for Filing.** The technical review officer may grant an extension of time for filing if, before the expiration of the required time for filing, the technical complainant shows sufficient justification for the extension.

#### **B. Administrative Denial of Complaint.**

1. In addition to and in accordance with rule 8-4, a technical appointment complaint may be administratively dismissed without prior notice for any of the following reasons:
  - a. The complaint fails to set forth allegations with sufficient particularity to permit review.
  - b. The complaint fails to allege a violation of a Civil Service rule or regulation or article 11, section 5, of the Michigan Constitution.
  - c. The complaint fails for other good and sufficient reason to warrant further review.

#### **C. Complaint Investigation.**

1. If a complaint is not summarily or administratively dismissed, Civil Service, Technical Complaints shall give immediate notice of the complaint to the appointing authority and any appointees and inform them of their rights to participate. Notice to appointees must include the following:
  - a. Notice that the pending complaint challenges the appointee's appointment and that the appointee may be removed or demoted as a result of the complaint.
  - b. Notice that the appointee is a party to the complaint and has the opportunity to present documents and argument and to appeal any adverse decision.
  - c. Notice that, even if the appointee does not participate, the appointee will be bound by the final decision in response to the complaint and will not be allowed to bring a separate, later grievance, technical appeal, or complaint to challenge the result of the final decision.
2. The technical review officer shall offer the appointing authority and any appointees an opportunity to respond to the complaint.
3. A technical review officer is not authorized to conduct a hearing, but may meet with the complainant or other interested parties to discuss the complaint. If the complaint raises a genuine issue of material fact that cannot be adequately determined under the technical complaint procedures, the technical review officer may certify questions of fact to Hearings, Employee Relations, and Mediation (HERM). HERM shall assign the matter to a hearing officer. The hearing officer shall then conduct a hearing, as provided in Civil Service rules and regulations, and issue a written recommendation on the certified question of fact to the technical review officer.

**D. Technical Review Decision.**

1. The technical review officer shall review all submissions, including any hearing officer's recommendation, and decide the matter based on the submissions, agency records, Civil Service rules and regulations, and technical expertise. At the conclusion of the technical review, the technical review officer shall issue a final technical review decision setting forth the review officer's material findings of fact, conclusions of law, and remedial orders, if any.
2. The decision of a technical review officer shall contain notice of the right of interested parties to file an application for leave to appeal to the Civil Service Commission, as provided in regulation 8.05 [Employment Relations Board Appeal Procedures].

**5. PROCEDURE**

| <b>Responsibility</b> | <b>Action</b>   |
|-----------------------|---|
| Appointing Authority  | 1. Makes appointment to position.   |
| Complainant           | 2. Prepares technical complaint and submits to Civil Service, Technical Complaints.<br><br>3. Provides a copy of the technical complaint to the appointing authority and files proof of service with the Technical Complaints.  |
| Technical Complaints  | 4. Upon receipt of the technical complaint, conducts preliminary review to determine timeliness and sufficiency of the complaint.<br><br>5. If the complaint is untimely or fails to meet the requirements of this regulation, administratively dismisses the technical complaint.<br><br>6. If the appeal is not administratively dismissed, notifies appointing authority, appointees and any other necessary parties and gives an opportunity to respond.<br><br>7. If necessary, meets with the technical complainant, appointing authority, appointee, or other interested persons to discuss the complaint.<br><br>8. If necessary, certifies questions of fact for determination by a hearing officer. |

| <b>Responsibility (continued)</b> | <b>Action (continued)</b>  |
|-----------------------------------|--|
| Technical Complaints              | 9. Prepares and issues technical review decision.                  |
| Complainant or Interested Party   | 10. May apply for leave to appeal to the Civil Service Commission. |

**CONTACT**

Questions regarding this regulation should be directed to Technical Complaints, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone, at 517-335-4970, 517-373-8231 or 1-800-788-1766.

 *Reg. 8.04\_TechnicalAppointmentComplaints.doc.*