

Draft Amendments to Civil Service Rules

Technical Qualification Appeals

(Rev 1, November 10, 2010)

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

1 **Rule 3-3 Appointments and Job Changes**

2 **3-3.1 Process**

3 All appointments, promotions, and job changes in the classified service must be made in
4 accordance with the civil service rules and regulations. Any person appointed or promoted must
5 be certified as qualified in accordance with and subject to the civil service rules and regulations.
6 The state personnel director shall administer the certification of all appointments and
7 promotions.

8 * * *

10 **3-3.4 Hire**

11 An appointing authority may appoint a qualified candidate to a position in the classified service
12 as authorized by and in accordance with the civil service rules and regulations. A candidate may
13 be qualified for appointment in one or more of the following ways:

14 (a) The candidate is listed in an appropriate civil service applicant pool.

15 (b) The candidate meets the civil service qualifications for appointment to a designated
16 classification.

17 (c) The candidate is qualified after review by civil service staff.

18 * * *

20 **3-3.7 Promotion**

21 An appointing authority may appoint a qualified employee candidate to another position at a
22 higher classification level as authorized by and in accordance with the civil service rules and
23 regulations. A candidate may be qualified for appointment in one or more of the following
24 ways:

25 (a) The candidate is listed in an appropriate civil service applicant pool.

1 (b) The candidate meets the civil service qualifications for appointment to a designated
2 classification.

3 (c) The candidate is qualified after review by civil service staff.
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6 3-3.10 Qualification

7 An employee or appointing authority that does not agree with a staff qualification decision may
8 file a written request for reconsideration with the state personnel director as provided in the
9 regulations. The state personnel director or the director's designee shall reconsider the staff
10 qualification decision in writing. If an employee's appointment is revoked as provide in rule 3-7
11 due to a staff qualification decision, the employee or appointing authority may file a technical
12 appointment complaint as provided in the rules and regulations in lieu of requesting
13 reconsideration.

17 **Rule 8-3 Technical Complaints**

18 **8-3.1 Complaint Regarding Technical Decision Authorized**

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

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

24 ~~(b) **Technical qualification complaint.** A person directly affected by a technical qualification~~
25 ~~decision or an appointing authority that requested a technical qualification decision may file~~
26 ~~a technical qualification complaint.~~

27 (be) **Technical disbursement complaint.** An interested party authorized in rule 7-6.4 [Complaint
28 Regarding Technical Decision] may file a technical disbursement complaint.

1 | **(cd) Technical appointment complaint.**

2 | **(1) After revocation of appointment.** If, as the result of a civil service audit, a person's
3 | appointment is revoked, the person or the person's appointing authority may file a
4 | technical appointment complaint.

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

8 | **8-3.2 Time Limits**

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

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

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

21 | **(b) Other technical complaints.** A technical classification complaint, ~~technical qualification~~
22 | ~~complaint~~, or technical disbursement complaint must be filed within 14 calendar days after
23 | the date the civil service staff issued the original technical decision.

24 | **8-3.3 Civil Service Technical Review**

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

28 | **(b) Technical review procedures.**

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

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

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

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

11 **8-3.4 Further Appeal to Commission Authorized**

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

15 **8-3.5 Effective Date of Decision of Technical Review Officer**

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

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

21 **(1) Request approved.**

22 **(A)** If an initial civil service staff decision approving a request became effective under
23 rule 7-6.3 [Effective Date of Staff Decision], a decision of a technical review officer also
24 approving the request is effective immediately and the appointing authority may
25 continue to make disbursements for the personal services until the civil service
26 commission or a court of competent jurisdiction rules otherwise.

27 **(B)** If civil service staff initially denied a request, a technical review decision
28 approving a request is effective 15 calendar days after the date the decision is
29 issued, unless a later date is specified in the decision. An interested party
30 intending to appeal the technical review decision to the civil service commission
31 may file a request that the state personnel director order the effective date of the
32 decision stayed pending appeal. The request for a stay must be filed within 14
33 calendar days after the date the technical review decision is issued. The director
34 may stay the effective date of the technical review decision pending appeal to the
35 commission if the director determines that (1) it is unlikely that the request meets
36 any of the standards for approval and (2) a stay is in the best interests of the
37 classified service.

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

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

17 **8-3.6 Exclusive Technical Appointment Reviews**

18 **(a) Exclusive proceeding.** The technical appointment review is the exclusive proceeding for
19 any candidate or employee, including an exclusively represented employee, to bring a
20 complaint that arises out of (1) the selection, appointment, or certification of a candidate for
21 a position in the classified service or (2) the revocation of an appointment after a civil
22 service audit. A candidate, employee, and appointing authority are prohibited from using
23 either the civil service grievance process provided in rule 8-1 [Grievances] or a negotiated
24 grievance process permitted by rule 6-9.6 [Negotiated Grievance Procedures]. This exclusive
25 procedure is not applicable when a collective bargaining agreement permitted in rule 3-5
26 [Relation to Collective Bargaining] authorizes a different procedure regarding a reassignment,
27 transfer, layoff, or recall.

28 **(b) Incumbent employee.** If a technical appointment complaint is filed, the technical
29 appointment review is the exclusive proceeding in which an incumbent employee whose
30 appointment is challenged may appear and defend the employee's own selection,
31 appointment, or certification. An incumbent employee whose appointment is challenged
32 and who is given notice of the technical appointment complaint and the opportunity to
33 appear and defend the appointment in the technical appointment review is bound by the final
34 technical appointment decision. The incumbent employee cannot later file a separate
35 technical complaint or grievance regarding either (1) the incumbent employee's original
36 selection, appointment, or certification or (2) the result of the technical appointment
37 decision, including revocation of the incumbent employee's appointment.
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1 **Rule 9-1 Definitions**

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

4 * * *

6 **Party**

7 *Party* means any of the following persons or organizations:

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

- 9 (1) The employee who filed 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
13 decision.
- 14 (2) The appointing authority of an employee in subdivision (b)(1).
- 15 (3) Any other interested person with a demonstrable special interest in the technical
16 classification decision that is granted permission to participate in the review.

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

- 18 ~~(1) A person whose qualifications and fitness for a position in the classified service is
19 directly affected by a technical qualification decision.~~
- 20 ~~(2) An appointing authority that requested a technical qualification decision.~~
- 21 ~~(3) Any other interested person with a demonstrable special interest in the technical
22 qualification decision that is granted permission to participate in the review.~~

23 ~~(c)~~ *Party*, in a review of a technical disbursement decision, means any of the following:

- 24 (1) The appointing authority that files a request under rule 7-6 [Prior Written Approval by Civil
25 Service Staff] or rule 7-7 [Preauthorized Approval] regarding disbursements for personal
26 services.
- 27 (2) An exclusive representative of a classified employee with a direct interest in the
28 technical disbursement decision.
- 29 (3) A nonexclusively represented classified employee with a direct interest in the technical
30 disbursement decision.

1 (4) A limited recognition organization appearing on behalf of a classified employee with a
2 direct interest in the technical disbursement decision.

3 (5) The office of the state employer.

4 (6) Any other person or organization with a demonstrable special interest in the technical
5 disbursement decision who (1) petitions to participate in the civil service staff review
6 and (2) is authorized by civil service staff to participate in the review.

7 **(de) Party**, in a review of a technical appointment decision, means any of the following:

8 (1) An unsuccessful candidate who files a technical appointment complaint.

9 (2) An employee whose appointment is revoked by civil service staff in an audit review.

10 (3) An employee whose appointment is challenged in a technical appointment complaint.

11 (4) The appointing authority of an employee whose appointment is revoked in an audit
12 review or challenged in a technical appointment complaint.

13 **(ef) Party**, in an inquiry about a complaint filed with the state personnel director under rule 7-9
14 [Complaints and Investigations], means any of the following:

15 (1) The person filing the complaint.

16 (2) The appointing authority that made or authorized the questioned disbursements.

17 (3) The office of the state employer.

18 (4) Any other person or organization with a demonstrable special interest in the complaint
19 who (1) petitions the state personnel director to participate in the inquiry and (2) is
20 authorized by the director to participate in the inquiry.

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22 * * *

24 Technical Decision

25 *Technical decision* includes each of the following individual decisions:

26 (a) *Technical classification decision* means a civil service staff decision (1) classifying a
27 position in the classified service or (2) making a working-out-of-class determination.

28 ~~(b) *Technical qualification decision* means a civil service staff decision determining the
29 qualifications and fitness of a candidate for a position in the classified service.~~

30 (be) *Technical disbursement decision* means a civil service staff decision authorized under rule
31 7-6 [Prior Written Approval by Civil Service Staff] or rule 7-7 [Preauthorized Approval] regarding
32 disbursements for personal services.

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