

Michigan Civil Service Commission

Regulation 8.04

Subject: Technical Appointment Complaints		
SPDOC No.: 18-03	Effective Date: January 1, 2019	Replaces: Reg. 8.04 (SPDOC 16-06, January 1, 2017)

1. Purpose

This regulation establishes procedures for technical appointment complaints authorized in rules 3-7 and 8-3.

2. CSC Rule References

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.*

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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(c) 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].

(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.

3. Definitions

A. CSC Rule Definitions.

1. **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.
2. **Technical decision** includes each of the following individual decisions:

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(c) **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. Definitions 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.
3. **Considered by the appointing authority** means a qualified candidate who (1) met any screening criteria established by the appointing authority and (2) was interviewed or otherwise comparably evaluated by the appointing authority.

4. Standards**A. Filing Complaints.**

1. An employee whose appointment is revoked because of a Civil Service audit or an unsuccessful candidate directly affected by a technical appointment decision may file a technical complaint with the Office of Technical Complaints. The complaint must be submitted on the Technical Complaint form (CS-212) to MCSC-OTC@mi.gov.
2. **Complaint.** The complaint must include:
 - a. All information required in part A of the CS-212 for each complainant.
 - b. A clear and concise description of the technical appointment decision questioned in Part B of the CS-212, including any additional information required in the form's instructions.
 - c. A complete statement of why the technical appointment decision (1) violated article 11, § 5 of the Michigan Constitution; (2) violated a 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, which must be within the authority of Civil Service to grant.
 - f. Each complainant's signature, which can be a scanned document of an actual signature or a complainant's typed name followed by "/s/" (e.g., "John Doe /s/").
 - g. The name, mailing address, and email address of the complainant's representative, if any.
3. **Time Limits.** If notice of the technical appointment decision was provided, the complaint must be received by the Office of Technical Complaints within 14 days after the later of the decision's effective date or the date notice of the decision was

provided. If no notice was provided, a complaint must be filed within six months after the appointment's effective date.

4. **Extension.** The technical review officer may grant an extension to file if, before the filing deadline passes, the complainant shows sufficient justification.

B. Administrative Denial of Complaint. In addition to the reasons in rule 8-4, a technical appointment complaint may be administratively dismissed without prior notice if:

1. The complaint fails to set forth allegations with sufficient particularity to permit review.
2. The complaint fails to allege a violation of a rule or regulation or article 11, § 5, of the Michigan Constitution.
3. The complainant was not a qualified candidate considered by the appointing authority.
4. 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, the Office of Technical Complaints shall give notice of the complaint to the appointing authority and any appointees and inform them of their right to participate. Notice to appointees must include notice that:
 - a. The pending complaint challenges the appointee's appointment and that the appointee may be removed or demoted as a result of the complaint.
 - b. The appointee is a party to the complaint and may present documents and argument and appeal any adverse decision.
 - c. Even if the appointee does not participate, the appointee will be bound by the final decision in response to the complaint and cannot bring a later grievance, technical appeal, or complaint to challenge the final decision's result.
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 cannot conduct a hearing, but may discuss the complaint with the complainant or other interested parties. If the complaint raises a genuine issue of material fact that cannot be adequately determined under the technical complaint procedure, the technical review officer may certify questions of fact to the Civil Service Hearings Office (CSHO). CSHO shall assign the matter to a hearing officer to conduct a hearing, as provided in 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, rules and regulations, and technical expertise. At the end of the technical review, the technical review officer shall issue a final technical review decision setting forth material findings of fact, conclusions of law, and any remedial orders.
2. The technical review officer's decision shall contain notice of interested parties' right to file an application for leave to appeal to the commission under regulation 8.05.

CONTACT

Questions on this regulation may be directed to the Office of Technical Complaints, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; 517-241-9096; or MCSC-OTC@mi.gov.