

# REGULATION

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<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>  <b>GRIEVANCE AND GRIEVANCE APPEAL PROCEDURES</b>			

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### 1. PURPOSE

This regulation establishes procedures for ~~an~~ employees to (1) file ~~a~~ grievances with ~~an~~ appointing authority ~~ies~~ and (2) appeal appointing authorities' ~~a~~ final grievance answers ~~decision of the appointing authority~~ to Civil Service ~~staff~~.

### 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 8-1 Grievances***

##### ***8-1.1 Grievance Authorized***

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

##### ***8-1.2 Time Limits***

*A grievance must be filed in writing 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 permitted.** 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 2-10 [Whistleblower Protection].*
  - (3) *Discipline without just cause.*
  - (4) *Written counseling issued without just cause.*
  - (5) *The abolition or creation of a position for reasons other than administrative efficiency.*
  - (6) *An arbitrary and capricious lateral job change resulting in substantial harm.*
  - (7) *Denial of compensation of supplemental military pay to which the grievant is entitled under the civil service rules and regulations.*
  - (8) *The actual or anticipated failure of refusal to comply with rule 2-14 [Rights of Employees Absent Due to Service in the Uniformed Service.]*
  - (9) *Retaliation for the employee's good faith exercise of grievance or technical complaint rights provided in the civil service rules or regulations.*
  - (10) *An action that substantially harmed the employee and violated (1) article 11, section 5 of the Michigan constitution (2) a civil service rule or regulation, (3) an agency work rule, or (4) an enforceable written grievance settlement permitted by the civil service rules or regulations.*
  - (11) *Any other action for which the civil service rules or regulations specifically permit a grievance to be filed.*
- (b) **Limitation on grievances.**
- (1) **Grievance not permitted.** *In addition to any other limitations in the civil service rules and regulations, the following limitations on grievances apply unless the grievant alleges that the action violated rule 1-8 or rule 2-10.*
    - (A) **SES or SEMAS employee without prior status.** *A member of the senior executive service [SES] or the senior executive management assistant service [SEMAS] who is separated from state employment at the expiration of an appointment cannot grieve the separation if the employee did not have prior status at the time of appointment to the SES or the SEMAS.*
    - (B) **Employee in limited-term position.** *An employee in a limited-term position whose appointment is terminated at or before the end of the term of appointment due to lack of work or funding cannot grieve the termination.*
  - (2) **Management rights.** *Unless specifically authorized in the civil service rules or regulations, an employee cannot grieve the agency's exercise of any of the rights reserved to management in rule 6-4 [Rights of Employer]*
  - (3) **Lateral job change.** *A grievance regarding a nondisciplinary lateral job change may be grieved only under the provisions of subsection (a)(1), (a)(2), (a)(6), or (a)(7), as appropriate. In addition, a grievance regarding a disciplinary lateral job change may be grieved under the provisions of subsection (a)(3).*
  - (4) **Technical appointment complaints.** *The following complaints cannot be filed as a grievance but must be filed directly with the civil service staff under the technical appointment complaint provisions in rule 8-3 [Technical Complaints]:*

(A) **Unsuccessful candidate.** A complaint by an unsuccessful candidate regarding a technical appointment decision or arising out of the selection, appointment, or certification of a candidate.

(B) **Employee whose appointment is revoked.** A complaint by an employee whose appointment is revoked in compliance with rule 8-3 [Technical Complaints].

#### **8-1.4 Grievance Decision by Appointing Authority**

(a) **Grievance review and decision.** 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.

(b) **Appeal of grievance decision.** The final grievance decision of the appointing authority is binding unless the grievant files a timely appeal of the decision, as authorized in rule 8-2 [Appeals of Grievance Decisions] and the civil service regulations.

### **Rule 8-2 Appeals of Grievance Decisions**

#### **8-2.1 Appeal of Grievance Decision to Civil Service Authorized**

A grievant may appeal a final grievance decision of an appointing authority to civil service staff, as authorized in the civil service rules and regulations.

#### **8-2.2 Limitation on Grievance Appeals**

A grievant is not authorized to file a grievance appeal unless the grievance alleges one or more 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 2-10 [Whistleblower Protection].
- (c) One or more of the following types of discipline imposed without just cause:
  - (1) Dismissal.
  - (2) Demotion.
  - (3) Suspension.
  - (4) Reduction in pay.
  - (5) Disciplinary lateral job change.
  - (6) Interim rating or unsatisfactory follow-up rating, as provided in rule 2-3.4(d) [Interim and Follow-up Ratings] and rule 3-6.5 [Grievance of Probationary Rating or Discipline].
- (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 or supplemental military pay to which the grievant was entitled under the civil service rules and regulations.

- (g) *A tangible adverse employment action has occurred or will occur as a result of the actual or anticipated failure or refusal of the appointing authority to comply with rule 2-14 [Rights of Employees Absent due to Service in the Uniformed Service] or applicable regulations.*
- (h) *A tangible adverse employment action taken in retaliation for the employee's good faith exercise of grievance or technical complaint rights provided in the civil service rules or regulations.*
- (i) *An action that substantially harmed the employee and violated (1) article 11, section 5 of the Michigan constitution, (2) a civil service rule or regulation, (3) an agency work rule, or (4) an enforceable written grievance settlement permitted by the civil service rules or regulations.*
- (j) *Any other action for which the civil service rules or regulations specifically permit a grievance appeal to be filed.*

### **8-2.3 Further Limitations on Grievance Appeals**

*The following additional limitations apply to a grievance appeal unless the grievant alleges that a tangible adverse employment action resulted from an action of the appointing authority that violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection]*

- (a) **Probationary employee without status.** *A probationary employee without status cannot appeal the final grievance decision of the appointing authority regarding any of the following:*
  - (1) *A probationary rating, an interim rating, or a follow-up rating.*
  - (2) *A decision to extend an employee's probationary term.*
  - (3) *A decision by the appointing authority to discipline the employee, including dismissal, during the probationary period or within 28 calendar days after the end of the probationary period.*
- (b) **Probationary employee with status.** *A probationary employee with status cannot appeal the final grievance decision of the appointing authority regarding a decision to extend the employee's probationary term.*
- (c) **Reprimand or counseling.** *An employee cannot appeal the final grievance decision of the appointing authority regarding a reprimand or counseling.*

### **8-2.4 Civil Service Grievance Appeal Procedures**

- (a) **Regulations.** *The state personnel director shall issue regulations governing the grievance appeal and arbitration procedures.*
- (b) **Referral.** *If a grievance appeal is not administratively dismissed under rule 8-4 [Summary Dismissal], a hearing officer or arbitrator shall conduct an expeditious review in accordance with the civil service rules and regulations.*
  - (1) **Hearing officer.** *Unless the grievant elects arbitration under subsection (b)(2), the grievance appeal is referred to a hearing officer designated or appointed by the state personnel director.*
  - (2) **Arbitration alternative.** *As an alternative to the referral provided in subsection (b)(1), the grievant may elect to have a grievance appeal heard by an arbitrator.*

- (A) **Cost.** *The grievant and the appointing authority shall share the cost of the arbitration equally.*
- (B) **Applicable rules and regulations.** *An arbitrator shall decide a grievance appeal under the same civil service rules and regulations that would be applicable if the grievance appeal were heard by a hearing officer, except as otherwise specifically provided in the regulations governing arbitration.*
- (c) **Decision.** *At the conclusion of the grievance appeal, the adjudicating officer shall issue a written decision setting forth findings of fact, conclusions of law, and any remedial orders.*
- (1) **Attorney fees and costs prohibited.** *An adjudicating officer cannot award attorney fees, witness fees, costs, or other expenses.*
- (2) **No interest on award.** *An adjudicating officer cannot award interest on any monetary award.*
- (3) **Limitation on damages for limited-term appointments.** *An adjudicating officer cannot award to a grievant in a limited-term appointment, the senior executive service, or the senior executive management assistant service, any damages for any period after the date of expiration of the grievant's term of appointment.*
- (4) **Back-pay awards.** *Any back-pay award is limited to regularly scheduled hours and holidays for which the employee otherwise normally would have been paid. Back-pay may include only the employee's base rate of pay, shift differential authorized in rule 5-4.5 [Shift Differential], and prison employee premiums authorized in rule 5-5 [Additional Compensation: Prison Employees]. A back-pay award cannot include any other pay premium, including overtime, on-call, callback, explosives duty, out-of-state location, or emergency response premiums. All back-pay awards are subject to deduction of the following:*
- (A) *Earnings in other employment or self-employment, except for previously-approved supplemental employment.*
- (B) *Benefits from employer contributory income protection insurance.*
- (C) *Benefits under workers' compensation, unemployment compensation, social security, and social welfare programs.*
- (5) **Leave awards.** *An adjudicating officer may award sick and annual leave credits that would have normally accrued during a period of vacated discipline.*
- (6) **Seniority awards.** *An adjudicating officer may award seniority credit and longevity compensation that would have normally accrued during a period of vacated discipline. Any such seniority credit does not count for classification or qualification purposes.*

#### **8-2.5 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.*

#### **8-2.6 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.*

### 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. **Administrative officer** *means the state personnel director or a person authorized by the state personnel director to take administrative action on matters filed with civil service commission.*
3. **Appointing authority** *means each of the following:*
  - (a) *A single executive heading a principal department or autonomous entity.*
  - (b) *A chief executive officer of a principal department or autonomous entity headed by a board or commission.*
  - (c) *The state personnel director.*
  - (d) *A person designated by any of the preceding as responsible for administering the personnel functions of the department, autonomous entity, or other agency.*
4. **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.*
5. **Grievance** *means a complaint, authorized in rule 8-1 [Grievances], filed by a classified employee regarding an action by an appointing authority or civil service human resources staff acting pursuant to any assignment, authority, or direction of an appointing authority.*
6. **Hearing officer** *means a person authorized by the state personnel director to administer oaths and conduct hearings as provided in the civil service rules and regulations.*
7. **Party** *means any of the following persons or organizations:*
  - (a) **Party**, *in a grievance appeal, means any of the following:*
    - (1) *The employee who filed the grievance.*
    - (2) *The appointing authority that issued the final grievance decision being appealed.*

\* \* \*

8. *Special extenuating circumstances* means a compelling excuse for the failure to file a matter timely that arises out of one of the following:
- (a) An intentionally or fraudulently misleading action by an appointing authority or party that prevented the filing.
  - (b) Serious physical or mental incapacity of the person that prevented the filing.
  - (c) Extraordinary unforeseen circumstances outside the control of the person that prevented the filing.

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

1. **Authorized representative** means a qualified person authorized to appear and receive notices on behalf of ~~and represent the interests of~~ a party in an agency grievance proceeding or Civil Service grievance appeal proceeding.
2. **Contested hearing** means a quasi-judicial proceeding before a hearing officer or arbitrator in which the parties, ~~after notice~~, may introduce documentary evidence, examine and cross-examine witnesses under oath, and submit arguments.
3. **Group grievance** means grievances by two or more employees with common issues of fact and law that the appointing authority processes in a single agency grievance proceeding.
4. ~~**Mailed** means deposited in a United States Postal Service mail receptacle properly addressed, containing the document to be mailed, and with first-class postage fully prepaid on the envelope.~~
54. **Member of the family** means a spouse, child, foster child, parent, foster parent, or sibling of the hearing officer or hearing officer's spouse.
65. **Member of the household** means any person (1) living in the household or (2) whose financial or physical care is the principal responsibility, of the hearing officer or hearing officer's spouse.
6. **Preponderance of evidence** means the greater weight of the evidence in the record, which shows that one conclusion is more likely true than not.
7. ~~**Postmark** means a date stamp placed on a mailed envelope or a receipt issued by the United States Postal Service indicating the date the envelope was mailed or received by the United States Postal Service for mailing. A postmark does not include a date stamp placed by the sender, such as a postage meter stamp.~~
7. **Step-1 Official** means the person designated by the appointing authority to receive and adjudicate Step-1 grievances.
8. **Step-2 Official** means the person designated by the appointing authority to receive and adjudicate Step-2 grievances.
89. **Tangible adverse employment action** means an act by an employer or employer's agent that objectively, substantially, and negatively affects an employee's ~~job~~, income, benefits, or employment status.

#### 4. STANDARDS

- A. Eligibility. These procedures are only available to nonexclusively represented employees (NEREs), except that exclusively represented employees may file

grievances over (1) creation or abolition of classified positions for reasons other than administrative efficiency and (2) actions during prior employment as a NERE.

**AB. Grievance Procedures at the Agency Level.**

**1. Steps in the Agency Grievance Procedure.**

**a. Agency sStep-1 grievances.**

a. Filing. ~~The A~~ grievant ~~shall~~must file a signed, written grievance on a CS-100 form with the ~~prescribed by Civil Service. The grievance must be filed with the agency Step-1 O~~ official. A grievant may ~~file a grievance directly at step 2 if dismissed, suspended without pay, demoted, laid off, or otherwise aggrieved by an action by management above the level of the Step-1 Official; the grievant must indicate on the CS-100 that the grievance initiated at Step 2.~~

b. Time limits. A grievance must be filed ~~designated to receive the grievance (the "Step-1 Official").~~

~~(1) Time limit for filing a written grievance.~~ ~~The grievant must file a signed, written grievance no later than~~ within 14 calendar days after a ~~the date the grievant became aware~~ knew of ~~the grievance or, in exercise of reasonable diligence, should have become aware~~ known of the grievance. ~~If a grievant does not timely file the written grievance, the grievance is waived, unless the untimeliness is excused as provided in Standard 4.A.3.~~

~~(2)c.~~ Step-1 A conference ~~answer at step 1.~~ The Step-1 Official shall hold an informal conference with ~~the a~~ a grievant, unless the grievant declines to attend, ~~and~~

d. Step-1 answer. The Sept-1 Official shall issue a written answer to ~~the a~~ a grievant within 14 calendar days after ~~the a~~ a grievance is filed.

**b2. Agency sStep-2 grievances.**

a. Filing. A grievant who may bypass Step 1 under Standard 4.B.1.a or who is ~~If the grievant is not unsatisfied with the a written answer of the Step-1 Official's written answer or failure to answer, the grievant may appeal~~ file a signed, written step-2 grievance on a CS-100 with the ~~the grievance decision to s~~ Step-2 Official. If a grievant does not ~~timely file an~~ timely file ~~appeal to at~~ at step 2, ~~the a~~ a grievance is ~~considered closed on the basis of the step-1 answer.~~

~~(1)b.~~ **Time limit for filing appeal to step 2.**

~~(a) After step-1 answer.~~ If ~~the a~~ a Step-1 Official timely issues a ~~timely~~ written answer, a ~~the employee grievant~~ grievant must file any ~~written~~ step-2 grievance ~~appeal to the appointing authority or other designated officer (the "Step-2 Official") no later than~~ within 14 calendar days after ~~the date that the step-1 answer is issued to the grievant. Unless a grievant produces a postmark or other proof of later issuance, t~~ The date of issued ~~is presumed to be the date on the~~ the ~~written~~ answer.

- ~~(b) No step -1 answer. If no the written Step-1 Official does not answer the is timely issued grievance in writing within 14 calendar days after the grievance is filed, the the grievance is Step-1 Official is presumed to have denied and the grievance. Thereafter, the grievant is authorized to appeal any step-2 grievance must be filed to with the Step-2 Official. An appeal to step 2 must be filed within 21 calendar days after the last day for the Sstep-1 Official to respond answer was due.~~
- ~~(2)c. Step-2 conference Answer at step 2. The A Step-2 Official shall may hold any conference deemed necessary. If a grievance began at step 2, the Step-2 official must offer an informal conference to the grievant.~~
- ~~d. Step-2 answer. and A Step-2 Official shall issue a written answer to the a grievant within 28 calendar days after the a step-2 grievance appeal to step 2 is filed.~~
- ~~e. Appeal of step-2 answer. If a grievant does not timely file an appeal step 3 with Civil Service, the grievance is considered closed on the basis of the step-2 answer.~~
- ~~2. Filing Timely. A grievance or appeal must be filed with the appropriate Step-1 or Step-2 Official before the end of the period specified in this regulation. To be timely, a written grievance or appeal must be **received** in the office of the appropriate Step-1 Official or Step-2 Official before 5:00 p.m. of the last day of the period. Time is counted as provided in Standard B of regulation 8.06 [Computing Time and Filing Documents]. A grievance or appeal must be delivered to the appropriate Step-1 or Step-2 Official by one of the following methods:~~
- ~~a. Delivery. The document may be delivered in person, by mail, or by other courier to the designated office of the appropriate official.~~
- ~~b. Fax. If the appropriate official has listed a fax number for receiving grievances, the document may be delivered by fax to that number.~~
- ~~c. E-mail. If the appropriate official has established an e-mail address for receiving grievances, the document may be delivered by e-mail to that address.~~
- ~~3. Effect of Late Filing. To file a grievance at step 1 or step 2 after the established deadline, a grievant must establish good cause or special extenuating circumstances that excuse the late filing. If denying a grievance for untimeliness, a Step-1 or Step-2 Official must evaluate the merits of any excuse for lateness. A grievant may appeal an otherwise appealable grievance to step 3 with Civil Service for a de novo consideration of the excuse.~~
- ~~a. Up to 28 days late. A filing received up to 28 calendar days late shall be denied as untimely, unless the filing party establishes good cause.~~
- ~~b. Between 29 days and one year late. A filing received more than 28 calendar days but less than 1 year shall be denied as untimely, unless the filing party establishes special extenuating circumstances.~~
- ~~c. One year or more late. A filing received 1 year or more late shall be denied as untimely.~~

~~4. **Extension of Time to File or Respond.** A grievant and the appropriate Step-1 or Step-2 Official may agree in writing to extend the time to file a grievance, appeal to step 2, or an answer. Extensions cannot exceed 6 months.~~

### ~~5.3. **Group Grievances.**~~

~~a. **Joint grievance form.** If ~~t~~Two or more employees ~~with have~~ a grievance with common issues of fact and law, ~~they~~ may jointly file a single CS-100 grievance form. Each employee filing a joint grievance ~~ee~~ must personally sign the grievance form. A joint grievance may be filed at step 1 only if the same Step-1 Official is responsible for responding to all the grievants. Otherwise, the joint group grievance must be filed directly at step 2.~~

#### ~~b. **Agency discretion.**~~

~~(1) If employees file a joint grievance, the An appointing authority may process the grievance (a) process grievances as a group grievance or (b) process employee's grievances separately as separate grievances.~~

~~(2) If employees file separate grievances with common issues of fact and law, the An appointing authority may also process separate grievances with common issues of fact and law the multiple grievances as a single group grievance.~~

~~6. **Skipping Step 1.** A grievant may file a grievance directly at step 2 if the grievant was dismissed, suspended without pay, demoted, laid off, or otherwise aggrieved by an action taken by management above the level of the Step-1 Official. If a grievance is filed directly at step 2, the step-2 procedures and time frames apply. However, the Step-2 Official or a designated official must hold an informal conference with the grievant before issuing the step-2 answer, unless the grievant declines to attend.~~

~~7. **Eligibility.** The grievance procedure established in this regulation is available to employees for grievances related to activities that occurred while employed as nonexclusively represented employees (NERE). Exclusively represented employees may only file grievances related to (1) the creation or abolishment of classified positions for reasons other than administrative efficiency and (2) timely grievances arising during a prior period of employment as a NERE.~~

## **BC. Grievance Appeals Procedures in to the Civil Service Hearings Office (CSHO).**

### ~~1. **Filing a Grievance Appeal.**~~

~~a. **Authorization.** If a A grievant is ~~not~~ unsatisfied with ~~the a step~~ Step-2 Official's answer or ~~the Step-2 Official failures~~ to issue a timely, written answer may file a signed, written grievance appeal on a CS-100 form with the CSHO, the grievant may appeal the final grievance decision to the Civil Service hearings office. An appeal is filed when received by Civil Service, as provided in Regulation 8.06. If a grievant does not timely file a grievance appeal, the grievance is closed.~~

#### ~~b. **Time limit to appeal to Civil Service.**~~

~~(1) **After Step-2 Answer.** If ~~the a~~ Step-2 Official timely issues a ~~timely~~ written grievance decision at ~~step 2~~ answer, ~~the a~~ grievant must file any appeal to the Civil Service hearings office CSHO within ~~no later than~~ 28 calendar days after the date the step-2 answer was ~~issued~~ ance. ~~Unless a grievant produces a postmark~~~~

~~or other proof of later issuance, t~~The date of issued is presumed to be the date on the ~~written~~ answer.

~~(2) No Step-2 answer.~~ If the Step-2 Official fails to issue a ~~no~~ timely written grievance decision ~~answer is timely issued at step 2,~~ the Step-2 Official grievance is presumed to ~~have denied the grievance and~~ Thereafter, the grievant is authorized to ~~any~~ appeal to the Civil Service hearings office. An appeal to Civil Service must be filed ~~with the CSHO~~ within 42 calendar days after the ~~last day for the S~~step-2 Official to respond ~~answer was due.~~

~~e3. Contents of the appeal. The~~ An appeal must include ~~all of~~ the following on a CS-100 form:

~~(1)a.~~ A listing of ~~t~~The grievant's (1) name, (2) employee ~~identification~~ ID number, (3) employing agency, (4) mailing address, (5) telephone number, and (6) e-mail address, ~~and (7) authorized representative, if any.~~

~~(2)b.~~ Alf the grievant has any authorized ~~representative, a listing of the~~ authorized representative's (1) name, (2) organization, (3) mailing address, (4) telephone number, ~~(5) fax number,~~ and ~~(6)~~5 e-mail address.

~~(3)c.~~ A complete copy of the grievance chain, including all step-1 and step-2 ~~the original grievances~~ and answers any appeals and responses issued by ~~Step-1 and Step-2 Officials.~~

~~(4)d.~~ A concise statement of the basis for the grievance appeal, including grounds for the appeal under rule 8-2.2.

e. A concise statement of the relief sought, which must be within the jurisdiction of a hearing officer to grant.

## ~~2. Late Appeal.~~

~~a. Action by administrative officer.~~ A grievance appeal that is untimely filed must be accompanied by a written explanation for the late filing. If a late filing is not accompanied by a written explanation, the administrative officer shall send a deficiency notice seeking an explanation. If the grievant fails to respond to a deficiency notice or if the offered explanation fails to establish the required good cause or special extenuating circumstances, the administrative officer shall dismiss the grievance appeal as untimely.

~~(1) Up to 28 days late.~~ A grievance appeal filed up to 28 calendar days late shall be denied as untimely, unless the filing party establishes good cause.

~~(2) Between 29 days and one year late.~~ A grievance appeal filed more than 28 calendar days but less than 1 year late shall be denied as untimely, unless the filing party establishes special extenuating circumstances.

~~(3) One year or more late.~~ A grievance appeal filed 1 year or more late shall be denied as untimely.

~~b. Decision by hearing officer.~~

~~(1) If the administrative officer cannot decide the issue of good cause or special extenuating circumstances based on the written explanation provided by the grievant, the administrative officer shall refer the issue to a hearing officer for resolution.~~

~~(2) If the administrative officer finds good cause or special extenuating circumstances and accepts a late appeal, any party may request that the assigned hearing officer review the finding de novo.~~

~~34. Administrative rReview of Grievance Appeal. A Civil Service The CSHO administrative officer wshall review all grievance appeals filed.~~

~~a. Dismissal by administrative officer. The administrative officer may and summarily dismiss any grievance appeal for meeting any of the following reasons criteria:~~

~~(1)a. **Not authorized.** The adjudicating officer CSHO lacks authority to consider the grievance appeal under the Civil Service rules and regulations because (a1)- the grievant is not authorized to file the grievance or grievance appeal, or (b2)- the subject matter of the grievance appeal is not reviewable in the grievance appeal forum, or (3) the grievant seeks unauthorized relief.~~

~~(2)b. **Lack of jurisdiction.** Civil Service lacks jurisdiction over a necessary party or over the subject matter of the grievance or grievance appeal.~~

~~(3)c. **Untimeliness.** The grievance or grievance appeal was untimely.~~

~~(4)d. **Another action pending.** Another Civil Service action has been initiated between the same parties involvesing substantially the same grievance or grievance appeal.~~

~~(5)e. **Barred by prior claim.** Substantially the same grievance or grievance appeal was adjudicated to finality in the Civil Service system in another action between with the same parties.~~

~~(6)f. **Failure to Respond.** The grievant fails to respond to a deficiency notice issued by from Civil Service staff.~~

#### D. Timely Filing.

1. **Based on receipt.** A timely grievance or grievance appeal must be **received** in the appropriate office by 5:00 pm on the deadline specified in this regulation. Time is counted as provided in Standard B of regulation 8.06.
2. **Extensions.** A grievant and the appropriate Step-1 or Step-2 Official may agree in writing to extend the time to file a grievance or an answer. Extensions cannot exceed 6 months. A grievant must request any extension to file a grievance appeal to the CSHO, which has discretion to grant any extensions.
3. **Filing Method.** A grievance or grievance appeal must be filed as follows:
  - a. **Grievance.** A grievance may be filed in person, by mail, or by other courier to the designated office of the appropriate official. If a Step-1 or Step-2 Official has established an email address to receive grievances, documents may be filed there instead.
  - b. **Grievance appeal.** Unless the CSHO administrative officer grants advance permission to file differently, a grievance appeal must be filed as a Microsoft Word or Adobe PDF attachment at MCSC-Hearings@mi.gov.
4. **Late filing.** To file a grievance or grievance appeal after a deadline, a grievant must establish good cause or special extenuating circumstances excusing the lateness. If denying a grievance for untimeliness, a Step-1 or Step-2 Official must evaluate the merits of any excuse for lateness. A grievant may file a grievance appeal over an otherwise appealable grievance to the CSHO for a *de novo* consideration of the excuse.
  - a. **Up to 28 days.** A filing received up to 28 calendar days late is denied as untimely, unless the filing party establishes good cause.
  - b. **Over 29 days and under one year.** A filing received more than 28 calendar days but less than 1 year late is denied as untimely, unless the filing party establishes special extenuating circumstances.
  - c. **One year late.** A filing received one year or more late is denied as untimely.

#### E. Prehearing Procedures.

1. **Assignment.** If a grievance appeal is not summarily dismissed and the arbitration alternative in Standard 4.K is not elected, the grievance appeal is assigned to a hearing officer for a fair, impartial, and expeditious adjudication of the grievance appeal. Separate appeals with common issues of fact and law may be consolidated for consideration by the CSHO, notwithstanding an appointing authority's treatment of grievances at the agency level.
- ~~b. **Dismissal by hearing officer.** If the administrative officer does not summarily dismiss a grievance appeal, a party may file a motion for summary dismissal with the assigned hearing officer.~~
42. **Mediation.** The ~~administrative officer or~~ hearing officer may require mediation of a grievance appeal. ~~Any person assigned to conduct a mediation~~ cannot (1) be assigned as ~~the~~ hearing officer in the same matter or (2) later testify ~~regarding on~~

any ~~statement of a party or offer of settlement made during~~ aspect of the mediation.

~~5. **Civil Service Grievance Appeal Procedures.** If the administrative officer does not summarily dismiss, the grievance appeal is assigned to a hearing officer for disposition. The hearing officer shall conduct a fair, impartial, and expeditious review and disposition of the grievance appeal in accord with rules 8-1 and 8-2 and this regulation.~~

~~63. **Limitation on C**ommunications. A hearing officer ~~and a party or representative~~ shall not communicate privately on the facts or merits of a pending matter with any party or representative. The hearing officer ~~and a party or representative~~ may communicate privately as ~~needed~~ ecessary for ~~scheduling and administrative~~ matters unrelated to the facts or merits ~~or facts~~.~~

~~74. **Disqualification of H**earing **O**fficer disqualification.~~

A hearing officer who cannot impartially decide a matter is disqualified. A party or the hearing officer may move to disqualify the hearing officer within 14 calendar days after the moving party knew or reasonably should have known the grounds for disqualification.

~~a. **Who may raise.** A party or the hearing officer may raise the issue of disqualification of a hearing officer.~~

~~ba. **Grounds.** A hearing officer shall be disqualified when the hearing officer cannot impartially decide a matter. Specific grounds to disqualify include, but are not limited to, the following:~~

- ~~(1) **The hearing officer is p**ersonally biased or prejudiced for or against a party or representative.~~
- ~~(2) **The hearing officer has been c**onsulted ation by a party or representative ~~regarding on~~ the pending matter before assignment ~~of the matter~~.~~
- ~~(3) **The hearing officer has been e**mployed ment by a party or representative in any private matter in the ~~previous past~~ five years. Appointment as a neutral arbitrator ~~in a private or public arbitration~~ is not disqualifying ~~employment~~.~~
- ~~(4) The hearing officer, ~~the hearing officer's spouse~~, or a member of the officer's family or household ~~of either~~ is (a) a party, (b) ~~a party's~~ representative, or (c) ~~a~~ person with more than a *de minimis* interest that the proceeding could substantially affect.~~

~~c. **Timing.** A motion to disqualify must be filed within 14 calendar days after the moving party discovers or, in the exercise of reasonable diligence, should have discovered the ground for disqualification.~~

~~eb. **Ruling.**~~

~~(1) The assigned ~~challenged~~ hearing officer shall decide the motion.~~

~~(2) If the challenged hearing officer denied ~~s the motion~~, within seven calendar days, the a moving party may ~~request~~ ask in writing for the State Personnel~~

~~Director in writing that~~ the State Personnel Director exercise superintending control and disqualify the ~~challenged~~ hearing officer.

~~(3) A request by the moving party must be filed with the State Personnel Director within 7 calendar days after the date the challenged hearing officer denied the motion.~~

~~(4) The State Personnel Director's decision on the motion is final.~~

~~e. Motion granted. When~~ After any hearing officer is disqualified, an the administrative officer shall assign the ~~grievance appeal~~ matter to another hearing officer.

**85. Prehearing Cconference.** The hearing officer may conduct a prehearing conference ~~in person or by telephone to consider any matters that will facilitate the fair and expeditious disposition of the grievance appeal, including, for example, the following:~~

~~a. identify material facts in dispute and sSimplifying issues;~~

~~b. obtaining stipulations, and admissions of fact, and documents to avoid unnecessary proofs or witnesses;~~

~~c. Identifying material facts in dispute.~~

~~d. Scheduling matters.~~

~~e. Prehearing e exchange of documents;~~ and take other actions to facilitate fair and expeditious adjudication.

**96. Submissions to Hearing Officer; and Pproof of Sservice.** If a party submits any written material to the hearing officer, the party shall ~~also concurrently~~ serve a complete copy ~~of the material on every all~~ other parties ~~at the same time. The submitting party shall and~~ certify in writing ~~that how~~ every other party ~~has been served and the manner of service. Copying all parties and representatives on an email submission is sufficient proof of service.~~

**107. Summary dDisposition without a Hearing.** If there is no genuine issue ~~as to~~ of any material fact, a party may file a motion for summary dismissal or the hearing officer may decide the matter without a contested hearing based on the grievance record and written submissions of the parties, including affidavits.

~~11. Hearing Procedures. If the grievance appeal is not decided on summary disposition, a hearing officer shall conduct a contested hearing under the following general procedures:~~

~~a. Time for hearing. The hearing officer shall fix the date, time, and place for each hearing.~~

~~b. Postponements. Except for a serious emergency, a request to postpone a scheduled hearing must be filed at least 14 calendar days before the scheduled hearing. A hearing officer may postpone a hearing at the request of a party if there is sufficient justification.~~

- ~~c. **Absence of a party or representative.** A hearing may proceed in the absence of a party or representative who fails to appear and did not obtain a postponement.~~
- ~~(1) If the party with the burden of proof fails to appear, the hearing officer may grant a default judgment to the responding party.~~
  - ~~(2) If the responding party fails to appear, the hearing officer shall make an award in favor of the party with the burden of proof if that party introduces sufficient evidence to justify an award. Any award must be consistent with applicable Civil Service rules and regulations.~~
- ~~d. **Prehearing exchange of documents and witness lists.** When a hearing is scheduled, a party shall provide every other party (1) a copy of each document that the party intends to introduce into evidence in the party's case in chief and (2) a written list of the names and titles of all witnesses the party intends to call to give evidence at the hearing. The copies and list must be delivered in person, by fax, or by e-mail to all other parties at least 7 calendar days before the hearing. Alternatively, the copies and list may be mailed to all other parties by first-class U.S. mail or sent by other courier at least 14 calendar days before the hearing. This section does not prohibit a party from introducing rebuttal evidence or witnesses.~~
- ~~(1) **Previously provided documents.** A party is not required to provide an advance copy of any document previously exchanged in the grievance.~~
  - ~~(2) **Security risk.** If an appointing authority intends to call as a witness any prisoner or other person involuntarily committed to the custody of a state agency, the witness may appear by telephone unless the hearing is held where the witness is located.~~
- ~~e. **Evidence.** At the hearing, the hearing officer shall provide the parties a reasonable opportunity to present evidence, examine and cross-examine witnesses, and present argument. The hearing officer may swear witnesses, take testimony, receive evidence, including opinion evidence, and take such other actions necessary to fairly consider the claims of the parties. The hearing officer may receive and consider the evidence of witnesses by affidavit, giving it only such weight as seems proper after considering any objection made to its admission. The rules of evidence do not apply, but the hearing officer may refuse to take or admit evidence that is repetitive, irrelevant, unreliable, or speculative.~~
- ~~f. **Hearing record.** The hearing record shall include the following:~~
- ~~(1) The grievance chain, with all written grievances and grievance answers.~~
  - ~~(2) Documents admitted into evidence by the hearing officer.~~
  - ~~(3) Sworn testimony of witnesses.~~
  - ~~(4) Briefs and motions filed by the parties.~~
  - ~~(5) All written orders and decisions of the hearing officer.~~
- ~~g. **Civil Service rules and regulations.** The hearing officer may judicially note Civil Service rules and regulations. Civil Service rules and regulations need~~

~~not be admitted into evidence unless there is a genuine dispute regarding the authenticity or text of the rule or regulation.~~

~~h. **Agency work rules.** Agency work rules must be admitted into evidence.~~

#### **12F. Orders of Appearance, Subpoenas, and Discovery.**

~~a1. **Authority of adjudicating officer to issue.** To obtain relevant and material evidence ne~~eded~~ecessary to decide pending matters, a Civil Service adjudicating officer may:~~

~~a. Order classified employees persons and to appear and give testimony agencies or their representatives or to appear, testify, and produce any evidence, including books, records, papers, correspondence, or documents in the person's possession or under their person's control.~~

~~b. Issue a subpoena to require a person who is not a classified employee to testify and produce evidence not under the control of a party, a classified employee, or an agency.~~

~~2. **Timing.** A party must request an order to appear or produce or a subpoena in writing at least 21 calendar days before the scheduled appearance or production date. The adjudicating officer may issue an order on a late request only if the requestor demonstrates good cause.~~

~~3. **Service.** The requesting party is responsible for serving an order or subpoena on the party to whom it is directed.~~

~~a. **Order to appear or produce.** If a party seeks to serve a classified employee, the appointing authority shall deliver the order to the employee on a party's request. Filing a proof of service is not required.~~

~~b. **Subpoenas.** A subpoena may be served anyplace in the state and must be served personally by an individual of suitable age and discretion who is not a party to the grievance appeal. Proof of service must be filed with the adjudicating officer.~~

#### **4.b. Orders of appearance for classified employees.**

~~(1) **Requirements.** An adjudicating officer may issue an order to require a classified employee to appear to give testimony or produce evidence on request of a party or the adjudicating officer's own motion. A party requesting an order of appearance must make the request in writing at least 21 calendar days before the scheduled appearance date. The adjudicating officer may issue an order on a late request only if the requesting party demonstrates good cause.~~

~~(2) **Service of order.** An order of appearance must be served on the classified employee to whom it is directed. If a party requests the order, that party is responsible for serving the order. If the adjudicating officer issues the order on the officer's own motion, Civil Service staff is responsible for serving the order. If a party seeks to serve an employee of an appointing authority, the appointing authority is not required to disclose home addresses, but shall deliver the order to the employee on request of the party.~~

- ~~(3)a. Appearance of classified employees by order.~~ All classified employees, ~~as a part of their official duties,~~ shall appear as directed by an adjudicating officer.
- ~~(a) A classified employee who is a necessary witness may also voluntarily appear at a party's request.~~ An appointing authority shall release ~~necessary the witnesses employee~~ from regularly scheduled work without loss of regular pay or leave credits for necessary travel and attendance to ~~comply with the order attend, of the adjudicating officer~~ unless an emergency or critical safety concern prohibits releasing the employee. The employee is not entitled to overtime pay or travel expenses.
- ~~(b)b. Producing documents.~~ A classified employee ordered to produce evidence ~~in the person's possession or~~ under the person's control ~~must comply shall produce the evidence as ordered,; even i~~ Any objection by the f the employee or ~~the employee's appointing authority objects must be to the order. If the employee or the employee's appointing authority objects to the order, either may filed in a writing objection~~ at least 7 calendar days before the ~~date the documents are to be produced~~ tion deadline. The hearing officer shall ~~hear rule on the objections and rule on them~~ before requiring the ~~employee to~~ release ~~the of~~ evidence.
- ~~(4) Voluntary appearance of classified employees.~~ A witness may voluntarily appear at the request of a party. A classified employee who is a necessary witness and appears at the request of a grievant shall be released from regularly scheduled work without loss of regular pay or leave credits for the period of necessary travel and attendance at a Civil Service hearing. The witness is not entitled to overtime pay or travel expenses.

### 3e. Orders to agencies.

- ~~(1)a. Requirements.~~ An adjudicating officer may issue an order ~~of appearance~~ to an agency directing it to provide produce its employees at a hearing to provide testimony or produce ~~any evidence, including books, records, papers, correspondence, or documents possessed by or~~ under the control of the agency. ~~The order may be issued at the on~~ request of a party ~~or on the adjudicating officer's own motion.~~
- ~~(a) Before a party requestsing an order of appearance, the a party must seek the agency's voluntary agreement of the agency to appear. The A party must affirmatively state in its a request for an order of appearance that the party it requested asked the appointing authority of the agency to voluntarily comply with the request and the appointing authority but was refused.~~
- ~~(b) A party requesting an order of appearance must make the request in writing at least 21 calendar days before the scheduled appearance date. The adjudicating officer may issue an order on a late request only if the requesting party demonstrates good cause.~~
- ~~(2) Service of order.~~ An order of appearance must be served on the office of the appointing authority of the agency to which it is directed. If a party requests the order, that party is responsible for serving the order. If the

~~adjudicating officer issues the order on the officer's own motion, Civil Service staff is responsible for serving the order.~~

~~(3)b. **Appearance of agency.** An agency shall comply with an order of appearance and provide ~~one or more~~ witnesses or ~~produce the~~ evidence as ordered, unless it files an objection ~~to the order~~ at least 7 calendar days before the witness or evidence is to be produced. The hearing officer shall rule on the objections before requiring the release of evidence.~~

~~(4) **Sanctions.** If an agency flagrantly and wantonly refuses to comply with an order of the adjudicating officer and the requesting party is materially disadvantaged by the refusal, the adjudicating officer may impose appropriate sanctions, up to and including dismissal of any claims or defenses of the offending agency.~~

#### ~~e4.~~ **Subpoenas.**

~~(1) **Subpoenas authorized.** An adjudicating officer may issue a subpoena to require the attendance and testimony of any person not a classified employee and the production of any evidence not in the possession or control of a party, classified employee, or agency. A subpoena commands the person to whom directed to attend and testify at the Civil Service proceeding, produce the things designated, or give a deposition.~~

~~(2) **Requirements.** When necessary to obtain relevant and material evidence to resolve a matter, an adjudicating officer, upon the officer's own motion or on the written request of any party, may issue a subpoena requiring the attendance and testimony of any person not a classified employee and the production of any evidence in the person's possession or under the person's control.~~

~~(3)a. **Applications and review.** An application ~~by a party~~ for a subpoena is normally ~~reviewed and~~ acted upon by the hearing officer assigned to ~~the a~~ matter, ~~but~~. However, in the ~~absence of an~~ assigned hearing officer's ~~absence~~, another adjudicating officer may grant or deny ~~the a~~ request ~~of a party~~. When available, the assigned hearing officer may reexamine the decision.~~

~~(4) **Service, proof.** A subpoena may be served at any place within the state. The party requesting the subpoena is responsible for service of the subpoena. Service must be made by delivery of a copy to the person served. A subpoena must be served personally by an individual of suitable age and discretion who is not a party to the grievance appeal. Verified proof of service must be filed with the adjudicating officer.~~

~~(5)b. **Notice to other parties.** The A party requesting ~~the a~~ subpoena shall ~~mail or send by other courier to~~ provide every other party a copy of the subpoena within 24 hours after service ~~on the person to whom it is directed~~.~~

~~(6)c. **Costs.** The A party requesting a subpoena bears the cost of service and witness and mileage fees ~~are borne by the party who requested the subpoena. If a subpoena is issued upon motion of the hearing officer, the costs are borne by Civil Service.~~ Witness and mileage fees are the same as ~~are paid to~~ for witnesses in the state circuit courts ~~of this state~~.~~

~~(7)d.~~ **Revocation.** Any person served ~~with~~ a subpoena who does not intend to comply ~~with the subpoena~~ shall, within 7 calendar days after ~~the date of~~ service, petition ~~in writing to revoke the subpoena. A petition to revoke is filed with the Civil Service hearings office~~ CSHO in writing to revoke the subpoena and referred to the adjudicating officer for ruling. The ~~person filing a petition~~ er to revoke shall serve a copy ~~of the petition~~ on the requesting party ~~who requested the subpoena. The CSHO must also promptly~~ notice of the filing of a petition to revoke must also be promptly given by Civil Service staff to the requesting party at whose request the subpoena of the petition was issued. The hearing officer may revoke a subpoena if it requires the evidence required to be produced does not unrelated to the matter in issue, ~~if the subpoena~~ does not describe the requested evidence with sufficient particularity, or ~~if the subpoena~~ is invalid for any other sufficient reason.

~~(8) Testimony not required.~~ A party at whose request a subpoena was issued is ~~not obligated to call the witness or present the witness for cross-examination.~~

~~(9)e.~~ **Compliance.** If a person served with a subpoena fails to comply ~~with the subpoena~~, the requesting party ~~on whose behalf it was issued~~ may file a petition ~~in the Michigan~~ circuit court for an order requiring compliance. If a ~~circuit court~~ petition is filed, the hearing officer may adjourn ~~the~~ proceedings or take other action deemed appropriate. If ~~the~~ hearing goes forward continues, the hearing officer may presume that ~~the~~ evidence or testimony of a non-complying witness ~~who failed to comply with the subpoena~~ would be adverse to ~~any~~ party ~~who is~~ responsible for the failure or refusal ~~of a witness~~ to testify.

5. Sanctions. If a party ignores or willfully refuses to comply with an order to appear or produce or a subpoena and the requesting party is materially disadvantaged, the adjudicating officer may impose appropriate sanctions, including dismissal of the noncompliant party's claims or defenses or drawing reasonable inferences against it related to its noncompliance.

~~e6.~~ **Discovery of m**Medical information.

~~(1) When~~ if a party's mental or physical condition ~~of a party~~ is in controversy, the hearing officer may order ~~the~~ prehearing discovery ~~of medical information about~~ on the condition. Medical information subject to discovery includes, ~~but is not limited to,~~ medical records in the ~~possession and~~ control of a party, physician, hospital, or other custodian, including the Employee Services Program.

~~(2) A hearing officer shall not issue any order on any assessment or counseling services by the Employee Services Program, unless the recipient has signed a written release authorizing the disclosure; employees of the Employee Services Program shall comply with any order of a hearing officer accompanied by a properly authorized release.~~ A party ~~who has~~ may assert a valid privilege ~~may assert the privilege and to~~ prevent discovery of medical information ~~relating to~~ about the party's mental or physical condition. A privilege not timely asserted is waived in the proceeding.

~~(3) Unless the hearing officer orders otherwise, if a~~ party who asserts that the medical information is subject to a privileged or refuses to sign a release and the assertion prevents discovery of medical information, the party may cannot thereafter present or introduce any physical, documentary, or testimonial evidence relating to on the party's medical history or medical or physical history or condition.

~~f. Employee Services Program.~~

~~(1) A hearing officer shall not issue any order regarding any professional assessment or counseling services provided by the Employee Services Program unless the employee receiving the services has signed a written release authorizing the disclosure of such information.~~

~~(2) If a party refuses to sign a written release and prevents the disclosure of medical information about a mental or physical condition in contention, the party may not thereafter present or introduce any physical, documentary, or testimonial evidence relating to the party's medical history or medical or physical condition.~~

~~(3) Employees of the Employee Services Program shall comply with any order of a hearing officer accompanied by a properly authorized release.~~

**G. Hearing Procedures.** If a grievance appeal is not decided on summary disposition, a hearing officer shall conduct a contested hearing under the following procedures:

**1. Scheduling.** The hearing officer shall fix the time and place of hearing. Grievance appeal hearings are to be concluded in one day, unless otherwise previously authorized by the hearing officer in writing. The parties shall avoid calling unnecessary witnesses, be sufficiently prepared, and stipulate to all uncontested facts of the case to the hearing officer before the hearing date. Hearing officers should encourage the parties to focus their presentations on relevant evidence.

**2. Postponements.** Except for a serious emergency, a request to postpone a scheduled hearing must be filed at least 14 calendar days in advance. A hearing officer may postpone at a party's request if there is sufficient justification.

**3. Absences.** A hearing may proceed in the absence of a party or representative who fails to appear and did not obtain a postponement.

a. If the party with the burden of proof fails to appear, the hearing officer may grant a default judgment to the responding party.

b. If the responding party fails to appear, the hearing officer shall make an award in favor of the party with the burden of proof if sufficient evidence to justify an award is introduced.

**4. Prehearing exchange of documents and witness lists.** Each party shall provide every other party and the hearing officer (1) a copy of each document that the party intends to introduce into evidence in the party's case-in-chief and (2) a written list of the names and titles of all witnesses the party intends to call to testify at the hearing. The copies and list must be (1) hand-delivered or emailed to all other parties at least 7 calendar days before the hearing or (2) sent by first-class U.S. mail or other courier at least 14 calendar days before the hearing. This section does not prohibit a party from introducing rebuttal evidence or witnesses.

- a. Previously provided documents. A party need not provide another copy of any document previously exchanged in the grievance process.
- b. Security risk. If an appointing authority intends to call as a witness any prisoner or other person involuntarily committed, the witness may appear by telephone, unless the hearing is held where the witness is located.
5. Evidence. The hearing officer shall provide the parties a reasonable opportunity to present evidence, examine and cross-examine witnesses, and present argument. The rules of evidence do not apply, but the hearing officer may refuse to admit repetitive, irrelevant, unreliable, or speculative evidence. Parties are limited in examining witnesses and presenting evidence to facts directly related to matters in dispute before the hearing officer. The hearing officer may swear witnesses, take testimony, receive evidence including opinion evidence, and take other actions necessary to fairly consider the parties' claims. The hearing officer may receive and consider evidence of witnesses by affidavit, giving it weight deemed proper after considering any objection to its admission.
6. Hearing record. The hearing record shall include the following:
- The grievance chain, with all written grievances and answers.
  - Documents and items admitted into evidence by the hearing officer.
  - Sworn testimony of witnesses.
  - Motions or other pleadings filed by the parties.
  - Written orders and decisions of the hearing officer.
7. Civil Service rules and regulations. The hearing officer may judicially note Civil Service rules, regulations, and decisions which need not be admitted into evidence unless there is a genuine dispute over their authenticity or actual text.
8. Agency work rules. Relevant agency work rules, policy directives, or orders at issue must be admitted into evidence.
- 13H. Standards and Burden of Proof.** The burdens of proof in a grievance appeals vary depending on the certified issues. The burdens isare allocated as follows:
- 1. Prohibited Discrimination.** If ~~a grievant alleged~~ ing discrimination ~~prohibited by rule 1-8 [Prohibited Discrimination], the a grievant has the burden of must prove~~ ing by a preponderance of the evidence that the grievant suffered a tangible adverse employment action ~~as a result of from~~ discrimination prohibited by rule 1-8.
  - 2. Whistleblower.** If ~~the grievant alleged~~ ing a reprisal ~~prohibited by rule 2-10 [Whistleblower Protection], the a grievant has the burden of must prove~~ ing by a preponderance of the evidence that the grievant suffered a tangible adverse employment action ~~as a result of from~~ retaliation prohibited by rule 2-10.
  - 3. Discipline.** If alleging that the grievant alleged a dismissal, demotion, suspension, reduction in pay, or disciplinary lateral job change was without just cause, the burden of proof is ~~as follows~~:

- (1)a. **Just cause for discipline.** The appointing authority ~~has the burden of~~ must first prove~~ing~~ by a preponderance of the evidence that ~~there was it had~~ just cause to discipline the grievant.
- (2)b. **Discipline.** If the appointing authority proves that ~~there was it had~~ just cause to discipline ~~the grievant~~, a hearing officer ~~cannot~~ can only alter the discipline imposed unless if the grievant proves by a preponderance of the evidence that the particular discipline imposed (1) violated a Civil Service rule or regulation, (2) violated an agency work rule, or (3) was arbitrary and capricious.
- d4. **Position Abolition or creation of position.** If ~~the grievant wa~~challenging s ~~aggrieved by a position's~~ the creation or abolition ~~of a position~~, ~~the a~~ grievant ~~has the burden of~~ must prove~~ing~~ by a preponderance of the evidence that (1) the grievant suffered a tangible adverse employment action ~~as the result of~~ from the abolition or creation ~~of a position~~ and (2) the position was abolished or created for reasons other than administrative efficiency.
- e5. **Nondisciplinary lateral job change.** If ~~the grievant wa~~challenging s ~~aggrieved by~~ a nondisciplinary lateral job change, the grievant ~~has the burden of~~ must prove~~ing~~ by a preponderance of the evidence that (1) the grievant suffered substantial harm ~~as a result of~~ from the lateral job change and (2) the lateral job change was arbitrary and capricious.
- f6. **Compensation.** If ~~the grievant~~ alleged a denial of compensation, the grievant ~~has the burden of~~ must prove~~ing~~ by a preponderance of the evidence that the grievant was denied compensation to which the grievant was entitled under a Civil Service rule or regulation.
- g7. **Service rating.** If ~~the grievant alleged that the appointing authority issued~~ an unsatisfactory service rating is challenged as without just cause, the appointing authority ~~has the burden of~~ must prove~~ing~~ by a preponderance of the evidence that ~~there was it had~~ just cause to issue the unsatisfactory service rating.
- h8. **Performance-pay Evaluation.** If ~~the grievant alleged that the appointing authority issued~~ alleging a less-than-satisfactory overall performance-pay evaluation was without just cause, the appointing authority ~~has the burden of~~ must prove~~ing~~ by a preponderance of the evidence that ~~there was it had~~ just cause to issue an overall less-than-satisfactory evaluation.
9. **Rescinded probationary appointment.** If the rescission of an appointment during a probationary period where the grievant was demoted to a classification level not less than that occupied when appointed is challenged:
- a. The appointing authority must first articulate the reasons for rescinding the probationary appointment and demoting the grievant.
- b. The grievant must then prove by a preponderance of the evidence that the rescission and demotion (1) were arbitrary and capricious or (2) violated rule 1-6, 1-8, or 2-10.
- i10. **General grievance appeal.** Unless otherwise specifically provided elsewhere in Civil Service rules or regulations, a grievant ~~has the burden of~~ must prove~~ing~~ by a preponderance of the evidence both of the following:

~~(1)a.~~ The grievant was substantially harmed by an ~~action of the~~ appointing authority's action.

~~(2)b.~~ The action ~~complained of~~ violated ~~one or more of the following~~:

~~(a1)~~ Article 11, section 5, of the Michigan Constitution.

~~(b2)~~ A Civil Service rule or regulation.

~~(c3)~~ A an agency work rule; or.

~~(d4)~~ A an enforceable written grievance settlement between the grievant and ~~the~~ appointing authority permitted by Civil Service rules or regulations.

~~j.~~ ~~**Rescission of probationary appointment.** If a grievance alleged that the appointing authority rescinded an appointment during a probationary period and demoted the grievant to a classification level not less than the level occupied at the time of the probationary appointment:~~

~~(1) The appointing authority must first articulate the reasons for rescinding the probationary appointment and demoting the grievant.~~

~~(2) The grievant must prove by a preponderance of the evidence that the rescission and subsequent demotion (1) were arbitrary and capricious or (2) violated rule 1-6 [Merit, Efficiency, and Fitness], 1-8 [Prohibited Discrimination], or 2-10 [Whistleblower Protection].~~

#### **14**. **Decisions**.

**a1**. **Final decision.** The hearing officer shall issue a written decision setting forth ~~the hearing officer's~~ findings of fact, conclusions of law, and any remedial orders. ~~If the~~ A decision ~~disposinges~~ of ~~the a~~ grievance appeal, ~~the decision~~ is final, unless a party timely files a timely claim of appeal or an application for leave to appeal to the Civil Service Commission.

**b2**. **Remand decision.** If the hearing officer remands the matter to the agency for further proceedings and does not retain jurisdiction, the ~~remand~~ decision is appealable as a final decision. If the hearing officer remands the matter to the agency and retains jurisdiction, the decision is appealable only as an interlocutory order.

**3**. **Effective date.** If a party files an appeal to the commission within 28 calendar days after a decision is issued, the decision is automatically stayed pending further order of the Employment Relations Board or commission. Otherwise, a grievance appeal decision becomes final and binding on the parties 29 calendar days after the adjudicating officer's decision is issued, unless the decision provides a later effective date.

**4**. **Dismissal grievances.** If an adjudicating officer's final decision orders an appointing authority to reinstate a grievant who had been dismissed for just cause, as a condition of further appeal the appointing authority must, temporarily at the class and level ordered for reinstatement, either (a) reinstate the grievant or (b) provide base pay and appropriate medical, dental, and vision group insurance. Temporary restoration does not reinstate the grievant to employment in the classified service. During any temporary restoration, the grievant is not entitled to any leave credit, retirement credit, longevity credit or payment, additional

compensation, base-pay increases, severance pay, expense reimbursement, or other additional compensation or benefit.

**15J. Awards.**

**a1. Prohibitions.** A hearing officer cannot award ~~any of the following:~~

- ~~(1) Attorney fees.~~
- ~~(2) Witness fees.~~
- ~~(3) Costs or other expenses, or.~~
- ~~(4) Interest on any monetary award.~~

**b2. Back pay and benefits.** An appointing authority need not pay an award of back pay or benefits until a final, nonappealable decision of the commission or a court of competent jurisdiction affirms the award. If a reinstatement is affirmed after appeal, the appointing authority shall provide the rest of any back-pay award, offset by any base pay and benefits temporarily restored on appeal. An award of back pay and other benefits, even when not expressly stated in the decision, is subject to ~~c~~Civil ~~s~~Service rules and regulations and ~~subject to~~ the following deductions, when appropriate:

- ~~(1)a.~~ Earnings in other employment or self-employment, except for previously-approved supplemental employment.
- ~~(2)b.~~ Benefits from employer contributory income protection insurance.
- ~~(3)c.~~ Benefits ~~received~~ under workers' compensation, unemployment compensation, social security, and social welfare programs.
- ~~(4)d.~~ Paycheck withholding required under federal, state, and local law.
- ~~(5)e.~~ The employee's share of the cost of any group insurance plan.
- ~~(6)f.~~ Retirement benefits, including disability retirement benefits.

**c3. Expiring appointments.** ~~If the A grievant is in a limited-term appointment, the Senior Executive Service, or the Senior Executive Management Assistant Service appointment, damages, including pay and benefits, cannot be awarded relief for any period after the scheduled date of expiration of the term of appointment, unless specifically authorized in a Civil Service rule.~~

**16. Effective Date of Decision.**

- ~~a. Effective date.~~ A grievance appeal decision becomes final and binding on the parties 29 calendar days after the date the decision of the adjudicating officer is issued, unless the decision provides for a later effective date.
- ~~b. Stay of effective date.~~ If a party files an appeal to the Civil Service Commission within 28 calendar days after the date the decision was issued, the decision is automatically stayed pending further order of the Employment Relations Board or Civil Service Commission.
- ~~c. Dismissal grievances.~~ If a final decision of an adjudicating officer orders an appointing authority to reinstate a grievant who had been dismissed for just cause, the appointing authority, as a condition of further appeal to the Civil Service Commission, must do one of the following:

- ~~(1) **Temporary reinstatement.** Temporarily reinstate the grievant to a position at the classification and level (1) held when the grievant was dismissed or (2) ordered for reinstatement by the adjudicating officer.~~
- ~~(2) **Temporary restoration of base pay and benefits.** Temporarily restore the grievant's base pay and medical, dental, and vision group insurance, at the level in effect when dismissed.~~
- ~~(a) The temporary restoration of base pay and benefits does not reinstate the grievant to employment in the classified service.~~
- ~~(b) During a period of temporary restoration of base pay and benefits, the grievant is not entitled to any leave credit, retirement credit, longevity credit or payment, additional compensation, increases in base pay, severance pay, expense reimbursement, or any other additional compensation or benefit.~~
- ~~(3) If, after appeal, the decision reinstating the grievant is affirmed, the appointing authority shall provide the remainder of any back pay award, with credit given for any base pay and benefits temporarily restored pending appeal, unless the Civil Service Commission or a court of competent jurisdiction orders otherwise.~~
- ~~d. **Back pay pending appeal.** The appointing authority is not required to pay an award of back pay or benefits until there is a final, nonappealable decision of the Civil Service Commission or a court of competent jurisdiction affirming an award of back pay.~~
- ~~17. **Confidentiality.** Except for the record and published civil service decisions, all files of the Civil Service Commission and its adjudicating officers relating to grievance appeals, including, but not limited to, internal correspondence, research, staff analyses, and draft decisions, are confidential and not open to the public.~~
- ~~18. **Other Administrative Proceedings.** The procedures established in this regulation for the conduct of hearings may be used in other civil service proceedings where a contested hearing is authorized to the extent that they are not incompatible with requirements in the civil service rules and regulations for those proceedings. In civil service proceedings where a contested hearing is not authorized, the adjudicating officer may use these procedures to the extent that they are not incompatible with the subject matter and conduct of the investigation.~~

**GK. Arbitration Alternative.**

1. **Filing ~~Grievance Appeal to Arbitration~~.** A grievant may elect to have an arbitrator hear a grievance appeal ~~heard by an arbitrator~~ rather than a hearing officer appointed by ~~Civil Service~~the CSHO. A grievant electing arbitration must ~~first timely~~ file ~~the a~~ grievance appeal with ~~Civil Service~~ the CSHO ~~after exhausting the agency-level steps~~ in ~~compliance with s~~Standards 4.B.1, 4.B.2, and 4.B.3 of this regulation. If the grievant's first filing with ~~Civil Service~~ the CSHO does not ~~clearly indicate that the grievant explicitly~~ elects the arbitration alternative, the grievant waives the ~~option arbitration alternative~~ and ~~the grievance appeal must be heard by a~~ the CSHO shall appoint a hearing officer appointed by ~~Civil Service~~.
2. **Pre-arbitration ~~C~~onference.** If the administrative officer does not summarily dismiss ~~the a~~ grievance appeal, the administrative officer shall schedule a pre-arbitration conference of the parties within 28 calendar days after ~~the date the grievance appeal was filed~~ing. The parties may explore conciliation, stipulate ~~as~~ to issues and facts, and coordinate selection of the arbitrator. After the conference, the administrative officer shall certify the grievance appeal to arbitration.
3. **~~Arbitrator S~~election ~~of Arbitrator~~.** Within 14 calendar days after the administrative officer's ~~mails or sends by other courier the~~ certification, the grievant must file a request with the selecting agency or acknowledge acceptance of an mutually agreed-upon arbitrator. Unless the parties agree otherwise, the arbitrator ~~shall be~~ is selected and the hearing conducted under ~~the~~ rules of the American Arbitration Association that are ~~not in~~consistent with the Civil Service rules and regulations. The Federal Mediation and Conciliation Service or Michigan Employment Relations Commission may be used by mutual agreement.
4. **~~Conduct of Arbitration~~Procedures.**
  - a. **Cost.** The grievant and appointing authority shall share ~~the cost of the~~ arbitration costs equally.
  - b. **Applicable law.** An arbitrator shall decide a grievance appeal under the same substantive Civil Service rules and regulations that would apply if the grievance appeal were heard by a Civil Service hearing officer ~~under rule 8-2 and this regulation~~.
  - c. **Record.**
    - (1) ~~The~~ arbitration must be recorded so that a verbatim transcript of ~~the arbitration~~ proceedings can be made, if ~~necessary~~needed.
    - (2) ~~The~~ arbitrator must retain all original documents, exhibits, pleadings, orders, and decisions. ~~If a party appeals the arbitrator's final decision, the arbitrator shall provide the original documents, exhibits, pleadings, orders and decisions to the Employment Relations Board on request of the appellant.~~
  - d. **Decision.** The arbitrator shall issue a written decision setting forth ~~the arbitrator's~~ findings of fact, conclusions of law, and any remedial orders. A

remedial order cannot exceed the ~~scope of~~ remedies available to a Civil Service hearing officer. The decision ~~of the arbitrator~~ is final unless a party timely files a ~~timely~~ claim of appeal or application for leave to appeal to the Civil Service Commission. If a party appeals, the arbitrator shall provide all original documents, exhibits, pleadings, orders, and decisions to the Board on the appellant's request.

#### **LD. Authorized Representation ~~and Administrative Leave.~~**

1. **By nNonexclusively represented employees.** A NERE who ~~files a grievance or~~ is a party in a Civil Service grievance ~~appeal~~ proceeding may represent himself or herself or may designate as an authorized representative (1) an employee or agent of a limited-recognition organization, (2) an attorney, or (3) another classified NERE, subject to ~~any limitation~~s in the rules or regulations.
  - a. **Administrative leave.** An agency shall release a NERE who ~~files or~~ is a party in a Civil Service grievance ~~appeal~~ proceeding from regularly scheduled work without loss of regular pay or leave credits for necessary travel to and attendance at grievance ~~procedure~~ meetings or proceedings scheduled by the employer or Civil Service.
    - (1) If a representative is an employee of the same agency, the appointing authority shall release the representative from regularly scheduled work without loss of normal pay or leave credits to attend grievance procedure meetings and proceedings scheduled by the employer or Civil Service.
    - (2) If the representative is an employee of a different agency, the representative may ~~be absent from the workplace to~~ attend grievance meetings or and hearings proceedings only if the representative's appointing authority ~~has approved~~s annual or personal leave.
  - b. **Limitationss.**
    - ~~(1)~~ Administrative leave for investigations by a grievant or representative is not authorized.
    - ~~(2)~~ Overtime, consultation time over 15 minutes, and expenses, including travel expenses, are not authorized. To the extent practical, meetings should be scheduled during the grievant's workday.
    - ~~(3)~~ An appointing authority may limit the granting of administrative leave to three spokespeople ~~from among for a~~ group grievancets.
2. **By eExclusively represented employees.** If an exclusively represented employee files a grievance ~~regarding over~~ a prohibited subject of bargaining under an exclusive Civil Service procedure, the employee may represent himself or herself or may designate as an authorized representative (1) an employee or agent of the employee's exclusive representative, (2) an attorney, or (3) another exclusively represented classified employee ~~who is member of in~~ the same bargaining unit, subject to ~~any limitation~~s in the rules or regulations.

**M. Confidentiality.** Except for the record and published Civil Service decisions, all files of the commission and its adjudicating officers relating to grievance appeals, including internal correspondence, research, staff analyses, and draft decisions, are confidential and not open to the public.

**N. Other Administrative Proceedings.** Procedures in this regulation for conducting hearings may be used in other Civil Service proceedings when a contested hearing is authorized to the extent that they are compatible with requirements for those proceedings. In Civil Service proceedings when a contested hearing is not authorized, the adjudicating officer may use these procedures to the extent that they are compatible with the subject matter and conduct of the investigation.

**CONTACT**

Questions ~~regarding-on~~ this regulation should be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 ~~S.outh~~ Pine Street, Lansing, Michigan 48909; or by telephone, at ~~(517-)~~ 373-3024.