Michigan Civil Service Commission

Regulation 8.01

Subject: Grievance and Grievance Appeal Procedures		
SPDOC No.:	**Effective Date:**	**Replaces:**
22-06	July 25, 2022	Reg. 8.01 (SPDOC 19-05, May 1, 2019)

1. Purpose

This regulation establishes procedures for employees to (1) file grievances with appointing authorities and (2) appeal appointing authorities' final grievance answers to Civil Service.

2. CSC Rule References

3-6 Probation and Status

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3-6.4 Grievance of Probationary Rating or Discipline

(a) Probationary employee without status. *A probationary employee without status who is dismissed or otherwise disciplined can only grieve within the agency steps of the civil service grievance procedure. The employee cannot appeal the appointing authority's final determination to civil service staff, unless the discipline violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].*

(b) Probationary employee with status.

(1) Rescission and demotion. *If an appointing authority demotes a probationary employee with status to a classification level not less than that occupied immediately before the probationary appointment, the employee can only grieve the rescission and demotion as provided in rule 8-1. The employee cannot appeal the appointing authority's final determination, unless the discipline violated rule 1-8 or rule 2-10.*

(2) Other discipline. *A probationary employee with status who is dismissed or disciplined other than as provided in subsection (b)(1) may grieve the discipline. The appointing authority must demonstrate just cause for the discipline in any appeal.*

6-9 Negotiations and Impasse

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6-9.6 Negotiated Grievance Procedures

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(b) Jurisdictional limitations on arbitrators

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(3) *The following disputes cannot be adjudicated in a grievance procedure authorized in a collective bargaining agreement. They can only be adjudicated in a civil service forum under the exclusive procedures provided in the rules and regulations:*

(A) *A grievance by an employee aggrieved by a position's abolition, creation, or assumption.*

(B) *A grievance by an employee aggrieved by an arbitrary and capricious lateral job change resulting in substantial harm.*

(C) *A grievance by an employee aggrieved by the application of employment preference or recall rights.*

(D) *A grievance by an employee aggrieved by the employer's exercise of any other of its rights to assign staff, including scheduling, shift assignment, overtime assignment, or seniority calculation.*

(E) *A grievance by an employee disciplined or denied use of sick or annual leave for striking.*

(F) *A grievance by an employee whose probationary appointment is rescinded.*

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(I) *Any matter or dispute in which civil service rules or regulations provide an exclusive procedure or forum for the resolution of the matter or dispute.*

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) *A written reprimand 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 or supplemental military pay to which the grievant is entitled under the civil service rules and regulations.*

(8) *The actual or anticipated failure or refusal to comply with Rule 2-14 [Rights of Employees Absent Due to Service in the Uniformed Services] or applicable regulations.*

(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 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].*

(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 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.*

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 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) *Unsatisfactory interim rating, as provided in rule 2-3.3 and rule 3-6.4.*

(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 is entitled under the civil service rules and regulations.*

(g) *A tangible adverse employment action has occurred or will occur as the 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 Services] 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 appointing authority's action that violated rule 1-8 or rule 2-10:

(a) Probationary employee without status. *A probationary employee without status cannot appeal the appointing authority's final grievance decision over the following:*

(1) *A probationary rating or an interim rating.*

(2) *A decision by the appointing authority to discipline the employee, including dismissal, when issuing an unsatisfactory probationary rating.*

(b) Reprimand. *An employee cannot appeal the appointing authority's final grievance decision over a written reprimand.*

8-2.4 Civil Service Grievance Appeal Procedures

(a) Regulations. *The state personnel director shall issue regulations governing the grievance appeal procedures.*

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

(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 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, 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 staff or the 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) *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.*

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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. Definitions in This Regulation.

1. **Authorized representative** means a qualified person authorized to appear and receive notices on behalf 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 in which the parties 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. **Member of the family** means a spouse, child, foster child, parent, foster parent, or sibling of the hearing officer or hearing officer's spouse.
5. **Member of the household** means any person (1) living in the household of 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. **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.
9. **Tangible adverse employment action** means an act by an employer or employer's agent that objectively, substantially, and negatively affects an employee's income, benefits, or employment status.

4. Standards

A. Eligibility.

1. Nonexclusively represented employees (NEREs) must use this process for all grievances and grievance appeals, as authorized in rules 8-1 and 8-2, respectively.
2. Exclusively represented employees must use this process for any grievances and grievance appeals as authorized in rules 8-1 and 8-2 for any grievances and grievance appeals (a) over actions during prior employment as a NERE, and (b) described in rule 6-9.6(b)(3) where grievances under contractual procedures are prohibited.

B. Grievance Procedures at the Agency Level.

1. **Step-1 grievances.**

   a. **Filing.** A grievant must file a signed, written grievance on a CS-100 form with the step-1 official. The CS-100 form must include a concise statement of the specific relief sought and of the factual basis for the grievance that is sufficient to identify the specific violation claimed. The 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 within 14 days after the grievant knew of or reasonably should have known of the grievance.

   c. **Step-1 conference.** The step-1 official shall hold an informal conference with the grievant, unless the grievant declines to attend.

   d. **Step-1 answer.** The step-1 official shall issue a written answer to the grievant within 14 days after a grievance is filed.

2. **Step-2 grievances.**

   a. **Filing.** A grievant who may bypass step 1 under § 4.B.1.a or who is unsatisfied with the step-1 answer or who is not issued a timely step-1 answer may file a signed, written step-2 grievance on a CS-100 with the step-2 official. The CS-100 form must include a concise statement of the specific relief sought and of the factual basis for the grievance that is sufficient to identify the specific violation claimed. If a grievant does not timely file at step 2, a grievance is closed.

   b. **Time limit.** If the step-1 official timely issues an answer, the grievant must file any step-2 grievance within 14 days after issuance. The date issued is presumed to be the date on the answer. If no written answer is timely issued, the grievance is presumed denied and any step-2 grievance must be filed with the step-2 official within 21 days after the step-1 answer was due.

   c. **Step-2 conference.** The step-2 official may hold any conference deemed necessary. If the grievance began at step 2, the step-2 official must offer an informal conference to the grievant.

   d. **Step-2 answer.** The step-2 official shall issue a written answer to the grievant within 28 days after a step-2 grievance is filed.

3. **Group grievances.** Employees with grievances with common issues of fact and law may jointly file a single CS-100. Each joint grievant must sign the form. A group grievance must be filed directly at step 2. An appointing authority may process the grievance as a group grievance or as separate grievances. An appointing authority may also process separate grievances with common issues of fact and law as a group

grievance. An appointing authority may limit attendance at group-grievance activities to three grievants.

4. **Administrative review at the agency level.** If a step-1 or step-2 grievance does not substantially comply with filing or timeliness requirements, an official shall notify the grievant in writing of the deficiency and that the official may dismiss the party's claim or take other appropriate action if the grievant does not correct the deficiency within 14 days of the notice's date. If the party does not timely correct the deficiency or if the grievance seeks relief that cannot be granted or that meets any criteria in rule 8-4(a)–(f), a step-1 or step-2 official may administratively dismiss the grievance.

C. Grievance Appeals to the Civil Service Hearings Office (CSHO).

1. **Authorization.** A grievant unsatisfied with a step-2 answer or who is not issued a timely answer may file a signed, written grievance appeal on a CS-100 form with the CSHO. If a grievant does not timely file a grievance appeal, the grievance is closed.

2. **Time limit.** If the step-2 official timely issues a written answer, the grievant must file any appeal to the CSHO within 28 days after issuance. The date issued is presumed to be the date on the step-2 answer. If no step-2 answer is timely issued, the grievance is presumed denied and any appeal must be filed with the CSHO within 42 days after the step-2 answer was due.

3. **Contents.** An appeal must include the following on a CS-100 form:

   a. The grievant's (1) name, (2) employee ID number, (3) employing agency, (4) mailing address, (5) telephone number, and (6) email address.

   b. Any authorized representative's (1) name, (2) organization, (3) mailing address, (4) telephone number, and (5) email address.

   c. A complete copy of the grievance chain, including all step-1 and step-2 grievances and answers.

   d. A concise statement of the factual basis for the grievance appeal, including grounds for the appeal and citation to relevant subsections of rule 8-2.2.

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

4. **Administrative review.** The CSHO administrative officer shall review all grievance appeals and summarily dismiss if a criterion in rule 8-4 is met, if the relief sought cannot be granted, or if the grievant fails to respond to a written notice or request 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 p.m. on the applicable deadline. Time is counted as provided in regulation 8.06, § 3.B.

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. The grievant must request any extension to file a grievance appeal in writing 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 the 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 answer must evaluate the merits of any excuse for lateness. A grievant may file a grievance appeal of 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 days late is denied as untimely, unless the filing party establishes good cause.

   b. **Over 28 days and under one year.** A filing received more than 28 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, 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.

2. **Mediation.** The hearing officer may require mediation of a grievance appeal. Any mediator cannot (1) be assigned as hearing officer in the same matter or (2) later testify on any aspect of the mediation.

3. **Limit on communications.** A hearing officer shall not communicate privately on the facts or merits of a pending matter with any party or representative. The hearing officer may communicate privately as needed for matters unrelated to the facts or merits.

4. **Hearing officer 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 days after the moving party knew or reasonably should have known the grounds for disqualification.

    a. **Grounds.** Grounds to disqualify include the following:

        (1) Personal bias or prejudice for or against a party or representative.

        (2) Consultation by a party or representative on the pending matter before assignment.

        (3) Employment by a party or representative in any private matter in the past five years. Appointment as a neutral arbitrator is not disqualifying.

        (4) The hearing officer or a member of the officer's family or household 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.

    b. **Ruling.** The assigned hearing officer shall decide the motion. If denied, within seven days, a moving party may ask in writing for the state personnel director to exercise superintending control and disqualify the hearing officer. The director's decision is final. After any disqualification, the administrative officer shall assign the matter to another hearing officer.

5. **Prehearing conference.** The hearing officer may conduct a prehearing conference to identify material facts in dispute and simplify issues; obtain stipulations, admissions of fact, and documents to avoid unnecessary proofs or witnesses; exchange documents; and take other actions to facilitate fair and expeditious adjudication.

6. **Submissions and proof of service.** If a party submits any written material to the hearing officer, the party shall concurrently serve a complete copy on all other parties and certify in writing how every other party was served. Copying all parties and representatives on an email submission is sufficient proof of service.

7. **Summary disposition.** If there is no genuine issue of 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 and any additional documents requested or obtained by the hearing officer.

F. Discovery.

1. **Authority to issue.** To obtain relevant and material evidence needed to decide pending matters, a Civil Service adjudicating officer may:

   a. Order classified employees and agencies or their representatives to appear, testify, and produce evidence, including books, records, papers, correspondence, or documents under their 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 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. A subpoena must be served (a) personally by an individual of suitable age and discretion who is not a party to the grievance appeal, or (b) by mailing to a witness a copy of the subpoena and a postage-paid card acknowledging service and addressed to the party requesting service. If the card is not returned, the subpoena must be served personally. Proof of service must be filed with the adjudicating officer.

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

   a. **Appearance.** All classified employees shall appear as directed by an adjudicating officer. A classified employee who is a necessary witness may also voluntarily appear at a party's request. An appointing authority shall release necessary witnesses from regularly scheduled work without loss of regular pay or leave credits for necessary travel and attendance, unless an emergency or critical safety concern prohibits releasing the employee. The employee is not entitled to overtime pay or travel expenses.

   b. **Producing documents.** A classified employee ordered to produce evidence under the person's control must comply as ordered. Any objection by the employee or employee's appointing authority must be filed in writing at least 7 days before the production deadline. The hearing officer shall rule on objections before requiring the release of evidence.

5. **Orders to agencies.**

   a. **Requirements.** An adjudicating officer may issue an order to an agency directing it to produce its employees at a hearing to provide testimony or produce evidence under the control of the agency on request of a party. Before requesting an order, a party must seek the agency's voluntary agreement. A party must state in a request that it asked the appointing authority to voluntarily comply but was refused.

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

6. **Subpoenas.**

   a. **Applications.** An application for a subpoena is normally acted on by the hearing officer assigned to a matter, but in the assigned hearing officer's absence, another adjudicating officer may grant or deny a request. When available, the assigned hearing officer may reexamine the decision.

   b. **Notice.** A party requesting a subpoena shall provide every other party a copy of the subpoena within 24 hours after service.

   c. **Costs.** A party requesting a subpoena bears the cost of service and witness and mileage fees. Witness and mileage fees are the same as for witnesses in state circuit courts.

   d. **Revocation.** Any person served a subpoena who does not intend to comply shall, within 7 days after service, petition the CSHO in writing to revoke the subpoena. The petitioner shall serve a copy on the requesting party. The CSHO must also promptly notice the requesting party of the petition. The hearing officer may revoke a subpoena if it requires evidence unrelated to the matter at issue, does not describe the requested evidence with sufficient particularity, or is invalid for any other sufficient reason.

   e. **Compliance.** If a person served with a subpoena fails to comply, the requesting party may petition the circuit court for an order requiring compliance. If a petition is filed, the hearing officer may adjourn proceedings or take other action deemed appropriate. If a hearing continues, the hearing officer may presume that evidence or testimony of a non-complying witness would be adverse to a party responsible for the failure or refusal to testify.

7. **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.

8. **Medical information.** If a party's mental or physical condition is in controversy, the hearing officer may order prehearing discovery on the condition. Medical information subject to discovery includes medical records in the control of a party, physician, hospital, or other custodian, including the Employee Services Program. 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 may assert a valid privilege to prevent discovery of medical information about the party's mental or physical condition. A privilege not timely asserted is waived in the proceeding. A party who asserts that medical information is privileged or refuses to sign a release and prevents discovery cannot thereafter introduce any physical, documentary, or testimonial evidence on the party's medical or physical history or condition.

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 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 and the hearing officer at least 7 days before the hearing or (2) sent by first-class U.S. mail or other courier at least 14 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:

   a. The grievance chain, with all written grievances and answers.

   b. Documents and items admitted into evidence by the hearing officer.

   c. Sworn testimony of witnesses.

   d. Motions or other pleadings filed by the parties.

   e. Written orders and decisions of the hearing officer.

7. **Judicial notice.** 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.

H. Standards and Burden of Proof. The burdens of proof in grievance appeals vary depending on the certified issues. The burdens are as follows:

1. **Prohibited discrimination.** If alleging discrimination, a grievant must prove by a preponderance of the evidence that the grievant suffered a tangible adverse employment action from discrimination prohibited by rule 1-8.

2. **Whistleblower.** If alleging reprisal, a grievant must prove by a preponderance of the evidence that the grievant suffered a tangible adverse employment action from retaliation prohibited by rule 2-10.

3. **Discipline.** If alleging that a dismissal, demotion, suspension, reduction in pay, or disciplinary lateral job change was without just cause, the burden of proof is:

    a. **Just cause.** The appointing authority must first prove by a preponderance of the evidence that it had just cause to discipline the grievant.

    b. **Discipline.** If the appointing authority proves that it had just cause to discipline, a hearing officer can only alter the discipline imposed if the grievant proves by a preponderance of the evidence that the particular discipline imposed (1) violated a rule or regulation, (2) violated an agency work rule, or (3) was arbitrary and capricious.

4. **Position abolition or creation.** If challenging a position's creation or abolition, a grievant must prove by a preponderance of the evidence that (1) the grievant suffered a tangible adverse employment action from the abolition or creation and (2) the position was abolished or created for reasons other than administrative efficiency.

5. **Nondisciplinary lateral job change.** If challenging a nondisciplinary lateral job change, the grievant must prove by a preponderance of the evidence that (1) the grievant suffered substantial harm from the lateral job change and (2) the lateral job change was arbitrary and capricious.

6. **Compensation.** If alleging a denial of compensation, the grievant must prove by a preponderance of the evidence that the grievant was denied compensation to which the grievant was entitled under a rule or regulation.

7. **Service rating.** If an unsatisfactory service rating is challenged as without just cause, the appointing authority must prove by a preponderance of the evidence that it had just cause to issue the unsatisfactory service rating.

8. **Performance-pay evaluation.** If alleging a less-than-satisfactory overall performance-pay evaluation was without just cause, the appointing authority must prove by a preponderance of the evidence that 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.

10. **General grievance appeal.** Unless otherwise specifically provided elsewhere in a rule or regulation, a grievant must prove by a preponderance of the evidence both of the following:

    a. The grievant was substantially harmed by an appointing authority's action.

    b. That action violated (1) article 11, section 5, of the Michigan Constitution; (2) a rule or regulation; (3) an agency work rule; or (4) an enforceable written grievance settlement between the grievant and appointing authority permitted by the rules and regulations.

I. Decisions.

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

2. **Remand decision.** If the hearing officer remands the matter to the agency for further proceedings and does not retain jurisdiction, the 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 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 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) temporarily restore 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.

5. **Publication.** Written decisions of the CSHO and any subsequent written decisions or recommendations from the employment relations board and civil service commission

from any appeal of a CSHO decision are public documents. They are generally published online and available to the public.

J. Awards.

1. **Prohibitions.** A hearing officer cannot award attorney fees, witness fees, costs or other expenses, or interest on any monetary award.
2. **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 rules and regulations and the following deductions, when appropriate:
    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.
    d. Paycheck withholding required under federal, state, and local law.
    e. The employee's share of the cost of any group insurance plan.
    f. Retirement benefits, including disability retirement benefits.
3. **Expiring appointments.** A grievant in a limited-term, Senior Executive Service, or Senior Executive Management Assistant Service appointment cannot be awarded relief for any period after the scheduled expiration of the term of appointment.
4. **Overtime equalization.** In a grievance over inequitable overtime scheduling, relief is limited to subsequent overtime opportunities.
5. **Modified discipline.** Any disciplinary suspension expressed as a number of days imposed by a hearing officer applies to days on which the grievant would have otherwise been scheduled to work, unless otherwise provided in the decision.

K. Authorized Representation.

1. **Nonexclusively represented employees.** A NERE who is a party in a Civil Service grievance 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 limits in the rules or regulations.

2. **Exclusively represented employees.** An exclusively represented employee who is a party in a Civil Service grievance under this regulation 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 in the same bargaining unit, subject to limits in the rules or regulations. An exclusive representative may consent to but has no duty to represent an employee in a grievance under this regulation.

3. **Attendance at proceeding.**

   a. **Administrative leave.** An agency shall release a designated representative in a Civil Service grievance proceeding from regularly scheduled work without loss of regular pay or leave credits as follows.

      (1) An appointing authority shall release a designated representative employed by the same agency as a grievant from regularly scheduled work without loss of normal pay or leave credits to attend a disciplinary conference for a NERE, one grievance conference scheduled by the appointing authority, and a grievance appeal prehearing conference and hearing dates scheduled by Civil Service. The appointing authority shall also release a designated representative from regularly scheduled work without loss of normal pay or leave credits for reasonable travel to the grievance appeal hearing dates.

      (2) A designated representative employed by a different agency may attend proceedings listed in § 4.K.3.a(1) only if the representative's appointing authority approves annual or personal leave.

   b. **Limits.** Administrative leave for investigations by a representative is not authorized. Overtime and expenses, including reasonable travel expenses, are not authorized. Consultation time, except for 15 minutes before a grievance appeal hearing, is not authorized. To the extent practical, meetings should be scheduled during the grievant's workday. An appointing authority may limit the grant of administrative leave to one designated representative for a group grievance.

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

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