

# **CIVIL SERVICE COMMISSION**

## **Government of Guam**

### **ADMINISTRATIVE LAW JUDGE RULES** **(A.K.A. ALJ RULES)**

**Title 2 Guam Administration Rules & Regulations (GARR),  
Title 2, Division 1, Chapter 2, Civil Service Commission,  
Article 2, Administrative Law Judge Rules.**

- Section 2201. Title.**
- Section 2202. Citation.**
- Section 2203. Authority to Establish Rules.**
- Section 2204. Purpose.**
- Section 2205. Unrepresented Party.**
- Section 2206. Disqualification of the ALJ.**
- Section 2207. Affidavit of Prejudice.**
- Section 2208. Conduct of ALJ.**
- Section 2209. Applicable Burden for Cases .**
- Section 2210. Powers of the ALJ.**
- Section 2211. Authority of the ALJ.**
- Section 2212. Discretionary Authority of the ALJ.**
- Section 2213. Recommendation by the ALJ.**
- Section 2214. ALJ's Findings.**
- Section 2215. Assignment of Cases.**
- Section 2216. CSC Decision.**
- Section 2217. Exclusivity Of Record.**
- Section 2218. CSC Review.**
- Section 2219. Judicial Notice.**
- Section 2220. Arbitration.**
- Section 2221. Judicial Review.**

#### **S2201. Title**

These Rules may be referred to as the Administrative Law Judge Rules.

#### **S2202. Citation**

These Rules shall be cited as "CSC ALJ" followed by the number of the rule (ex. "CSC ALJ 2203") and may also be referred to as the "CSC ALJ Rules."

#### **S2203. Authority to Establish Rules**

The Civil Service Commission (hereafter "CSC") is empowered to create these Rules pursuant to 4 G.C.A. §§ 4403(d) & (e), 4407 and 4409. These rules are effective \_\_\_\_\_ pursuant to the Administrative Adjudication Act.

**S2204. Purpose**

The Purpose of these Rules is to create a fair process to adjudicate appeals, grievances, and complaints, administered by the Administrative Law Judge, hereafter "ALJ". The CSC believes it is important to inform employees and management of rules and laws critical to the services of an ALJ, by paraphrasing some of them in these Rules. When a Rule is related to a law, a citation to the law will be included. Copies of these Rules are available at the CSC office or website. At the time of publication of these rules the CSC website address is [www.csc.guam.gov](http://www.csc.guam.gov).

**S2205. Unrepresented Party**

The ALJ shall adjust the application of these Rules for any party who is not represented by an attorney or a lay representative when it is clear there is a genuine misunderstanding of a rule(s) which, if applied, would operate unfairly. In cases where an employee represents oneself, the ALJ shall render all possible assistance to the employee to insure a fair and impartial hearing.

**S2206. Disqualification of the ALJ**

An ALJ must be free of any political or economic association that would impair the judge's ability to function officially in a fair and objective manner. Disqualification is appropriate where a personal or a pecuniary interest or economic bias is shown, or one ground for disqualification is the establishment by facts of a personal prejudice or a partiality toward a party or a party's group.

**S2207. Affidavit of Prejudice**

If a party believes that the ALJ is prejudiced, they must file an affidavit no later than five (5) days after the assignment of the case to the ALJ. An ALJ is not automatically disqualified by the filing of an affidavit of prejudice, the burden of establishing bias or other disqualifying interest rests on the party challenging the hearing officer. The Executive Director or their designee shall decide whether the ALJ is prejudiced.

**S2208. Conduct of ALJ**

An ALJ shall be fair, objective and unbiased, providing a fair opportunity for all parties to make their case. Where the ALJ is effectively closed to reason or persuasion from one side disqualification may be appropriate. An ALJ will not be disqualified merely because he or she has made rulings adverse to the filing party in prior cases. Neither will an ALJ be automatically disqualified from sitting at a rehearing of a contested case after reversal of the ALJ's earlier

ruling. A motion to disqualify an ALJ based upon their conduct may be filed within any reasonable time.

**S2209. Applicable Burdens for Cases**

The ALJ shall apply applicable burdens of proof for cases as described in 4 G.C.A. §§ 4403 & 4407.

**S2210. Powers of the ALJ**

The ALJ shall have the following powers and duties, subject to published rules of the CSC.

- (a) Maintain an orderly proceeding;
- (b) Administers oaths and affirmations;
- (c) Rule on offers of proof and receive relevant evidence;
- (d) Take depositions or have depositions taken when the ends of justice would be served;
- (e) Regulate the course of the hearing;
- (f) Hold unrecorded settlement conferences;
- (g) Inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;
- (h) Require the attendance at any conference held of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;
- (i) Dispose of procedural requests or similar matters;
- (j) Make rulings on motions;
- (k) Grant continuances;
- (l) Examine witness(s);
- (m) Permit written testimony;
- (n) Make or recommend decisions or take other action authorized by the CSC.

**S2211. Authority of the ALJ**

The ALJ has authority to regulate the manner and form of the testimony of witnesses. The ALJ has wide discretion in not allowing undisclosed witnesses to testify at the hearing. Where testimony would merely be cumulative or irrelevant, the ALJ may limit the number of witnesses. Conversely, the ALJ has discretion to permit a witness to testify even though his name was not on a prehearing list of proposed witnesses. Generally, the ALJ should permit counsel to question witnesses in their own way so that they may develop their case. Each party has a right of cross-examination of witnesses and the right to submit rebuttal evidence. Cross-examination may be restricted, however, in the sound discretion of the ALJ, and a ruling restricting cross-examination is reversed only for an abuse of discretion. The ALJ may cross-examine witnesses called by any party in order to clarify the testimony. The ALJ shall exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

**S2212. Discretionary Authority of the ALJ**

The ALJ has wide latitude in all phases of the conduct of the hearing, including rulings on the reception of evidence. However, an ALJ's creation of prejudice to a party by excluding competent and material evidence may be a denial of due process that requires a remand for rehearing.

**S2213. Recommendation by the ALJ**

After the hearing and the filing of written briefs, if any, the ALJ must prepare a decision that contains findings of fact, conclusions of law, and a recommendation.

**S2214. ALJ's Findings**

The ALJ's findings of fact and conclusions of law must be stated with clarity and completeness and the findings of fact must be specific. Specific findings are those that are definite and detailed so as to disclose the basis of the recommendation or order and permit an intelligent review. A summarization of the testimony will not constitute specific findings of fact. The ALJ is expected to find which facts are true. The report must also state the reasons for the conclusions of law and recommendation. The reasons are often set out in a memorandum that explains why the ALJ credited or relied on certain evidence and relates the facts to the law or policy involved.

**S2215. Assignment of Cases**

The CSC may assign any case or hearing to an ALJ without the consent of the parties.

**S2216. CSC Decision**

The ALJ's recommendation is not the final decision but must be adopted, modified or rejected by the CSC. The CSC cannot make its final decision until the ALJ's report has been made available to the parties for ten days and an opportunity to file exceptions and to present argument has been afforded the parties.

(Source: see P.L. 33-55)

**S2217. Exclusivity Of Record**

The final decision of the CSC shall be decided solely on the hearing record. Only upon good cause will a party be permitted to present additional evidence that should have been presented and made a part of the hearing record. If the CSC determines the record is incomplete, the case will be returned to an ALJ to complete the record. The commission may, in evaluating the evidence contained in the record, utilize their experience, technical competence, and specialized knowledge.

**S2218. CSC Review**

The commission will review only those parts of the record before the ALJ which the commission deems necessary to decide whether to accept, modify, or reject the ALJ's decision. The CSC owes no deference to the recommendations of the ALJ and make findings of fact or conclusions contrary to those made by the ALJ. However, the credibility determinations of the ALJ, who actually saw the witnesses, are entitled to some weight. The CSC should show a sufficient basis to reverse or modify the credibility findings of the ALJ.

**S2219. Judicial Notice**

Upon motion or on their own, provided notice and opportunity to be heard is given, an ALJ may take judicial notice of facts that normally can be taken judicial notice of. When rendering its final decision the CSC may also take judicial notice.

**S2220. Arbitration**

Upon consent of all parties, case may be referred to an ALJ for binding arbitration. Such arbitration need not follow the published rules. Arbitration decisions by the ALJ are final and not subject to review by the CSC; However, the CSC will ratify the final arbitration decision. Such arbitration decisions may be subject to judicial review upon the standard grounds of arbitration review.

**S2221. Judicial Review**

The CSC's final decision may be raised to judicial review, the findings of the ALJ may bear on the determination of whether substantial evidence supports the final agency decision.