

**CIVIL SERVICE COMMISSION**  
**I GOBIETNON GUAHAN**  
**TERRITORY OF GUAM**

**RULES OF PROCEDURE FOR GRIEVANCE APPEALS**

**ADOPTION STATEMENT**

*Although similar, grievance procedures for the various line and autonomous agencies and entities of the Government of Guam are not necessarily the same. These revisions have been drafted in order to address such differences. Wherever appropriate, references to the Department of Administration's personnel rules have been deleted and replaced with references to the applicable rules. Additionally, in an effort to reduce redundancies, simple restatements of statute have been removed.*

*A draft version of these Rules was made available for public review and a public hearing to take comments was held on September 14, 2011. The Commission also accepted written testimony. The Rules as contained here reflect appropriate changes in consideration of such comments.*

**RULE G1 JURISDICTION**

*The Civil Service Commission (hereafter "the CSC or the Commission") is empowered to create Rules pursuant to 4 G.C.A. § 4403 (c) and § 4409.*

- *These rules are effective \_\_\_\_\_ 2011 (pursuant to the Administrative Adjudication Act) and shall govern any grievance appeals filed after the effective date as well as to any grievance appeals pending as of the effective date, except to the extent that application of these Rules would not be feasible or would work an injustice.*

**RULE G2 PURPOSE**

The purpose of these Rules is to create a fair process with which to adjudicate Grievance Appeals.

**RULE G3 UNREPRESENTED PARTY**

The CSC shall consider the unrepresented status in applying these Rules for any party who is not represented by a lawyer or a lay representative when it is clear that there is a genuine misunderstanding of a rule(s) which, if applied, would operate unfairly.

## **RULE G4 CITATION**

These Rules may be cited as CSC G#, and then the number; (ex. "CSC G3"); and may also be referred to as the GRE Rules of the Civil Service Commission.

## **RULE G5 RIGHT TO APPEAL**

A person may appeal their grievance to the CSC, if the person meets all of the following criteria:

- a) Is a permanent, classified Employee,
- b) Has successfully completed his (hereafter his also means her) probationary period,
- c) Has completed the steps as outlined in the applicable Rules and Regulations; and
- d) Is entitled under his department's or agency's Personnel Rules to appeal to the CSC.

## **RULE G6 GRIEVANCE DEFINITION**

A grievance is defined as outlined in the applicable Rules and Regulations.

## **RULE G7 TIME FOR FILING GRIEVANCE APPEAL**

A grievance appeal, which has completed the necessary steps in accordance with the applicable Rules and Regulations, shall be filed in writing with the CSC. "Filed" means given to the CSC and received by the CSC. A document may be filed by facsimile, registered mail or by personal delivery. If a document is filed by facsimile, the facsimile document with the original signature(s) must be received by the CSC by the next business day.

## **RULE G8 COMPUTATION OF TIME**

- a) Whenever these Rules or orders of the CSC provide for a time period, calendar days shall be used. Weekends and government of Guam holidays are to be included in the computation, unless otherwise specified. For purposes of filing a Grievance Appeal, if the last day falls on a weekend or holiday, the document may be accepted via facsimile to the CSC on or by the prescribed time.
- b) The first day of a time period commences with the day after a party receives a document or order which contains a time period.

## **RULE G9 SERVICE OF DOCUMENTS**

All documents filed with the CSC, shall be served by the parties on each other or, when applicable to the other's representative or lawyer.

### **RULE G9.1 How Service Is Performed**

Service may be made by the parties on each other and to the Commission as follows:

- a) Personal delivery; or
- b) By facsimile to a representative's or attorney's place of business with a confirmed receipt; or

- c) Regular mail with supporting affidavit or declaration as to the date of mailing; or certified mail with a signed return receipt.

### **RULE G10 OBLIGATION OF EMPLOYEE WHO FILES AN APPEAL**

The Employee shall read, understand, and indicate such by signing the "Disclosure and Release of Information" form provided by the CSC upon filing of his appeal.

### **RULE G11 RIGHT TO CONTROL CALENDER**

The Civil Service Commission through the Executive Director or designee reserves the right to make any necessary changes to any scheduled meeting or hearing as it deems appropriate.

### **RULE G12 CONTINUANCES**

A request to continue a date of hearing or status call/ prehearing conference shall set forth the basis for the request.

### **RULE G13 DEFINITION OF "STATUS QUO"**

To the extent the applicable Rules and Regulations require that an employee remain at status quo, that term is defined as set forth in CSC Resolution No. 2010-01.

### **RULE G14 CONFERENCES**

#### ***RULE G14.1 Status Call Conference***

Upon receipt of a Grievance Appeal, the CSC shall set the matter for a Status Call Conference. The Status Call Conference shall be conducted by the Executive Director or designee.

At the status call, the parties shall ensure that an Entry of Appearance is provided. The parties with their representatives shall be prepared to discuss:

- a) The legal issues of the action;
- b) Whether the appointing authority made a decision on the Grievance Review Board's findings and recommendations;
- c) Pre-hearing motions;
- d) The possibility of settlement; and
- e) The date of the Grievance hearing.

### **RULE G15 MOTIONS AND BURDEN OF PROOF**

The moving party bears the burden of proof on motions. The parties shall file any motion regarding procedural issues or questions of law prior to the Grievance hearing.

*RULE G15.1 No Right To Oral Arguments On Motions*

The CSC may or may not hear oral arguments on written motions and may rule on a motion without hearing arguments.

*RULE G15.2 Additional Briefings*

The Commission may, at any time, order additional briefings on issues not addressed by motion of the parties.

*RULE G15.3 Motion Filing Schedule*

Unless otherwise predetermined by an order by the Commission, Executive Director, or designee the moving party must file and serve a motion four (4) weeks before the hearing.

A motion may be supported by affidavits, or declaration but no live testimony shall be taken at a motion hearing unless the Commissioners or the Executive Director or designee approves a request for live testimony to assist in a determination of the motion.

Unless otherwise predetermined by an order by the Commission, Executive Director, or designee, the opposition brief shall be filed seven (7) days after the motion is filed or three (3) weeks before the hearing on the motion.

*RULE G15.4 Motions To Dismiss*

The legal and factual bases of any motion must be sufficiently set forth in the motion and supporting affidavits, briefs or declarations.

A motion to dismiss may also be made upon stipulation of the parties. A stipulated motion to dismiss must be approved by the CSC Board and may be read into the record. The Parties may settle an action, but any settlement may be read into the record and must be approved by the CSC before the action is dismissed with prejudice.

An Employee may dismiss his appeal with prejudice by filing a written motion to dismiss which must be signed by the Employee and his representative or attorney, if any.

*RULE G15.5 Motion To Allow Hearing In The Absence Of The Employee*

A motion to permit an Employee to be absent from the Grievance hearing or motion hearing shall set forth the basis for the motion.

**RULE G16 STAYS**

The Commissioners or the Executive Director or designee is empowered to grant "stays" of actions when circumstances warrant.

## **RULE G17 SUBMISSION OF DOCUMENTS FOR INTRODUCTION INTO EVIDENCE**

### **RULE G17.1 Time For Submission Of Documents**

No later than twenty-eight (28) days before a Grievance hearing or a motion hearing or at a time designated by the Executive Director or designee, each party shall submit to the CSC all documents it wishes the CSC Board to consider.

All documents submitted by the parties to the CSC must be redacted beforehand of Social Security Numbers, residential addresses, home or residential or private cellular telephone numbers, and personal mailing addresses. Failure to comply with this provision will result in the documents being returned and/or not considered by the CSC Board.

### **RULE G17.2 Required Documents From Employee**

Employee shall submit to the CSC required documents as outlined in the applicable Rules and Regulations.

### **RULE G17.3 Required Documents From Management**

Management shall submit to the CSC the grievance review board's findings if any and the appointing authority's decision on the matter.

### **RULE G17.4 Documents To Be Bound**

The documents shall be two-hole punched on the top center and bound with two-pronged fasteners and clasps. Each document may be indexed and tabbed.

### **RULE G17.5 Identification Of Management's Documents**

Management shall identify its documents using consecutive numbers preceded by "M" (M1, M2, M3, etc.) for every page inclusive of exhibits.

### **RULE G17.6 Identification Of Employee's Documents**

Employee shall identify his documents using consecutive numbers preceded by "E" (E1, E2, E3, etc.) for every page inclusive of exhibits.

### **RULE G17.7 Number Of Copies**

Each party shall submit eleven (11) copies of their bound documents to the CSC.

## **RULE G18 BURDEN OF PROOF**

Upon the hearing of any grievance appeal, the burden of proof shall be upon the employee to show that the action of the Government was improper (e.g., unjust, inequitable, or not in accord with the facts or law).

## **RULE G19 GRIEVANCE APPEAL HEARING**

A Grievance Appeal Hearing is a matter elevated to the CSC level, requiring the CSC Board to make a ruling on whether to accept or reject the Grievance Review Board's recommendation and findings, in whole or in part.

## **RULE G20 REMAND**

In the event that the Grievance Review Board has not made a decision on the matter, or in the event that a Grievance Review Board has not been assembled in the prescribed time, the CSC may remand the grievance to the appointing authority charged with assembling the board and require that the matter be heard and decided within 30 days.

## **RULE G21 ORAL ARGUMENTS DISCRETIONARY**

The Commission may or may not, in its discretion, afford the parties an opportunity to present oral arguments and presentations.

## **RULE G22 ORDER OF PRESENTATION**

Each party may be limited to an opening argument and closing argument as determined by the CSC presiding officer. The time for presentation may be limited by the CSC presiding officer.

## **RULE G23 RULES OF EVIDENCE**

The Guam Rules of Evidence and Title 6 of the Guam Code Annotated shall not apply to grievance appeal proceedings before the Commission. The only grounds for excluding any proffered evidence are that the evidence is irrelevant or unduly repetitious, or protected information under statute or other applicable law.

## **RULE G24 OATH**

Testimony is under oath or affirmation.

## **RULE G25 DECISION**

The CSC shall decide the appeal on the basis of the evidence presented, or may decide the matter in favor of the grievant who has satisfied his burden of proof if no Grievance Review Board decision has been rendered after the matter was remanded back by the CSC Board. An affirmative vote of four Commissioners is required for any action of the Commission.

## **RULE G26 JUDGMENT**

A judgment is the final administrative adjudication of the Commission on a case presented before the Commission. A judgment shall be in writing and the caption shall state it is a "judgment."

The vote taken by the Commission to decide a Grievance appeal does not constitute a judgment.

An Order of the Commission is not a judgment, but a decision made during a case presented before it.

A judgment is entered, that is, it becomes final and effective, on the date a majority of the Commissioners sign the judgment at a Commission meeting attended by a sufficient number of Commissioners to constitute a quorum.

The judgment shall recite the numerical vote of the Commission in deciding a grievance appeal. The signing of the judgment by the Commissioners does not reflect how they actually voted in deciding the grievance appeal. The signing of the judgment simply affirms that the judgment accurately reflects the decision that was made.

#### *RULE G 26.1 Compliance With Judgment*

Within thirty (30) days, or as soon thereafter as practicable, of the entry of any judgment that requires a department or agency to take affirmative action, the Commission may hold a status call at which the director or agency head shall report what steps have been taken to ensure compliance with such judgment.

### **RULE G27 DISMISSAL OF APPEAL**

The CSC may dismiss an Employee's grievance appeal:

- a) At the Employee's request; or
- b) Under any other circumstances that warrant dismissal.

### **RULE G28 REPRESENTATION OF EMPLOYEES BY PERSONS WHO ARE NOT ATTORNEYS**

The laws of Guam permit persons who are not attorneys to represent Employees and Management before the CSC.

### **RULE G29 RULES RELATIVE TO REPRESENTATIVES**

By entering his appearance before the CSC, a representative becomes subject to the Orders of the CSC and to reasonable discipline and to contempt proceedings by the CSC.

Reasonable discipline may include, but is not limited to, disqualification from appearing before the CSC.

By agreeing to be a representative, the representative assumes an ethical and agency relationship with the Employee that he represents.

#### *RULE G29.1 Withdrawal As Representative*

Unless withdrawal occurs through substitution of counsel or representative, no Lay Representative or attorney may withdraw from representing an Employee except upon motion to show cause.

*RULE G29.2 Representative Required Reading*

By appearing before the Civil Service Commission, every Lay Representative and attorney agrees that he has read, and is familiar with, these Rules.