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 **CIVIL SERVICE COMMISSION**

 **Government of Guam**

 **ADVERSE ACTION RULES**

**Title 2, Guam Administrative Rules & Regulations (GARR)**

**Division 1, Chapter 2, Civil Service Commission,**

**Article 1, Adverse Action Rules.**

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§ **2101 Citation**

These Rules shall be cited as “CSC AAR” followed by the number of the rule (ex. “CSC AAR 2103”) and may also be referred to as the “CSC AA Rules.”

**§ 2102. Authority to Establish Rules**

The Civil Service Commission (hereafter “CSC”) is empowered to create these Rules pursuant to 4 G.C.A. §4403(b), 4406 and 4409. These rules are effective \_\_\_\_\_\_\_\_\_\_\_ pursuant to the Administrative Adjudication Law. Whenever these Rules refer to the CSC, the Administrative Law Judge (hereafter the ALJ) shall also apply these Rules.

**§ 2103. Purpose**

The Purpose of these Rules is to create a fair process to adjudicate Adverse Action appeals. The CSC believes it is important to inform employees of rules and laws critical to their appeal 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)*.*

**§2104. Eligibility to File an Appeal?**

 A classified employee has the right to have a representative file an appeal on his behalf or the employee may file his own appeal.

**§2105. Verification of Appeal**

 The employee or his representative shall sign and date the “Notice of Appeal.” Signatures received through facsimile or electronically will be considered as an original signature. Failure to file a verified appeal within the twenty (20) day time period shall be considered untimely and act as grounds for dismissal of the appeal.

**§ 2106. Time to File an Appeal**

 An appeal from an adverse action must be filed in writing within twenty (20) days of the effective date of the action.

 (see 4 G.C.A. §4406)

**§2107. Contents of Appeal**

 The Notice of appeal shall include the following information:

1. The employee’s name;
2. The employee’s department or agency;
3. The employee’s job title or position;
4. The employee’s answer to the charges of the Final Adverse Action;
5. The employee’s representative’s name, if applicable; and,
6. Contact information for service to include current mailing address, physical address and telephone number and email address.

(see 4 G.C.A. §4406)

 **§2108. Manner of Filing an Appeal**

 An appeal document may be filed by personal delivery to the CSC during working hours, by facsimile, by electronic filing or by certified mail. An appeal filed by certified mail will be considered received on the date it is postmarked.

**§ 2109. Represented Party**

All representatives must file an “Entry of Appearance” with the CSC as the official counsel of record. Appearances shall include:

1. The representative(s) name;
2. Mailing address;
3. Telephone number;
4. Facsimile numbers;
5. E-Mail address; and,

 Other means of contact information.

**§2110. Unrepresented Party**

 The CSC 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.

4 GCA § 4402

**§2111. Computation of Time**

 Calendar days shall be used wherever these Rules provide for a period of time. If the last day to file or serve notice falls on a weekend or holiday, the next working day shall be acceptable.

**§2112. Time Standards for Hearings on the Merits**

 The Commission shall follow the time standards established by the Legislature:

1. For appeals from action resulting in the termination of an employee, a hearing on the merits shall commence no later than four (4) months from the initial filing of the appeal;
2. For all other appeals from adverse actions, a hearing on the merits shall commence no later than six (6) months from the initial filing of the appeal;
3. All matters shall be adjudicated within twelve (12) months from the filing of a notice of appeal unless the time standards are waived by the employee;
4. Failure on the part of the Commission to adhere to the time standards described in Subsections (a), (b) and (c) shall in no way result in the dismissal of the employee’s right to appeal their adverse action;
5. The time standards described in Subsections (a), (b) and (c) may be waived by the employee; and,
6. The time standards described in Subsections (a), (b) and (c) may be waived by the Commissioners upon finding substantial and compelling reasons to determine that a waiver of the time standards is the only option available, and only upon mutual consent of the parties.

(see 4 G.C.A. §4406.2)

**S2113. Waiver of Time Standards**

 The employee or his representative may waive the time standards as set forth in 4 G.C.A. §4406.2, either in writing, orally on the record, or by implication in requesting or agreeing to a delay in the proceedings.

(see 4 G.C.A. §4406.2)

**§2114. Duty of Management to Prosecute Expeditiously**

 Upon issuing a Final Notice of Adverse Action, management shall be prepared to prosecute their case in accordance with the time standards as required by 4 G.C.A. §4406.2. Failure to meet the time standards may result in the adverse action becoming void for failure to prosecute.

(see 4 G.C.A. §4406.2)

**§2115. Requirement of Employee to Consent to Continuances**

 Request for any delay(s), continuances, rescheduling of date(s), etc., by management for any reason shall require the consent of the employee or their representative, unless time standards have been waived. Upon receiving such consent or where there is a waiver the Executive Director or their designee is empowered to reschedule any and all dates to accommodate the parties.

**§2116. Employee’s Right to Freedom from Reprisal**

 The Employee shall be assured freedom from restraint, interference, coercion, discrimination, and/or reprisal from filing an appeal, during the appeal process and after adjudication of their appeal.

**§2117. Employee’s Right to be Represented**

 The CSC does not provide representation for employees: however, an employee may consult with the CSC Staff for procedural guidance.

 The employee shall have the right to be accompanied, represented and advised by a representative.

**§2118. Employee’s Duty Status**

 The employee is considered to be on duty while attending any hearing relating to his Appeal.

 **§2119. Employee’s Right to Prepare for Case**

 Management shall grant the employee a reasonable amount of time-off to prepare for his case while on duty status. The form of time-off granted will be either paid annual leave, unpaid leave, or any combination at the employee’s request.

**§2120. Employee’s Right to Withdraw Appeal**

 An employee who files an adverse action appeal may withdraw their appeal. However, such withdrawal of appeal must be in writing and filed with the CSC.

**§2121. Employee’s Right to Waive Time Standards**

An employee who files an adverse action appeal may waive the time standards pursuant to 4 G.C.A. §4406.2.

(see 4 G.C.A. §4406.2)

**§2122. Employee’s Right to Stay Proceedings**

 The employee has the right to stay a proceeding on the basis that the employee is a defendant in a matter pending in criminal court arising from the same factual transaction which is the basis of the adverse action. The request to stay the proceeding by the employee or their representative will constitute a waiver of the time standards.

**§2123. Employee’s Right to Recover Attorney Fees and Costs on Appeal**

Should the employee prevail in whole or in part before the CSC either by a favorable decision or a withdrawal of the adverse action by the agency, the employee shall be awarded and paid costs, if any, and reasonable attorney’s fees if one was retained.

(see 4 G.C.A. §4406.1)

**§2124. Employee’s Right to Discovery**

 The employee, or that person’s representative, shall be given the opportunity to inspect any document(s) relevant to the action which would be admissible in evidence at the hearing, and to depose, interview or direct written interrogatories to other employees having knowledge of the acts or omissions upon which the dismissal, demotion or suspension is based.

(see 4 G.C.A. §4406)

**§2125. Discovery and the Production of Documents**

 After inspecting any document(s) relevant to their action, the employee or their representative may request copies relevant to their adverse action which shall be provided at no cost. The Executive Director or designee may issue a protective order(s) for any unreasonable request.

**§2126. Orders for Discovery**

The Executive Director or designee shall control the nature and scope of discovery between the parties, including but not limited to, the following:

1. Issuing orders compelling discovery;
2. Issuing orders limiting the scope and nature of discovery;
3. Issuing orders establishing dates for completion of discovery;
4. Issuing protective orders regarding discovery; and,
5. Issuing orders requesting for deposition(s).

All orders made by the Executive Director or their designee are appealable to the CSC by filing the appropriate motion with the CSC within two (2) days of service of the order.

(see 4 G.C.A. §4406 and 5 G.C.A. §9218)

**§2127. Discovery Objections and Protective Orders**

 Objections to discovery requests or request for protective orders must be made within three (3) working days after a discovery request has been made. Failure to raise a timely objection shall be considered as waiving all objections. Failure by management to comply with employee discovery request may form the basis for a motion to void Adverse Action for failure to prosecute.

**§2128. Filing of Documents**

 Except for the initial appeal, all documents filings, motions, response to motions, exhibits, witnesses list and proposed orders, decisions or judgments, shall be submitted in paper copy and in electronic format readable by the CSC computer system.

**§2129. Filing of Time Sensitive Documents**

 All filings, motions, response to motions, exhibits, witness list, proposed order, decisions or judgments, shall be filed at the CSC on the date established by the Executive Director or designee, ordered by the Commission, or as established by law. The Commission has discretion to refuse to consider late filings.

**§2130. Filing of Proposed Order, Decision, or Judgment**

 The prevailing party is required to file their proposed order, decision, or judgment within ten (10) days of a CSC ruling. All proposed order(s), decision(s), or judgment(s) must be served to the other party. The party that did not prevail may also elect to submit a proposed order, decision, or judgment. Should a party disagree with a proposed order, decision, or judgment, they may file their objection within seven (7) days of being served. The parties may elect to cooperate on a joint proposed order, decision, or judgment.

**§2131. Service of Documents**

 All documents filed with the CSC (except for employee’s notice of appeal or withdrawal of appeal) shall be served by the parties on each other in accordance to these rules. Service of documents may be made by the parties and the Commission by:

1. Personal delivery;
2. Facsimile;
3. Certified mail; or,
4. Electronically, pursuant to an agreement by the parties.

**§2132. Status Call Conference**

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

 The parties shall ensure that an Entry of appearance and Case Management Statement have been filed.

**§2133. Case Management Statement**

The Parties shall complete the Case Management Statement (CMS) form provided by the CSC. The CMS shall address jurisdiction, burden of proof, settlement, scheduling of hearings procedural issues, and other matters as required. The CSC shall have the authority to modify the CMS form as it deems necessary.

**§2134. Presence of Employee and Management Required**

 The presence of both Employee and Management shall be required at any hearing before the Commission. The Appointing Authority (management) may designate any management official to attend on their behalf in writing and stating that such designee has full authority to make final decisions, including settlement authority.

 The CSC may dismiss the adverse action for failure of employee or management to appear.

**§2135. Pre-Hearing Conferences**

 Witness and exhibit lists shall be filed and served one (1) day prior to the Pre-Hearing Conference.

 **§2136. Motion Hearings**

All Motion Hearings shall be scheduled before the CSC within ninety (90) days of the filing of a Notice of Appeal unless the Employee waives the time

standards.

**§2137. Motion Content**

 All motions and responses are to clearly identify the issue(s) being presented and documents shall explain in detail each issue. Each motion shall be separately numbered. Exhibits referred to in the motion shall be attached to the motion. Failure to comply with this section will be grounds to deny the motion.

**§2138. Citations to Authority in Motions and Responses**

 Motions and Responses should cite to authority, including but not limited to: rules, statutes, case law and/or prior decisions. When appropriate, such as motions dealing with novel questions of law, parties should cite to other jurisdictions including: But not limited to, CSC decisions of other states, Merit System Protection Board decisions, and/or other federal decisions. When citing to outside jurisdictions the parties are required to provide copies of the decision.

**§2139. Oral Arguments on the Motion**

 The CSC may or may not hear oral argument on a written motion. The CSC may rule on a motion without hearing argument from the parties. The CSC may limit oral arguments on a motion to a specific issue or issues and may limit the time to present oral arguments.

**§2140. Failure to File a Motion Response**

A party who fails to file a response to a motion may argue his opposition verbally.

**§2141. Hearing Exhibits**

 All hearing exhibits shall be numbered at the bottom of each page sequentially. Examples include, for Management exhibits M1, M2, M3, etc., for Employee, exhibits E1, E2, E3, etc. An original and Twelve (12) copies of the list of exhibits shall be filed. The exhibits shall not be filed before the hearing. Exhibits will be entered into evidence at the hearing on the merits or attached to the motion documents.

**§2142. Subpoenas**

The Chairperson of the Civil Service Commission or the Executive Director, upon his own initiative, upon the request of any member of the Commission, or upon the request of any party before the Commission, may summon in writing any person to attend before a meeting of the Commission as a witness and in a proper case, to bring with him any book, record or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before the Superior Court, except that if the witness is a government employee no witness fees shall be given. The subpoena shall issue in the name of the Civil Service Commission, and shall be directed to the person and shall be served in the same manner as subpoenas to appear and testify before the court. Service of subpoenas shall be the responsibility of the party seeking the subpoena If any person or persons summoned to testify shall refuse or neglect to obey said subpoena, upon petition, the court may compel the attendance of such person or persons before the Commission, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the Superior Court.

 (see 4 G.C.A. §4404)

**§2143. Duty Status of Witnesses**

 Any employee of the Government of Guam, who is subpoenaed, is considered to be on duty while attending CSC official meetings. Such employee is entitled to compensatory time-off if they serve as a witness during a time they are not normally scheduled to work.

**§2144. Treatment of Witnesses**

 The CSC presiding officer shall ensure that all witnesses are treated with courtesy and respect while giving testimony at the hearing. Witnesses shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal in presenting testimony.

**§2145 Conduct of Hearings**

 The Chairman of the Commission shall control the hearing and may limit witnesses and testimony to avoid redundancy and irrelevant evidence. He may limit argument to a reasonable time. Commissioners may ask questions of the witnesses. The Chairman or any Commissioner may seek legal advice from the Administrative Counsel during the hearing.

**§2146. Order of Witnesses**

The Employee shall be the last witness called by management.

(see Guam Police Department vs. Mark Charfauros 2020 Guam 12)

**§** **2147. Examination of Witnesses**

 The Examiner of a witness shall not use leading questions (questions which suggest the answer).

**§2148. Recording of Hearing**

 All hearings shall be recorded by the CSC and maintained thereafter in accordance with the CSC’s records management policy. Recorded hearings can be saved by audio tape, digitally recorded, video with audio and / or any other means that will preserve all testimonies and arguments presented. Any form of recording of a hearing, used by the CSC is available for copy to any person requesting such material.

**§2149. Official Evidence**

 Only exhibits admitted in to evidence during the hearing shall be part of the official record.

**§2150** **Off-Island Participation**

 Witnesses, Representatives and Employee may participate by remote audio and/or video when available. The Party seeking off-island participation shall be responsible for the cost of the remote participation

**§2151. Evidentiary Hearings**

 The Commission may hold such evidentiary Hearings as are necessary to resolve issues in the cases before it. Such Hearings may be assigned to the ALJ.

**§2152. Hearing on the Merits Briefs**

 A Party may file a written brief no later than twenty-one (21) calendar days prior to a Hearing on the Merits, the contents of which should be:

1. Brief summary of the case;
2. A list of witnesses and exhibits.
3. Any legal arguments on which the party intends to rely; and,

The Party must serve the written brief on the opposing party.

**§2153. Opening Statements**

 The opening statements are limited to outlining the facts and should not contain arguments or rhetoric. The parties should use this opportunity to set the basic scene, introduce the case and the core dispute(s) of the case, provide a general road map of how things are expected to unfold and who their witnesses are, how they are related to the parties and to each other, and what each is expected to say on the witness stand. The employee may reserve their opening statement until after management has completed presenting their evidence. Each party shall be limited to an opening statement not to exceed fifteen (15) minutes in length; however the CSC presiding officer may modify the time upon the request of a party or as the presiding officer deems appropriate.

**§2154. Closing Arguments**

 Closing arguments by the parties should tie the evidence presented into the rules and argue the burden has been met or not. The closing argument is limited to facts of evidence offered during the hearing. The presiding officer shall determine the amount of time for closing arguments; however, the length of time granted shall not be less than fifteen (15) minutes.

**§2155. Deliberations and Burden of Proof**

 The deliberation of the CSC regarding the merits of actions and motion issues shall be made in public. Where there is more than one charge listed on the Final Notice of Adverse Action or more than one motion, the CSC shall deliberate and vote on each charge or motion separately.

 Management has the burden of proof by clear and convincing evidence that the action of Management was correct. In cases involving charges which could be a crime if the person was charged in a criminal action, the Commission shall determine the matter based upon substantial evidence the employee committed the acts charged. See 4 GCA §4407 (a) and (c). Management must obtain four (4) affirmative votes to prevail. If, after the Commission votes and the vote is less than four (4), the Employee prevails and the adverse action is revoked upon the signing of the Judgment and service on the Parties. The Burden of Proof on motions is by the preponderance of the evidence and burden falls on the moving party. The moving party must get four affirmative votes to prevail.

(see Port Authority of Guam v. Javelosa 2018 Guam 9)

**§2156. Motion for Reconsideration of CSC Decision**

 A party may move the CSC to reconsider or amend its judgment by filing a Notice for Motion for Reconsideration within three (3) working days of the receipt of entry (signing) of the judgment. The filing of a response brief to a Motion for Reconsideration shall be due within five (5) working days from the receipt of the Motion for Reconsideration. The filing of a motion to reconsider or amend does not affect the time imposed by law to file a Petition for Judicial Review with the Superior Court of Guam. If a motion to reconsider or amend a judgment is not decided within thirty (30) days of entry of a judgment, the motion is denied.

**§2157. Attorney Fees**

 The precise amount of back-pay or attorney’s fees due is not decided at the Hearing on the Merits. Evidence relating to mitigation is not permitted prior to entry of Decision and Judgment. If the parties are not able to resolve back-pay and attorney fees amicably, either party may seek their remedy in the Superior Court of Guam.

**§2158. Judicial Review**

 Judicial review of the judgment of the CSC may be had by filing the appropriate pleadings with the Superior Court of Guam within thirty (30) days after judgment is delivered or mailed to the parties.

**§2159. Termination of Appeal**

 In addition to adjudication on a Motion Hearing or Hearing on the Merits, the CSC may terminate an employee’s appeal for the following reasons:

1. The employee has indicated verbally they will not pursue their appeal, and they do not actively withdraw their appeal;
2. When the employee fails to furnish or update their information necessary to adjudicate the appeal and there has been three (3) attempts to contact the employee and no communication can be established.

**§2160. Death of Employee**

 If an employee dies after they have filed an appeal of an adverse action taken against them, the appeal shall automatically be stayed for a period up to six (6) months in order for the estate of the employee to apply to the CSC to continue with the appeal. If the estate of the employee does not move the CSC via a motion to continue the appeal process, then the appeal shall be dismissed by the CSC.

**§2161. Rules Relative to Lay Representatives**

 The employee or management may elect to secure the services of a person to represent them in adverse action proceedings, who is not a licensed attorney on Guam. This person shall be referred to as a “Lay Representative”. Off island attorneys not licensed on Guam shall qualify as a “Lay Representative”. By entering their appearance before the CSC, the Lay Representative becomes subject to 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, so long as the disqualification does not prejudice the client’s interest. All Lay Representatives shall adhere to the following:

1. Assumes an ethical attitude towards their client;
2. Shall be committed to provide their best efforts in representing their client;
3. Be responsible for their actions on behalf of their client;
4. Shall not be compensated for their time or services;
5. May seek reimbursement for reasonable incurred costs which are substantiated with receipts;
6. Will be obligated to attend all CSC hearings on behalf of their client;
7. Shall adhere to all CSC rules and the laws of Guam, while representing their client before the CSC;
8. Assumes a professional attitude on behalf of their client;
9. Will be accountable for their representation before the CSC; and,
10. Be diligent to read and understand the CSC rules.

No Lay Representative may withdraw from representing their client except upon a substitution of counsel of record or a motion to withdraw as representative, stating specific, valid reasons why the CSC should approve such withdrawal.

**§2162. Rules Relative to the CSC Administrative Counsel**

CSC Administrative Counsel may advise the Commissioner(s) on legal issues pending in cases before the Commission at any time including during the hearing itself. Said advice is confidential.

**§2163. Rules Relative to the CSC Administrative Law Judge (ALJ)**

 The ALJ shall conduct such hearings as are assigned to him/her by the Commission. The place and time of such hearings shall be at the discretion of the ALJ and shall be conducted in such manner as the ALJ deems appropriate consistent with these rules and controlling statutes.

**§2164. Judgment: Rule 11.7.5**

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 an adverse action does not constitute a judgment.

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

A Judgment is entered, that is, it becomes final and effective thirty days after it is delivered or mailed to Parties, unless a reconsideration is ordered within that time. Notice that a proposed judgment is before the Commission for signing shall be served on the parties to the action and shall be publicly advertised as required by the Open Government Law of Guam.

 The judgment shall recite the numerical vote of the Commission in deciding the matters before it. The signing of the judgment by the Commissioners does not reflect how they actually voted in deciding the adverse action. The signing of the judgment simply affirms that the judgment accurately reflects the decision that was made. (see 4 GCA § 4402)