

## HUMAN RESOURCES DEPARTMENT



### PROCEDURE

Division

Effective Date

Approval

Title

### Appeals to the Municipal Civil Service Commission

Municipal Civil Service

July 7, 2014

Director, Municipal Civil Service

Proc Revn No. 07072014-0

Date 8/1/14

Reviewed

### PURPOSE

To identify the procedures for filing and responding to appeals filed by covered Municipal Civil Service (MCS) employees to the MCS Commission. This is pursuant to Article IX of the Austin City Charter and the MCS Rules of the City of Austin.

Note: For direction on filing and/or responding to complaints regarding wages, hours, or conditions of work, see Section IV.C.2 of the Personnel Policies. For complaints regarding discrimination or harassment, see Section IV.C.3 of the Personnel Policies.

### OVERVIEW

This procedure addresses all steps in the process, including initiating an appeal, department response, requesting subpoenas, procedures during an appeal, as well as pre- and post-hearing procedures, final decision, and time limits.

### APPLIES TO

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|---|---|--|
| <input type="checkbox"/> All employees                              | <input type="checkbox"/> Temporary employees          | <input type="checkbox"/> Civil Service (Police/Fire/EMS Sworn) |
| <input checked="" type="checkbox"/> Regular full-time MCS employees | <input type="checkbox"/> Temporary Seasonal employees | <input type="checkbox"/> Executive Employees                   |
| <input checked="" type="checkbox"/> Regular part-time MCS employees | <input type="checkbox"/> Temporary On Call employees  |  |
| <input type="checkbox"/> Probationary employees                     | <input type="checkbox"/> Interns                      |  |

### HRD Internal Procedure

- |   |                   |                     |                            |
|---|-------------------|---------------------|----------------------------|
| <input type="checkbox"/> All HRD Staff  | Civil Service     | Employee Relations  | Organization Research      |
| <input type="checkbox"/> Administration | Compensation      | Employment Services | Organizational Development |
| <input type="checkbox"/> ADA Office     | Compliance        | Finance             | Records                    |
| <input type="checkbox"/> Automation     | Employee Benefits | HRMS                | Risk Management            |

## I. Statement of Purpose

This document identifies the procedures for filing and responding to appeals filed by covered Municipal Civil Service (MCS) employees to the MCS Commission, pursuant to the MCS Rules.

## II. Procedures

### A. Step I. Initiating an Appeal

<i>1. Disciplinary Probation, Suspension, or Demotion</i>	A covered employee who has a complaint regarding disciplinary probation, suspension, or demotion, shall file a written notice of appeal with the MCS Office within fifteen (15) business days following the date the employee is provided a final departmental grievance response or, in the case of no response, fifteen (15) business days from the deadline for the response.
<i>2. Denial of Promotion</i>	A covered employee who has a complaint regarding a denial of promotion shall file a written notice of appeal with the MCS Office within fifteen (15) business days following the date a department has issued a final departmental notice of non-selection for a competitive position. The employee must initially follow the departmental grievance procedures after being provided the initial written notice of non-selection.
<i>3. Discharge of Employment</i>	A covered employee who has a complaint regarding termination of employment, including a reduction-in-force, shall file a written appeal directly with the MCS Office without first grieving the action to any management level within the department, within fifteen (15) business days of receipt of actual notice of the discharge. Receipt of actual notice means the date on which the employee received notice of the discharge in writing.

The MCS Notice of Appeal form is available from Human Resources staff in the departments, from the Municipal Civil Service Office, and in the Human Resources Department. An appeal filed with the MCS Office which meets all filing criteria will be processed. Individuals will be notified if their filing does not meet the filing criteria.

### B. Step II. Submitting Notice of Appeal

Within the timelines described above, once an Employee has decided to file an appeal with the MCS Office, the employee or representative of the employee must:

<i>1. Complete Notice Of Appeal Form</i>	Completely fill out the <b>Notice of Appeal</b> form as indicated on the form.
<i>2. Submit the Notice of Appeal Form</i>	Submit the form in writing to the Office of the Municipal Civil Service Director, located at 505 Barton Springs Road, Suite 600, Austin, TX 78704 by 5:00 p.m. on the date the <b>Notice of Appeal</b> is due, as outlined above.

### C. Step III. Receipt of Notice of Appeal

Within five (5) business days of receiving a **Notice of Appeal**, the MCS Office will:

<i>1. Proof of Receipt</i>	MCS Staff will date and time stamp the <b>Notice of Appeal</b> when received by the MCS Office. If the form is emailed, the form will be date and time stamped as when it was received by the MCS Staff member. The email with the date and time of when the form was emailed will be included as part of the record of receipt.
<i>2. Review of Completeness</i>	MCS Staff will review the <b>Notice of Appeal</b> to ensure the form has been filled out completely. If areas of the form are not complete, MCS Staff will notify the employee of additional information needed. Once the form is complete, the MCS Staff member will sign and date the <b>Notice of Appeal</b> on the appropriate line.
<i>3. Provide notice to the Commission</i>	MCS Staff will send an email to all Commissioners with copy of the first page of the <b>Notice of Appeal</b> , which contains the employee's name, department, and the type of appeal.

4. <i>Make notice part of records of the Commission</i>	MCS Staff will create a folder and file the notice in accordance with record retention procedures.
5. <i>Provide copy to Employee and Department</i>	MCS Staff will email a PDF copy of the <b>Notice of Appeal</b> to the employee, the employee's representative (if applicable) and the department named in the <b>Notice of Appeal</b> . A copy will also be sent to the Employment Division of the City Attorney's office.
6. <i>Alternative Dispute Resolution</i>	If the Employee requests Alternative Dispute Resolution (ADR), MCS Staff will provide the employee with information regarding the ADR process as provided by the Ombuds Office. MCS Staff will forward the <b>Notice of Appeal</b> paperwork to the Ombuds Office, if the ADR process is selected, at the same time the department is provided the notice.
7. <i>Withdrawal of Appeal</i>	If at any time the Employee chooses to withdraw the appeal, the <b>Notice of Withdrawal of Appeal</b> form or other written notification can be submitted to the MCS Office. If Employee withdraws their request before the Commission, the employee relinquishes their right to an appeal.

<b>D. Step IV. Written Notice of Hearing</b>	
1. <i>Scheduling a Hearing</i>	Within ten (10) business days of receiving a <b>Notice of Appeal</b> form, the MCS Office will provide the employee, the employee's representative (if applicable), and the department head an available hearing date.
	MCS Staff will evaluate the established meeting dates for the MCS Commission, and determine the next available meeting date when a hearing could be conducted. Once a date has been identified, MCS Staff will email a <b>Notice of Hearing</b> to the employee, the employee's representative (if applicable), and the department named in the <b>Notice of Appeal</b> to notify both parties of the hearing date. If the employee has selected the ADR Process, the Ombuds Office will also be copied on the <b>Notice of Hearing</b> email.
	Hearings will be scheduled in the order the <b>Notice of Appeal</b> was received. Appeals for a Discharge or Denial of Promotion will be expedited, when possible. In the event multiple <b>Notice of Appeal</b> forms are turned prior to scheduling a hearing, priority will be given for Discharge and Denial of Promotion appeals. If the <b>Notice of Appeal</b> forms are for the same type of appeal, hearings will be scheduled in the order the final department head notification was received by the employee. If the appeal is for a Denial of Promotion, the hearings will be scheduled in the order the positions were filled.
	MCS Staff will send an email to all Commissioners with a copy of the <b>Notice of Hearing</b> attached.
2. <i>Rescheduling a Hearing</i>	Within five (5) business days of receiving the initial hearing date, either party may elect to reschedule the hearing by filling out the <b>Request to Reschedule a Hearing</b> form and submitting it to the MCS Office.
	Once the <b>Request to Reschedule a Hearing</b> form is received, the MCS office will determine the next available meeting date when a hearing could be conducted. That date will be emailed to the employee, the employee's representative (if applicable), and the department named in the <b>Notice of Appeal</b> by the MCS Staff on a new <b>Notice of Hearing</b> form. If the employee has selected the ADR Process, the Ombuds Office will also be copied on the <b>Notice of Hearing</b> email.
3. <i>Agreement for Rescheduling</i>	If either party needs to reschedule outside the timeframe above, the <b>Request to Reschedule a Hearing</b> form needs to be signed by both parties, following the instructions on the form. The party requesting the rescheduling submits the form to the MCS Office for processing.
	The MCS Office will determine the next available meeting date when a hearing could be conducted. That date will be emailed to the employee, the employee's representative (if applicable), and the department named in the <b>Notice of Appeal</b> by the MCS Staff on a new <b>Notice of Hearing</b> form. If the employee has selected the ADR Process, the Ombuds Office will also be copied on the <b>Notice of Hearing</b> email.

	The new <b>Notice of Hearing</b> form, as well as the <b>Request to Reschedule a Hearing</b> form with signatures from both parties, will be sent to the Commission via email from the MCS Staff as notice of rescheduling.
<i>4. Other Rescheduling Requests</i>	If either party needs to reschedule outside the timeframe above and there is not agreement among both parties for rescheduling, the <b>Request to Reschedule a Hearing</b> form needs to be filled out, following the instructions on the form. The party requesting the rescheduling submits the form to the MCS Office for processing.
	The MCS Office will contact the MCS Commission Chair, and the Chair shall determine if the hearing shall be rescheduled.
	Upon approval of rescheduling by the Chair, the next available meeting date will be emailed to the employee, the employee’s representative (if applicable), and the department named in the <b>Notice of Appeal</b> by the MCS Staff on a new <b>Notice of Hearing</b> form. If the employee has selected the ADR Process, the Ombuds Office will also be copied on the <b>Notice of Hearing</b> email.
	Upon denial of rescheduling by the Chair, notification will be emailed to the employee, the employee’s representative (if applicable), and the department named in the <b>Notice of Appeal</b> form by the MCS Staff and the hearing will continue as scheduled per the <b>Notice of Hearing</b> form.
As hearings are rescheduled, a new <b>Notice of Hearing</b> will be provided as identified above.	

<b>E. Step V. Subpoenas</b>	
A subpoena is a written direction to an individual issued under the authority of the Commission as set out in Article IX of the City Charter requiring the production of witnesses or documents at an appeal hearing under these Rules.	
<i>1. Authority</i>	a. The MCS Commission has full authority to issue subpoenas in connection with an appeal.
	b. The MCS Commission makes the non-exclusive delegation of such authority to the MCS Director, or designee to issue subpoenas on its behalf subject to the terms and limitations of the MCS Rules.
	c. The MCS Office will copy all subpoenas issued and will make the copy a part of the records of the Commission.
<i>2. Requests</i>	a. An employee or department head may request subpoenas any time between the receipt of a <b>Notice of Hearing</b> and 5:00 p.m. fifteen (15) business days prior to the hearing.
	b. Requests for subpoenas must be made using the <b>Request for Subpoena</b> form, as specified by the MCS Director.
	c. If additional subpoenas are requested as part of a rebuttal submission, a <b>Request for Subpoena</b> form must be filled out and submitted with a <b>Rebuttal Submission</b> form, as specified below.
<i>3. Submission</i>	a. Employees and department heads shall submit their <b>Request for Subpoena</b> form in writing to the Office of the Municipal Civil Service Director, located at 505 Barton Springs Road, Suite 600, Austin, TX 78704.
	b. All <b>Request for Subpoena</b> forms received will be stamped with the date and time it was received, and will become records of the Commission.
	c. Once a <b>Request for Subpoena</b> form has been received, MCS Staff will notify the other party of receipt. MCS Office staff will copy the request, and have the copy of the other party’s <b>Request for Subpoena</b> available for pick up.
<i>4. Issuance</i>	a. Subpoenas will be issued if a completed <b>Request for Subpoena</b> form is received within the timelines outlined above.
	b. The MCS Director will sign all subpoenas before they are issued.
	c. The MCS Office shall attempt to issue a subpoena after receipt of a <b>Request for Subpoena</b> form.
<i>5. Service</i>	a. The subpoena will be served to the individual or department (for requested documents) named

	<p>in the subpoena by MCS Office staff as soon as the MCS Director signs the subpoena.</p> <p>b. For subpoenas that request city employees to serve as a witness or for the production of City documents, the City’s email system will be used to serve the subpoena. MCS Staff will email the subpoena, and a receipt will be kept indicating the email was delivered, as well as a read receipt that the email was read. The subpoena is considered served after receiving delivery confirmation.</p> <p>c. If the City employee does not have a City email address, the subpoena will be sent to the address as listed on the <b>Request for Subpoena</b>. If no address is listed, the subpoena will be sent to the address on file with the Human Resources Department. Subpoenas will be sent through certified mail.</p> <p>d. If the subpoena is for an individual that does not work for the City, MCS Office staff will prepare the subpoena for service. If an email address is listed, MCS Staff will email the subpoena, and a receipt will be kept indicating the email was delivered, as well as a read receipt that the email was read. If an email address is not listed, the MCS Office staff will submit the subpoena to a process server, and the server will deliver the subpoena to the address indicated on the <b>Request for Subpoena</b> form.</p>
6. Compliance	<p>a. Service of a subpoena as described above constitutes a compulsory direction for the individual to appear or produce documents as requested at the time and place designated in the subpoena.</p> <p>b. If an individual receiving a subpoena is unable to comply with the subpoena based on compelling personal circumstances or an unreasonable burden placed on the individual, a written statement must be provided in the space indicated on the subpoena. The statement must include the factual basis why the individual cannot comply with the subpoena.</p> <p>c. If an individual is providing a written statement for non-compliance, the subpoena with the written statement section filled out must be filed with the MCS Office five (5) business days after receipt of delivery of the subpoena for consideration by the Commission at the time of the hearing.</p> <p>d. If the MCS Office receives a subpoena with a written statement from an individual, a copy of the subpoena shall be provided to the Chair of the MCS Commission in advance of the hearing. The Chair will determine if the individual could provide alternative testimony with a sworn statement or through a form of electronic testimony (as outlined below).</p> <p>e. If the Chair indicates alternative testimony can be provided for an individual that submits a written statement, the MCS Office will notice both parties of the approved alternative testimony.</p> <p>f. City employees must comply with a subpoena when issued. Non-compliance with a subpoena is cause for disciplinary action.</p> <p>g. City employees who are witnesses may request administrative leave (ADL) for this purpose.</p>

<b>F. Step VI. Pre-Hearing Submissions</b>	<p>Pre-Hearing packets must be received in the Office of the Municipal Civil Service Director, located at 505 Barton Springs Road, Suite 600, Austin, TX 78704, no later than 5:00 p.m. ten (10) business days prior to an appeal hearing using the <b>Employee Pre-Hearing Submission</b> form or the <b>Department Pre-Hearing Submission</b>. Each party shall provide seven (7) copies, submitted on two sided, sequentially numbered pages. Once hearing information has been submitted to the MCS Director, MCS Office staff will notify the parties via email that the submissions are available to be picked up. MCS Commissioners will receive submissions at the Hearing. The seven (7) copies will be distributed as follows: one (1) copy for the other party; one (1) copy for the records of the commission; and five (5) copies for the MCS Commissioners.</p>
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1. <i>Employee Submission</i>	<p>a. The employee’s submission shall include:</p> <ol style="list-style-type: none"> <li>1. Information listing the reasons for the appeal</li> <li>2. Names of witnesses the employee has Subpoenaed</li> <li>3. Names of witnesses the employee will call at the hearing</li> <li>4. Copies of written statements the Employee will speak to at the hearing</li> <li>5. Copies of any documents the Employee will provide as evidence at the hearing</li> </ol> <p>b. The employee’s submission shall be made including a completed <b>Employee Pre-Hearing Submission</b> form.</p>
2. <i>Department Submission</i>	<p>a. The department’s submission shall include:</p> <ol style="list-style-type: none"> <li>1. Information about the issues for the appeal</li> <li>2. Names of witnesses the department has Subpoenaed</li> <li>3. Names of witnesses the department will call at the hearing</li> <li>4. Copies of written statements the Department will speak to at the hearing</li> <li>5. Copies of any documents the Department will provide as evidence at the hearing</li> <li>6. At a minimum, all performance appraisals and disciplinary actions concerning the Employee for the three (3) years immediately preceding the Disciplinary Action or Denial of Promotion</li> </ol> <p>b. The department’s submission shall be made including a completed <b>Department Pre-Hearing Submission</b> form.</p>

<b>G. Step VII. Rebuttal Submissions</b>	
1. <i>Rebuttal Submission Defined</i>	The Rebuttal Submission is a written response provided to contradict evidence presented by the opposing party. The rebuttal submission is limited to written response to disprove or contradict issues raised in the opposing party’s written submission and may include requests for additional subpoenaed witnesses and production of evidence that would contradict or attempt to contradict evidence submitted in the pre-hearing packet.
2. <i>Submission</i>	Rebuttal packets must be received in the Office of the Municipal Civil Service Director, located at 505 Barton Springs Road, Suite 600, Austin, TX 78704, no later than 5:00 p.m. five (5) business days prior to an appeal hearing, including the <b>Rebuttal Submission</b> form. Each Party shall provide seven (7) copies, submitted on two sided, sequentially numbered pages. Once a rebuttal submission has been made to the MCS Director, MCS Office staff will notify the parties via email that the submissions are available to be picked up. MCS Commissioners will receive rebuttal submissions at the Hearing.
3. <i>Permitted Submission</i>	If either party has not provided an initial submission, the parties are not permitted to submit a rebuttal submission.
4. <i>Subpoenaed Documents</i>	A rebuttal submission may be used to provide subpoenaed documents received after the initial submission deadline.

<b>H. Step VIII. Hearing Administration</b>	
1. <i>Employee Representation</i>	a. An employee may designate any individual or entity as the employee’s representative in an appeal. The employee shall provide the name of the representative on the <b>Notice of Appeal</b> form. The employee’s representative shall be provided with all notices and other information required to be provided to the employee.
	b. The representative may propose remedies to resolve the appeal.
	c. The representative may speak on behalf of the employee during the hearing. The representative may not testify as though to provide personal knowledge of the employee.
	d. The representative may ask questions during the hearing.
	e. The representative may correspond with MCS Staff on the status of the appeal.

<p><i>2. Contact with Commissioners</i></p>	<p>a. The employee, the employee’s representative (if applicable), and the department shall direct all communications concerning an appeal to the MCS Director.</p> <p>b. The employee, the employee’s representative (if applicable), or the department shall not communicate directly or indirectly with a Commissioner concerning an appeal at any time before the hearing on the appeal, except in an open meeting of the Commission, with a quorum of Commissioners present.</p> <p>c. Commissioners shall not communicate with an employee, the employee’s representative (if applicable), or the department concerning a pending appeal, or matters that the Commissioners believe may become an appeal, prior to the hearing on the appeal, except in an open meeting of the Commission with a quorum of Commissioners present.</p>
<p><i>3. Manner of Conducting Hearings</i></p>	<p>The conduct of an appeal hearing shall be respectful and professional, but not unnecessarily formal in tone or process. The Commission shall ensure that the parties in a hearing have a clear understanding of the process and a fair opportunity to present their witnesses and evidence to the Commission.</p>
<p><i>4. Presenting Evidence</i></p>	<p>a. Presentation of testimony and other evidence in a hearing shall be conducted in open session, unless the Commission elects, by majority vote, to conduct all or part of the presentation of witnesses or evidence in closed session.</p> <p>b. The Commission may elect, by majority vote of the Commissioners present, to conduct all or part of a hearing in closed session.</p> <p>c. The appealing employee may request that the hearing continue in open session, and the employee’s request shall be honored, unless prohibited by law.</p> <p>d. The Commission shall consider a request by the appealing employee to conduct the hearing in closed session.</p>
<p><i>5. Deliberations</i></p>	<p>a. After the close of all evidence, the Commission shall conduct deliberations on an appeal in closed session.</p> <p>b. The employee may request that deliberations be conducted in open session, and the employee’s request shall be honored.</p>
<p><i>6. Vote and Decision</i></p>	<p>Commissioners shall decide the outcome of any appeal with a vote in open session, and shall not vote on or decide the outcome of an appeal in closed session.</p>
<p><i>7. Consideration of Evidence</i></p>	<p>a. The Commissioners shall consider only the testimony of the witnesses and other evidence offered by the parties at the hearing and shall rule on any objections made by either party.</p> <p>b. The rules of evidence used in court proceedings shall not apply.</p> <p>c. The Commission may elect, by majority vote of the Commissioners present, to exclude evidence that has no value in determining the truth of an issue in dispute or where the prejudicial effect of the evidence outweighs its value in determining the truth of an issue in dispute.</p>
<p><i>8. Objection to Witnesses and Documents</i></p>	<p>a. A party may object at a hearing to the presentation of any witness or document by the other party that was not submitted to the MCS Director as outlined above.</p> <p>b. Upon such objection, the Commission may permit the presentation of the witness or document by a majority vote of the Commissioners present for good cause shown.</p>
<p><i>9. Testimony</i></p>	<p>All testimony during a hearing shall be sworn. The chair or other presiding officer shall administer an oath to all individuals prior to the offer of any testimony.</p>
<p><i>10. Use of Sworn Statements</i></p>	<p>a. The Chair must approve use of a sworn statement for a witness who has been subpoenaed and is unable or unwilling to attend the hearing.</p> <p>b. Sworn statements shall be signed and dated by the individual making the statement and shall include an attestation at the end of the statement above the signature of the individual making the statement in the following form:  “ I swear and affirm under penalty of perjury that all of the statements made above are true and correct.”</p> <p>c. Sworn statements shall be included in the <b>Required Pre-Hearing Submission</b> or <b>Rebuttal Submission</b> by a party.</p> <p>d. All or part of a sworn statement shall be excluded from consideration if the Commission</p>

		determines by a majority vote of those present that it is not reliable, credible, or does not comply with the MCS Rules.
11. <i>Electronic Testimony</i>	a.	The Chair must approve use of electronic testimony for a witness who has been subpoenaed and is unable or unwilling to attend the hearing.
	b.	Electronic testimony can be provided by telephone, audio/visual, or other electronic means at or before the hearing.
12. <i>Questioning</i>	a.	Members of the Commission may question witnesses at the conclusion of the witnesses' testimony and any cross or re-direct examination by the parties, and may recall witnesses for further examination.
	b.	Parties may redirect and cross-examine witnesses after questioning by the Commission to address any questions raised by the Commissioners' questions.
13. <i>Recording of Hearings</i>	a.	A video or audio recording of all hearings shall be created and retained as the official record of the hearing, in accordance with applicable records retention schedules.
	b.	No other video or audio recording of any part of a closed hearing shall be permitted by any individual unless approved in advance by a majority vote of the Commission.
14. <i>Time Limits for Presenting Evidence</i>	a.	Each party has one-hundred twenty (120) minutes to present that party's witnesses and evidence in a hearing, and to question the witnesses presented by the other party.
	b.	The one-hundred twenty (120) minutes <b>does not</b> : <ol style="list-style-type: none"> <li>1. Include any time permitted by the Commission for opening and closing statements.</li> <li>2. Include any time expended through questioning by the Commission of either party's witnesses</li> <li>3. Include any additional direct or cross- examination of witnesses by the parties based on questioning by the Commission</li> </ol>
	c.	The Commission may permit an extension of the time limits by a majority vote of the Commission.

<b>I. Step VIII. Order of the Proceedings</b>	
1. <i>Call to Order</i>	The Chair or presiding officer shall call the hearing to order.
2. <i>Administrative Issues</i>	The Commission may address any administrative issues it determines appropriate, such as clarification of issues, sequestering witnesses, agreements between the parties, scheduling, or other matters.
3. <i>Opening Statements</i>	The Commission shall permit the parties to make an opening statement concerning the appeal. The party with the burden of proof shall go first, as outlined below.
4. <i>Case Presentation</i>	The party with the burden of proof shall present its witnesses and other evidence first, and then the other party shall present its witnesses and other evidence.
5. <i>Rebuttal Evidence</i>	The parties may present any further rebuttal evidence permitted by the Commission.
6. <i>Closing Statements</i>	The Commission shall permit the parties to make a closing statement. The order of the party's closing statement will be the same as the order of the opening statement.
7. <i>Close of Hearing</i>	The Chair or presiding officer shall announce the close of the hearing. After the close of the hearing, no further evidence or argument may be offered or considered.
8. <i>Deliberation</i>	The Commission shall deliberate as a group as outlined above, and consider and evaluate the testimony and other evidence offered by the parties.
9. <i>Hearing Continuance</i>	The Commission may adjourn its deliberations at any time as determined by a majority vote in open session of the Commission to the following regular business day. If a meeting is continued, the Commission must give notice of the continuance.



10. <i>Decision</i>	The Commission shall decide the issues in the appeal in open session and announce its decision in open session. The decision of the Commission shall be recorded using a <b>Notice of Decision</b> form. A Commissioner must be present for the entire hearing of the appeal in order to vote and sign the <b>Notice of Decision</b> form. All Commissioners participating in the appeal shall sign the notice.
11. <i>Notice of Decision</i>	The MCS Director shall make the <b>Notice of Decision</b> form a part of the records of the Commission. A PDF copy shall be provided to the parties via email within two (2) business days of the Commission's decision.

<b>J. Step IX. Provisions for Appeals</b>	
1. <i>Disciplinary Appeals</i>	<p>a. The department has the burden of proof and will present its evidence first in the hearing, and first in the closing statement.</p> <p>b. The issue for decision is: Was their cause for the disciplinary action and, if not, what is the remedy?</p> <p>c. If the Commission determines there was cause for the disciplinary action, the Commission will deny the appeal. The disciplinary action will stand.</p> <p>d. If the Commission determines there was not cause for the disciplinary action, the Commission will grant the appeal. The disciplinary action will be rescinded, and the Commission may:</p> <ol style="list-style-type: none"> <li>1. Issue a lesser level of disciplinary action; or</li> <li>2. Restore the employee's position (if applicable), and all or part of any pay or other benefits lost by the employee as a result of the disciplinary action; or</li> <li>3. Both.</li> </ol> <p>e. In the event of a tied vote by the Commissioners, the department is deemed to have not met the burden, and the Commission may order one of the actions above.</p>
2. <i>Denial of Promotion Appeals</i>	<p>a. The employee has the burden of proof and will present its evidence first in the hearing, and first in the closing statement.</p> <p>b. The issue for decision is: Did the department have a reasonable, good faith belief that the employee should not have received the promotion?</p> <p>c. If the Commission determines that the department had reasonable, good-faith belief that the employee should not have received the promotion, the Commission will deny the appeal.</p> <p>d. If the Commission determines that the department did not have a reasonable, good faith belief that the employee should not have received the promotion, the Commission will grant the appeal. In that event:</p> <ol style="list-style-type: none"> <li>1. The employee shall be placed in the position at issue and may be awarded any lost pay or benefits; and</li> <li>2. The individual who initially received the promotion shall be placed by direct appointment in any open position laterally, or at the employee's prior salary grade and pay rate for which the employee is qualified, with no right of appeal.</li> </ol> <p>e. In the event of a tied vote by Commissioners, the employee is deemed to have not met the burden.</p>
3. <i>Reduction-in-Force Appeals</i>	<p>a. The department has the burden of proof and will present its evidence first in the hearing, and first in the closing statement.</p> <p>b. The issue for decision is: Did the department have a reasonable, good faith belief that the employee should have been selected for separation due to Reduction -in-Force?</p> <p>c. The decision of the department to conduct a Reduction-in-Force and the number of positions eliminated shall not be contested as part of the appeal.</p> <p>d. If the Commission determines that the department had a reasonable, good-faith belief that the employee should have been selected for separation due to Reduction-in-Force, then the Commission will deny the appeal.</p>

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|  | <p>e. If the Commission determines that the department did not have a reasonable, good-faith belief that the employee should have been selected for separation due to Reduction-in-Force, then the Commission will grant the appeal. In that event:</p> <ol style="list-style-type: none"><li>1. The employee shall be reinstated to the Employee's former position, if that position still exists, or the Department may place the employee in a comparable position if the former position no longer exists; and</li><li>2. The employee may be awarded any pay or other benefits lost by the employee as a result of the separation.</li></ol> |
|  | <p>f. In the event of a tied vote by Commissioners, the department is deemed to have not met the burden.</p>  |

<b>K. Step X. Final Ruling</b>	The grant or denial of any appeal is final. The final ruling shall not affect the rights or duties of any employee under a state or federal law.
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<b>REFERENCE DOCUMENTS</b>		
<b>Number</b>	<b>Type</b>	<b>Title</b>
<b><i>Replaced Documents</i></b>		
	Personnel Policy	
	Administrative Bulletin	
	Personnel Procedure	
	Personnel Forms	
	HRD Reference	
	BANNER	
	Government Regulations	
	Template	
<b><i>Current Documents</i></b>		
	Personnel Policy	
	Administrative Bulletin	
	Personnel Procedure	
	MCS Rules	Rule 7
	Personnel Forms	Notice of Appeal Notice of Hearing Request to Reschedule a Hearing Request for Subpoena Employee Pre-Hearing Submission Form Department Pre-Hearing Submission Form Rebuttal Submission Form Notice of Decision Notice of Withdrawal of Appeal
	HRD Reference	
	BANNER	
	Government Regulations	
	Template	
<b>PROCEDURE ADMINISTRATION</b>		
<b>Review Cycle</b>	Annual	
<b>Performance Measures</b>	None	
<b>Authority to Change</b>	Originated by HRD/MCS	