

GOVERNMENT OF GUAM



CIVIL SERVICE COMMISSION  
KUMISION I SETBISION SIBIT

7<sup>TH</sup> Floor International Trading Center (ITC), Suite 709  
Marine Corp Drive, Tamuning 96913  
P.O. Box 3156 Hagatna, Guam 96932  
Tel: 647-1855/57 Fax: 647-1867  
Website: [www.csc.guam.gov](http://www.csc.guam.gov)

CSC NO. 2009-102

25 November 2009

MEMORANDUM

To: Honorable Speaker Judith Wonpat  
30<sup>th</sup> Guam Legislature  
I Liheslaturan Guahan

From: Executive Director

Subject: Transmission of Amended Civil Service Commission Rules of Procedures for Adverse Action Appeals

30-09-1400  
Office of the Speaker  
Judith Wonpat, Ed.D.  
Date: 11/30/09  
Time: 10:30

2009 NOV 30 AM 11:11  
[Signature]

**Hafa adai!**

The Civil Service Commission is hereby providing an economic impact statement, copy of the official record of the public hearing, and copy of the minutes of the public hearing relative to the Commission's intent to **amend** the Civil Service Commission's **Rules of Procedures for Adverse Action Appeals** in compliance with 5 GCA § 9301, "Rule Making Procedures" of the Administrative Adjudication Act.

Notice of a public hearing was published in the Marianas Variety on October 30, 2009. A public hearing on the subject rules was held on November 17, 2009, and public comments were received. After discussing and taking into consideration the comments received, the Civil Service Commission Board of Commissioners ratified the attached amended Rule of Procedures for Adverse Action for transmission to I Liheslaturan Guahan.

The Commission looks forward to your support and timely approval of the submitted rules pursuant to 5 GCA § 9303(c) (which states in part: "The Guam Legislature may approve, disapprove or amend any rule within ninety calendar days from the date of filing with the Legislative Secretary.").

Senseramente,

[Signature]  
Naomi Lujan-Gonzales

Attachments: EIS Adverse Action  
Record of Public Hearing  
Minutes of Public Hearing

1401

TERRITORY OF GUAM  
GUAM U.S.A.  
CIVIL SERVICE COMMISSION

**ECONOMIC IMPACT STATEMENT**

**AMENDMENT OF**  
**RULES OF PROCEDURES FOR ADVERSE ACTION APPEALS.**

**Definition of Impact:**

<b>None</b>	<b>\$.01 - \$500.00</b>
<b>Small</b>	<b>\$501.00 - \$50,000.00</b>
<b>Medium</b>	<b>\$50,001.00 - \$500,000.00</b>
<b>Large</b>	<b>\$500,000.01 – or more.</b>

**PURPOSE AND NEED:** The request to amend the Civil Service Commission's, Rules of Procedures for Adverse Action Appeals, is to provide guidelines in a quasi judiciary setting on administrative matters. The proposed amended rules will provide for Hearings that will be organized, efficient, and productive, and that Hearings will be conducted in accordance to law, providing for due process, thereby reducing litigation costs to employee, management, and the government of Guam. The need to amend the Civil Service Commission, Rules of Procedures for Adverse Action appeals is largely contributed to past experiences that will provide clarity in the process and to incorporate the current changes in the law, and decisions made by the courts.

**FINANCIAL IMPACT: SMALL**

The financial impact to those persons or corporate entities directly affected by the proposed changes in the rules could be categorized as **small**, this will also apply to the people and economy of Guam. Historical data and statistics vary from year to year, depending on the amount of appeals filed by employees, making it difficult to determine an average cost impact. Should an employee prevail in an adverse action appeal, back pay, benefits, attorney fees, hearings, and operational costs are things to consider as cost to the government agency. Should management prevail in an adverse action appeal, the total man hours and operational costs associated with bringing the adverse action which escalated to the hearing level are things to consider as cost to the government.

However, estimated costs associated with the proposed changes in the rules may be determined by using the following assumptions: As required by the Administrative Adjudication Act: **Media Announcements, Multiple Copies of Documents for Inspection, Public Hearing, Review of Public Comments, and Finalizing of amended Rules.** A notice to be published in a newspaper of general circulation for at least ten days prior to the date of the public hearing is estimated at **\$150.00**, based on Newspaper Add cost of \$96.00 plus 3 employees at 2 hours each at \$10.00 per hour, to secure and produce add = \$60.00. Five sets of documents proposed amendments of rule available for public examination estimated at **\$30.00**, based on \$20.00 per 2 reams of paper plus 1 employee

at 1 hour at \$10.00 per hour, to prepare documents for inspection = \$10.00. Public hearing estimated at **\$4,800.00**, based on 10 government agencies utilizing 2 employees at 4 hours each at \$60.00 per hour, to review, prepare documents and provide testimony.

**COST OF LIVING IMPACT: NONE**

The amendment of these rules would not have any impact on the cost of living on Guam or any specific impact on the price or availability of any good or service, directly or indirectly attributed to the amendment of these rules.

**EMPLOYMENT IMPACT: NONE**

The amendment of these rules would not have any direct or indirect upon employment on Guam or any increase or decrease in the availability of a particular job or jobs, or jobs in general, attributed to the amendment of these rules.

**BUSINESS IMPACT: NONE**

The amendment of these rules would not have any increase or decrease in the cost of doing business as an enterprise or industry on Guam, or any increase or decrease in doing business in general, which is attributed to the amendment of these rules.

**ECONOMIC IMPACT: NONE**

The amendment of these rules would not have any adverse or beneficial economic impact, which is attributed to the amendment of these rules.



GOVERNMENT OF GUAM



CIVIL SERVICE COMMISSION  
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7<sup>TH</sup> Floor International Trading Center (ITC)  
Marine Corp Drive, Tamuning 96913  
P.O. Box 3156 Hagatna, Guam 96932  
Tel: 647-1855/57 Fax: 647-1867

Present: Luis, Manny,  
John, & Lou

AGENDA  
Tuesday  
17 November 2009  
5:45 p.m.

Staff: Naomi, Roland,  
Rachel, & Marie


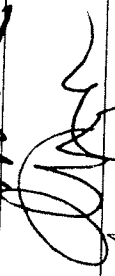

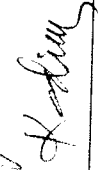
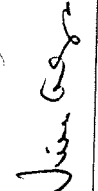


- I. CALL TO ORDER
- II. APPROVAL OF MINUTES - 10 November 2009 - approved 4-0
- III. NEW BUSINESS < PUBLIC HEARING >
  - 1. Rules for Procedure for Adverse Action Appeals
  - 2. Rules for Public Employee Protection Act Complaints
- IV. OLD BUSINESS
- V. GENERAL BUSINESS
  - 1. Bill and Laws Affecting CSC
- VI. EXECUTIVE SESSION
- VII. ADJOURNMENT

> Public testimony  
received

NAOMI E. LUJAN-GONZALES  
Executive Director

Cont. to Thur. 11/19/09 5:45pm to  
discuss comments and any possible  
changes.

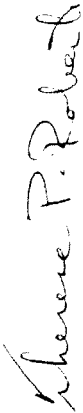



CIVIL SERVICE COMMISSION  
**WITNESS LIST / Attendance**  
**SIGN-IN ROSTER**  
 November 17, 2009

	PRINT NAME	SIGNATURE	DATE	TIME IN	TIME OUT
1	Frank Diaz		11-17-09	5:15p.	
2	Margaret Cruz		11/17/09	5:24p.	
3	Joselyn C. Fierles		11/17/09	5:30	
4	Kathly Diaz, DOA HR		11-17-09	5:30 p.	
5	Vivian Aragon   GAAA		11/17/09	5:40 p.m.	
6	David R. Pineda		11-17-09	5:45 pm	
7	Art Aguerro   Gttura-HR	A. Aguerro	11/17/09	5:45	
8	Jeff Sabolan		11/17/09	5:55	

1 verified  
 2 verified  
 3 verified

6 - mail check

CIVIL SERVICE COMMISSION  
**WITNESS LIST** / ~~Attendance~~  
**SIGN-IN ROSTER**  
 November 17, 2009

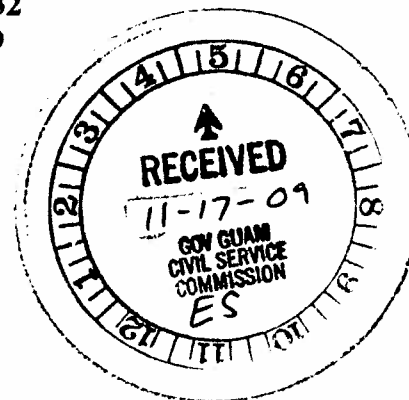
	PRINT NAME	SIGNATURE	DATE	TIME IN	TIME OUT
1	Theresa P. Roberto		11/17/09	5:45	
2	ATHELOTINE TATAGUIS (Attendance)		11/17/09	6:10 pm	
3	Graham Botha		11/17/09		
4	Julie L. Dunder		11/17/09		
5					
6					
7					
8					

Frank Diaz  
(GWA HR Admin)



**GUAM WATERWORKS AUTHORITY**  
**ATURIDAT KINALAMTEN HANOM GUAHAN**  
Post Office Box 3010, Hagatna, Guam 96932  
Phone: (671) 647-7847 Fax: (671) 649-0369

November 17, 2009



Naomi Lujan-Gonzales  
Director, Guam Civil Service Commission  
7<sup>th</sup> Floor, International Trading Center  
Suite 709  
Marine Corps Drive, Tamuning, GU 96932

RE: Testimony On Proposed Regulations for Adverse Action Appeals and PEMRA Complaints.

Hafa Adai,

The Guam Waterworks Authority has the following comments on the proposed Adverse Action Appeals and PEMRA complaints (the concerns below are applicable for PEMRA as well).

**1. Rule 5.2.**

The CSC should not adopt any rule that involves an employee willfully evading service unless it defines exactly what constitutes a willful evasion. Also, who has the burden of proving the employee was or was not willfully evading – the current rule is silent.

Finally, why not allow for filing via e-mail to cut down on copying costs and time spent for travel and copying and allow for ease of use for both parties. The CSC could then serve on the last known e-mail address of the authorized representative.

**2. Rule 5.2.2.**

The CSC does not have the jurisdiction or authority to modify the time for filing an appeal by an employee – i.e., 20 days. This is the exact same issue that was decided by both the Guam Supreme Court and the Guam Superior Court.

### **3. Rule 5.3.2.**

Just like above, the amending of an appeal after the 20 days allows for the employee to have "another bit at the apple" and in fact is a de-facto extension of time to file an appeal. This is simply wrong and violates due process since both parties are limited to specified periods of time under Guam law within which to serve a final notice of adverse action and for employees to file an appeal.

### **4. Rule 6.1.**

Service should be via e-mail if at all practicable. Also, referring to the G.R.C.P in terms of service is somewhat dangerous since in some cases service by publication is appropriate and the rules need to be crystal clear as to what type of service is required at all times. The rule as written is overly broad and vague and capable of too many interpretations.

### **4. Rule 7.1**

The parties may choose to represent themselves. Also, aside from the final hearing on the merits, the director should not be required to be present if represented by a lawyer since Motions, pre-hearing matters and other status conferences are merely the process leading to the hearing. If the party is represented by an attorney, this is even more true which for the government, if most often the case. This is an inefficient use of government resources.

### **5. Rule 8 (and as otherwise applicable)**

ALL orders of the Executive Director should be reviewable by the Civil Service Commission since the Executive Director is not a voting member of the Commission and only decisions of the Commission have any weight if there is a dispute.

### **6. Rule 8.1.**

Only orders regarding discovery are reviewable by the CSC, while we believe all orders should be reviewable if they negatively impact a case such as the timing for appearance, etc.

Forty-eight (48) hours is simply too short a period of time for either party to file a motion to object because sometimes a party cannot figure out how burdensome a request may be until they start to look for files or the person who may be making the motion may be off-island. This rule needs serious work and as written is inherently unfair to both parties and practically renders the Executive Director's decisions almost un-reviewable.



**7. Rule 9.3.**

What sanctions are we talking about? Also, how can the Commissioners approve a document without first seeing it? This rule does not seem to be practical as written.

**8. Rule 9.4.**

Continuances should be allowed right up to the hearing date because representatives can get sick, have a court hearing or other emergency arise which precludes their attendance within the 7 day period. That is common practice now and it works.

**9. Rule 9.4.2.**

This rule has long needed changing since there needs to be recognition of the difference between a criminal case where guilt beyond a reasonable doubt is the standard and in civil administrative proceedings where the standard is much lower. Witnesses leave, memories fade and the government is usually the party that suffers the consequences from waiting.

**10. Rule 9.5.**

Adding a motion to dismiss for untimely filing of an adverse action with the CSC is an impermissible expansion of the CSC's jurisdiction since under Guam law all that the government must do is serve the final notice of adverse action on the employee within the 60 day period in order for it to be effective. This change would also add an additional hoop to the 60 day rule in statute where none exists.

**11. Rule 9.7.**

It is a complete double standard and violation of the government's due process rights to not allow the government to dismiss a case where the employee fails to appear where the government's case can be dismissed for the failure of the appointing authority to appear (at every hearing). Again, preliminary matters should not even be required to appear at all hearings which makes adverse actions less likely if the appointing authority knows they have to sit through endless status calls, motions and other matters that are routine. As written this rule is decidedly pro-employee and heavy-handed. Furthermore, this rule if adopted will not only chill the amount of adverse actions filed, it will negatively disrupt operations by not instituting discipline when necessary. Since most government cases have attorneys involved, and since attorneys are duty bound to take settlement offers to their clients, the possibility of having settlements forestalled is truly not a real concern.

**12. Rule 10.1.**

Parties should be notified of need to resubmit documents by CSC and this requirement should be in the rule.

### **13. Rule 1.2**

This rule is too strict. Often a government agency may only have one type of binder on hand and may not have the time or funds to procure the proper type of folder. Perhaps a little bit more room for options to bind?

### **14. Rule 10.3.**

There is no provision that allows for documents to be held by CSC to allow parties time to file objections. Also, who decides? The CSC Commissioners should decide the relevance of all information being submitted to it. Also, if a document is excluded, there should be some right to have an interlocutory appeal to the Superior Court on this issue.

### **15. Rule 11.**

Preponderance should suffice. Changing the standard to clear and convincing is way too stringent and seems to be pro-employee at the expense of the government.

Also, why is there only a motion to dismiss for management's failure to comply with discovery? Why not allow management further discovery and then dismiss for employee's failure to provide the documents?

### **16. Rule 11.2.2**

All issues governing admissibility of evidence should be heard by CSC either on appeal from a decision of the Administrative Counsel or Executive Director, or directly.

### **17. Rule 11.3.4**

We recommend adding the language that "all witnesses should be treated with respect and be free from restraint, interference, coercion, discrimination or reprisal in presenting testimony." There is such a thing as peer pressure or having a witness treated poorly by the employee's representative and simple fairness dictates equality in treatment.

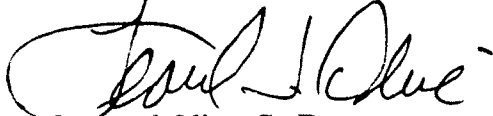
### **18. Rule 13.2.**

Reimbursing costs solely to the employee is simply wrong. What about having the government receive costs it incurs if the employee is determined to have filed a frivolous appeal? Should the people of Guam be entitled to the same protections from bad acts on the part of the employee?

**19. Rule 13.4.**

Attorneys should not be required to file any document to affirm that they have read the rules and statute applicable to the action since attorneys are already duty bound under their ethical rules to make these types of investigations anyway and can be disbarred for not doing so.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leonard Olive".

Leonard Olive, Sc.D.  
GWA General Manager

Kin Flores (GPA) ✓

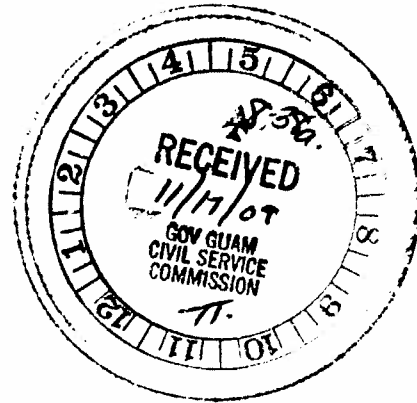


# GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN  
P.O. BOX 2977 • HAGATNA, GUAM U.S.A. 96932-2977

October 29, 2009

Ms. Naomi Lujan-Gonzales, Executive Director  
Kumision I Setbision Sibit (Civil Service Commission)  
7<sup>th</sup> Floor, International Trade Center (ITC)  
Marine Drive, Tamuning, Guam 96913  
P.O. Box 3156, Hagatna, Guam 96932



Dear Ms. Lujan-Gonzales,

Hafa Aдай and thank you for the opportunity to provide comments on the Civil Service Commission's proposed amendments on the Rules for Adverse Action Appeals. The Guam Power Authority supports all efforts to provide guidelines for the processes utilized to conduct business activities. It ensures equity for all parties. The following are recommendations the Authority offers the Commission for consideration:

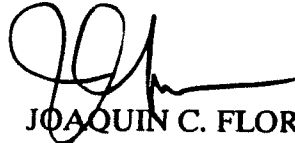
- a.) Provide a definition for the term "*reasonable time*" that is permitted an employee to prepare his/her case under Rule 5.4.a. Without some form of definition or specified period this term may be subject to various interpretations of what the term "*reasonable time*" means. Should a definition not be provided then it is recommended that the respective department or agency head determine and specify the "*reasonable time*" permitted for employees to prepare for his/her case.
- b.) Qualify who is eligible to receive a document in the event the appellant is not available upon "*personal delivery*" of a proposed and/or final notice of adverse action under Rule 6.1.a. This is important since in the Authority's experience when serving notices of proposed and/or final adverse action at the employee's residence, the employee may not be home but other members of the household are. There were times when people were home at residence but would not answer the door or the telephone when called to notify them that GPA representatives are outside the door.
- c.) The Authority is concerned that Rule 9.7 impedes in the appointing authority's prerogative to designate a representative other than a deputy to represent his/her behalf at adverse action hearings. It is recommended that Rule 9.7 include the designation of other managerial personnel to act on behalf of the appointing authority at adverse action hearings.
- d.) For the sake of consistency, it is recommended under Rule 10.3 to state the amount of time for objecting to the inclusion of documents by the

number of days rather than the "twenty-four (24) hours" period indicated. Like many departments/agencies, the Commission conducts its normal business during week days from 8:00 a.m. to 5:00 p.m., Monday through Friday and is normally closed for business on week ends and holidays.

- e.) Add verbiage under Rule 13.2 to ensure that government employees who represent employees at the Commission do not charge for his/her time spent at hearings, status calls and conferences. Permitting charges under this section may subject representatives working for the government of Guam to double dipping. Thus, should government representatives be permitted to charge they must possess a valid business license and secure proper authorizations from their superiors to conduct such business.

The Authority also submits these same recommendations where applicable in the proposed "Rules for Public Employee Protection Act Complaints". In conclusion, we look forward to working harmoniously with the Commission to achieve best practices in the administration of rules for procedures of adverse action appeals and other matters of employment.

Sincerely,



JOAQUIN C. FLORES, P.E.  
General Manager

P.O. Box DE  
Hagatna, Guam 96932  
Tel. (671) 300-1612  
Fax (671) 477-0698

**Guam Department of Education  
Personnel Services Division**

# Fax

**To:** Civil Service Commission      **From:** Margaret Cruz, EEO Officer

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**Attn:** Maria Masnayan

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**Fax:** 671-647-1867      **Pages:** 8

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**Phone:** 671-647-1850      **Date:** 11/18/2009

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**Re:** verbal testimony      **CC:**

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**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

● **Comments:**

Attached are the documents requested for the copy of verbal testimony given at CSC Hearing on Rules for Procedure for AdvAct appeals on Nov. 17, 2009.

  
Margaret

**Rule 9 Pre-Hearing Motions and Burden of Proof**

Second paragraph on the area of: *late filing shall not be given to the Civil Service Board of Commissioners . . . at the beginning of the scheduled hearing.*

This is not fair for the Board of Commissioners of CSC because if the late filing is allowed and the Board of Commissioners is given the information right before the hearing is not fair to them. If such late filing is allowed then reschedule the hearing date.

**Rule 9.3 Failure to Timely File**

Second paragraph on the area of: *Documents submitted after the time frame established will not be given to the Civil Service Board of Commissioners . . .*

Same thing applies here as in Rule 9

**Rule 9.7 Presence of Management Required**

Areas that reads or *his deputy* shall be changed to read or designee

**Recommend to incorporate Rule 9.8 Grievances**

As under Rule 11.2.6 Order of Presentation

Section of a & b to incorporate this under the new Rule 9.8 as well as Rule 11.5.1

**LIMITATION IN THE SCOPE OF HEARINGS ON THE MERITS****Rule 11 Hearing on the Merits - Burden of Proof**

Section area that in part reads: *The Commission may dismiss the adverse action in favor of Employee for the failure of Management . . .*

This should be applied to both parties the employee and management. If the employee refuses to comply in providing the information of an alleged complaint and refuses to provide such information and by directing the employee to such will be considered.

For example: an employee is alleged to have sexually assaulted a student because he/she wrapped his/her arms around the student because of a medical condition attack and the employee needed to support his/herself from further injuring themselves falling. By not providing such information could have resulted in closing the case at that level and no discipline action is taken then for the employee not to reveal such information and discipline action is taken, is filed before the Board of Commissioners and only then to find out the situation could have been resolved at the lowest level and not escalate up to the Commissioners because such information was withheld. Why waste the time of the Board of Commissioners when the matter could have been resolved had such information be revealed.

Margaret Cruz  
on behalf of Fred Nishihira - GDOE

*filing shall not be given to the Civil Service Board of Commissioners until the Commissioners agree by a minimum of four affirmative votes to accept such late filing at the beginning of the scheduled hearing.* → not fair.  
*Appellate of late filing reschedule any late filing if accepted.*

**RULE 9.1 ARGUMENTS ON MOTIONS**

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

**RULE 9.1.1 ISSUES RAISED BY THE COMMISSION**

Any Commissioner may, at any time, raise issues not raised by motion of the parties. Upon a majority vote of the CSC, such issues must be addressed by the parties and decided by the CSC.

**RULE 9.2 MOTION FILING SCHEDULE**

Unless otherwise predetermined by an order *established at the Status Call by the Executive Director or his designee*, the moving party must file and serve a motion ~~thirty~~ *(30) days four (4) weeks* before the hearing on the *merits motion*.

A motion may be supported by affidavits, but no live testimony shall be taken at a motion hearing *unless the Commission approves a request beforehand for live testimony to assist in a determination of the motion.* ~~a written request from a Party is approved by the Administrative Counsel within five (5) days after the opposition brief is filed.~~

Unless otherwise predetermined by an ~~discovery~~ *Order established at the Status Call by the Executive Director or his designee*, the opposition brief shall be filed ~~ten (10) days~~ *seven (7) days after the motion is filed or three (3) weeks* before the hearing on the motion.



No reply briefs shall be filed or accepted by the Commission unless with the written approval of the ~~Administrative Counsel~~ Executive Director or his designee.

**RULE 9.3 FAILURE TO TIMELY FILE**

Motion documents that are not filed on time may be disregarded by the CSC or subject the transgressing party or his representative to sanctions. Failure of the moving party to file their motion on time will result in the matter proceeding to a hearing on the merits. When no motion documents are filed, the ~~parties are~~ required to attend the scheduled motion hearing to state on the record that no motion documents were filed and the case is to proceed to a hearing on the merits.

Documents submitted after the time frame established will not be given to the Civil Service Board of Commissioners until the Commissioners approve its acceptance by a minimum of four affirmative votes at the beginning of the scheduled hearing.

*Some not enough time.*

**RULE 9.4 MOTIONS TO POSTPONE HEARINGS**

A motion to continue a date of hearing shall set forth the factual bases for the motion.

Continuances based on illness, emergencies, or stipulation of the parties, may be granted without hearing by the ~~Administrative Counsel or in his absence by the~~ Executive Director or his designee, if said decision may be made seven (7) days before the hearing sought to be postponed.

**RULE 9.4.1 CONTINUANCES OTHER THAN IN RULE 9.4**

The Commission's ~~Administrative Counsel~~ Executive Director or his designee, is

The CSC may dismiss an appeal if the Employee is not present for the hearing on the merits *or motion hearing*, unless the Employee has a reasonable excuse.

A motion to permit an Employee to be absent from the hearing on the merits *or motion hearing* shall set forth the factual basis for the motion. The CSC may require affidavits in support of the motion.

**RULE 9.7 PRESENCE OF MANAGEMENT REQUIRED**

The appointing authority *or his deputy* shall be present at all adverse action hearings. The Commission may excuse the presence of the appointing authority *or deputy* for reasonable cause.

The Commission may dismiss the adverse action for the failure of the appointing authority *or his deputy* to appear.

*9.8 new rule* MANAGEMENT is defined to be the appointing authority *or his deputy* with settlement authority. An appointing authority who wishes to have his deputy appear on his behalf shall file such authorization at a Status Call or prior to a hearing, which also shall indicate that the deputy has settlement authority.

**RULE 10 SUBMISSION OF DOCUMENTS FOR INTRODUCTION INTO EVIDENCE**

**RULE 10.1 TIME FOR SUBMISSION OF DOCUMENTS**

No later than twenty-eight (28) ~~seven (7)~~ days before a hearing on the merits or a motion hearing, *or at a time designated by the Executive Director or his designee*, each party shall submit to the CSC all documents it wishes the CSC to consider.

*With the exception of the notices of proposed and final adverse action, all documents*

**RULE 10.2.3 NUMBER OF COPIES**

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

**RULE 10.3 OBJECTION TO INCLUSION OF DOCUMENTS**

*The opposing party may object to the inclusion of a document for a hearing on the merits or motion hearing prior to it being sent to the CSC Commissioners by filing a written objection to that document, along with the reason and other documents supporting the exclusion, within twenty-four (24) hours after receipt by the CSC.*

*The objected document will be excluded from the packet and its submission will be decided during the hearing on the merits or motion hearing if such document is introduced or referred to.*

**RULE 11 HEARING ON THE MERITS — BURDEN OF PROOF**

The burden of proof on the merits is on Management to prove its allegations by a ~~preponderance of the~~ *clear and convincing* evidence. If, however, Management's allegations would constitute criminal charges, then Management bears the burden of proof to prove the allegations by substantial evidence.

*The Commission may dismiss the adverse action in favor of Employee for the failure of Management to comply with a Commission's order regarding discovery.*

See: 4 G.C.A. §§ 4407(a) and 4407(c)

**RULE 11.1 PLACE AND TIME OF HEARING**

The Commission shall set the place, date and time of hearing as expeditiously as

the witness has been completed by both parties; except that questions may be asked during examination by a Party to clarify a response by a witness.

**RULE 11.2.5 RULES OF EVIDENCE**

The Rules of Evidence, Title 6 G.C.A., shall not apply. The only grounds for excluding any proffered evidence are that the evidence is irrelevant or unduly repetitious *or is filed untimely.*

**RULE 11.2.6 ORDER OF PRESENTATION**

The order of presentation at the hearing shall be as follows:

- a. Opening statement of Management; ✓
- b. Opening statement of Employee; ✓
- c. Presentation by Management of evidence in support of the charges;
- d. Presentation by the Employee of such evidence in defense or rebuttal;
- e. Closing statement of Management;
- f. Closing statement of Employee.

**RULE 11.3 WITNESSES**

Both parties are entitled to produce witnesses. *The party who calls for the witness is responsible for whatever witness fee the witness is entitled to.*

*Except as otherwise provided in Rule 9.7, the department or agency head or his designee ~~deputy~~ shall be in attendance without subpoena.*

Except as otherwise provided in Rule 9.6, the Employee shall be in attendance without subpoena.

and the exhibits admitted during the hearing, together with all pleading and documents filed by the parties, shall constitute the official record of a hearing.

**RULE 11.4.1      OTHER RECORDINGS**

Filming, *still photography*, video taping or audio recording of a hearing or other proceeding before the CSC by any person is permitted by the CSC only upon written motion or request. *The CSC may delegate such approval to the Executive Director.*

**RULE 11.4.2      COPIES OF RECORDINGS**

Copies of the audio tape *or digital* recording of hearings will be made available to any person at cost.

**RULE 11.5.      OPENING AND CLOSING**

*Each party shall be limited to an opening statement and closing argument not to exceed 15 minutes in length. The CSC presiding officer may grant additional time not to exceed 5 minutes upon the request of the party.*

**RULE 11.5.1      LIMITATION IN THE SCOPE OF HEARINGS ON THE MERITS**

The scope of the hearing on the merits shall be limited to:

- a. the issue in dispute; and
- b. a review of compliance with procedural requirements for effecting an adverse action;

**RULE 11.6      DELIBERATIONS**

The deliberation of the CSC regarding the merits of actions and motions shall be

**Naomi Gonzales**

---

**From:** Dave Q. Peredo [david.peredo@gfd.guam.gov]  
**Sent:** Tuesday, November 17, 2009 8:49 PM  
**To:** Naomi Gonzales  
**Subject:** Proposed Amended

Hafa Adai, Naomi,

Sorry for not saying hi to you last night at the hearing but was great to see you again.

I know I didn't provide a written testimony for the hearing. I was there to observe and to listen on comments from all interested parties.

Anyhow, just to share on one concern of the amendment most specifically on section 5.2.2 on the **COMPUTATION OF TIME:** To clarify the language; is it to say 10 work days or 10 calendar days for the purpose of filing a Notice of Appeal? We just want to make sure the 10 day rule for the employee to respond to the NPAA is not going to be 10 working days. Just want to make sure that there will be no confusion by anyone to interpret that rule in the DOA rules and regs by referencing the CSC rules that might be challenged.

I hope my thoughts makes sense. Please let me know.

Have a great day and be safe.

Dave Peredo  
GFD



GOVERNMENT OF GUAM



CIVIL SERVICE COMMISSION
KUMISION I SETBISION SIBIT

7th Floor, International Trade Center (ITC Bldg.)
Marine Drive, Tamuning 96913
P.O. Box 3156 Hagatna, Guam 96932
Tel: 647-1855/57 Fax: 647-1867

CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS

MINUTES OF MEETING
TUESDAY

17 November 2009

The Civil Service Commission, Board of Commissioners met on Tuesday, 17 November 2009, in the CSC conference room, 7th Floor, International Trading Center (ITC Building), Suite 709, Marine Corp Drive, Tamuning Guam.

Table with 2 columns: Board members present were, CSC staff present were. Lists names and titles of attendees.

I. CALL TO ORDER:

The meeting was called to order at 5:45 p.m.

II. APPROVAL OF MINUTES:

Vice-Chair Pinauin moved to approve the minutes of 10 November 2009 and was seconded by Commissioner Hongyee.

III. OLD BUSINESS: NONE

IV. NEW BUSINESS:

- 1. Rules for Procedure for Adverse Action Appeals
2. Rules for Public Employee Protection Act Complaints

Executive Director briefed the Commissioners that a Public Notice went out 10/30/09 and was published in Marianas Variety and is in compliance with the Administrative Adjudication Act..

The following individuals attended the Public Hearing,

- 1. Frank Diaz-GWA Provided written comments
2. Margaret Cruz-DOE Provided written comments
3. Joaquin Flores-GPA Provided written comments
4. Julie Quinata-GPA
5. Vivian Atoigue-GIAA
6. David Q. Peredo-GFD Provided written comments via email to Executive Director
7. Art Agüero-GHURA
8. Therese P. Roberto

ORIGINAL

9. Christine Taitague
10. Graham Botha-GWA
11. Julie Quinata
12. Kimberly K. Bersamin-GHURA

The individuals made comments for the following rules.

**Rule 5.2**

GWA- Recommends removing the language involving willful evasion of service, unless what constitutes "Willful evasion" is defined. Also concerned about who bears the burden of proving willful evasion. Recommend that via e-mail be included in part of filing to cut cost down.

GPA- Need to provide a definition for the term "reasonable time"

**Rule 5.2.2**

GWA is concerned the CSC cannot modify the 20-days time period for filing an appeal of an adverse action

GFD- concerned that the 10 "working days" computation in CSC's rules is different from DOA's Personnel Rules 10 "calendar days" when computing how much time an employee is given to respond to a Proposed Adverse Action.

**Rule 5.3.2**

GWA- concerned that permitting an amendment to an appeal after the 20 days gives the employee "another bit [sic] at the apple" and is also a de-facto extension of time to file an appeal.

**Rule 5.4**

**PEP RULE 11.2**

GPA- (a) recommends defining "reasonable Time" that an employee has to prepare his case.

**PEP Rule 18: SUBPOENAS**

GWA- Rule 6.1: Recommends including service by email if at all practicable.

Rule 6(d): Recommends not referring to methods of service under the Guam Rules of Civil Procedure because GRCP permits service by publication and GWA states that CSC rules need to be "crystal clear" as to what types of service is required or permitted at all times.\

GPA- Rule 6.1(a): Recommends qualifying who can receive a document upon "personal delivery" in the event the employee is not available.

**Rule 7.1**

GWA- Recommends amending the language to reflect that parties may represent themselves. Also recommends, with the exception of a hearing on the merits, not requiring the director or party to be present at motion hearings, status conferences, and other pre-hearing matters if they represented by a lawyer.

**Rule 8**

GWA- recommends that all orders by the Executive Director, and not just on discovery issues, should be reviewable by the Board.

**Rule 8.1**

GWA- recommends that all orders by the Executive Director, and not just on discovery issues, should be reviewable by the Board. If they negatively impact a case, such as timing for appearances, etc. Also recommend increasing the 48-hours time period to request for a review of the Executive Director's order.



**Rule 9**

DOE- Recommends rescheduling a hearing if a late document is allowed in the interest of fairness to the Board and parties to give enough time to review the late document.

**Rule 9.3**

GWA- questions the type of sanction that can be imposed. Also concerned about how the Commissioners can approve a late document without seeing it first.

DOE- Recommends rescheduling a hearing if a late document is allowed in the interest of fairness to the Board and parties to give enough time to review the late document.

**Rule 9.4**

GWA- Recommends allowing continuances right up to the hearing date since representatives can get sick, have court hearings, or other emergencies.

**Rule 9.4.2**

GWA- Recommends changing the rule to recognize the differences in the standards of proof between a criminal case and a civil administrative proceeding, since witness may leave and memories may fade and the government usually are the party that suffers from the consequences of waiting/stays.

**Rule 9.5**

GWA- opposes adding "untimely filing of the Adverse Action" as a basis of a motion to dismiss because considers this an impermissible expansion of CSC jurisdiction.

**Rule 9.7**

GPA recommends permitting designation of other managerial personnel to represent the appointing authority and act on his behalf at adverse actions hearings.

GWA- Opposes the possible dismissal of a case because of the appointing authority's or his deputy's failure to appear at every hearing, and claims there is double standard because the employee is only required to attend motion and merit hearings.

DOE- recommends changing "his deputy" to "his designee"

**Rule 9.8**

**NEW**

DOE- Recommends creating a new Rule 9.8 to include the requirement of presence of parties listed in Rule 9.7 for grievances, and to also include Rule 11.2.6(a) and (b) into this new Rule 9.8.

**Rule 10.1**

GWA- Recommends adding requirement that CSC notify the parties of the need to resubmit documents that are returned because of failure to comply with rule.

**Rule 10.2**

GWA- contends the rule is too strict and should permit other binding options.

**Rule 10.3**

GPA- Recommends specifying the time for objecting to inclusion of documents to number of days (i.e., one day) rather than the current language of "twenty-four hours" period.

GWA- concerned that the rule does not have a provision that allows for the documents to be held by CSC to allow the parties time to file their objections. Is also concerned who will decide if an objection is made, and believes there should be a right to interlocutory appeal to the Superior Court if a document is determined to be excluded.

**Rule 11**

GWA- Recommends keeping the burden of proof as a preponderance of the evidence. Recommends permitting a motion to dismiss for an employee's failure to provide documents to management.

DOE- Recommends applying a motion to dismiss for failure to comply with the Commission's order regarding discovery to both the parties (i.e., management and employee).

**Rule 11.2.2**

GWA- Recommends that all issues governing admissibility of evidence are heard by the Board either on appeal from a decision by the Admin. Counsel or Executive Director, or directly.

**Rule 11.3.4**

GWA- Recommends adding the following language, "all witness should be treated with respect and be free from restraint, interference, coercion, discrimination or reprisal in presenting testimony.

**Rule 11.5.1**

DOE-recommends including Rule 11.2.6(a) and (b) into rule.

**Rule 11.3.4**

GWA- Recommends adding the following language, "all witnesses should be treated with respect and be free from restraint, interference, coercion, discrimination or reprisal in presenting testimony.

**Rule 11.5.1**

DOE recommends including Rule 11.2.6(a) and (b) into rule.

**Rule 13.2**

GPA- Recommends adding language that GovGuam employees who are lay representatives must have a business license and authorization for outside employment if they are going to charge for their time spent at hearings, status calls, and conferences.

GWA-objects to reimbursing cost solely to employee and asks that the government be able to receive costs it incurs if the employee is determined to have filed a "Frivolous appeal"

**Rule 13.4**

GWA- Recommends those attorneys should not be required to file any document to affirm that they have read the rules and statute applicable to the action since attorneys are already duty bound under ethical rules.

Chairman Baza thanked all that came and showed their support. Informed all that their recommendations will be put into consideration.

Motion made by Chairman Baza to continued on Thursday, 17 November 2009. All present agreed.

**V. GENERAL BUSINESS: NONE**

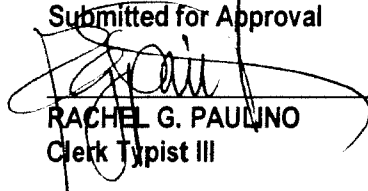
**1. *Bills and Laws Affecting CSC***

**VI. EXECUTIVE SESSION: NONE**

VII. ADJOURNMENT:

Upon a motion made by Commissioner Hongyee and seconded by Commissioner Smith, the Board adjourned at approximately 1847 hours, all present agreed.

APPROVED BY:  
  
\_\_\_\_\_  
LUIS R. BAZA, Chairman

Submitted for Approval  
  
\_\_\_\_\_  
RACHEL G. PAULINO  
Clerk Typist III

**CIVIL SERVICE COMMISSION  
GOVERNMENT OF GUAM  
TERRITORY OF GUAM**

**PROPOSED AMENDED**

**RULES OF PROCEDURE FOR ADVERSE ACTION APPEALS**

Rule 1	Jurisdiction.
Rule 2	Purpose.
Rule 2.1	Unrepresented Party.
Rule 3	Citation.
Rule 4.	Citation to Laws as Rules.
Rule 4.1	Citation to Related Law.
Rule 5	Right to Appeal.
Rule 5.1	Adverse Action.
Rule 5.2	Time for Filing Appeal.
Rule 5.2.1	Filing Past the Twenty Day Period.
Rule 5.2.2	Computation of Time.
Rule 5.3	Contents of Appeal.
Rule 5.3.1	Contents.
Rule 5.4	Rights of Employee Who Files an Appeal.
Rule 6	Service of Documents.
Rule 6.1	How Service is Performed.
Rule 7.	Conferences.
Rule 7.1	Status Call Conference.
Rule 7.2	Pre-Hearing Conference.
Rule 8	Discovery.
Rule 8.1	Review of Orders.
Rule 9	Pre-Hearing Motions and Burden of Proof.
Rule 9.1	Arguments on Motions.
Rule 9.1.1	Issues Raised By the Commission.
Rule 9.2	Motion Filing Schedule.
Rule 9.3	Failure to File.
Rule 9.4	Motions to Postpone Hearings.
Rule 9.4.1	Continuances Other Than in Rule 9.4.
Rule 9.4.2	Stays.
Rule 9.5	Motions to Dismiss.
Rule 9.6	Motion to Allow Hearing in the Absence of the Employee.
Rule 9.7	Presence of Management Required.
Rule 10.	Submission of Documents for Introduction Into Evidence.
Rule 10.1	Time for Submission of Documents.
Rule 10.1.1	Required Documents from Management.
Rule 10.1.2	Required Documents from Employee.

- Rule 10.2 Documents to be Bound.
  - Rule 10.2.1 Identification of Management's Documents.
  - Rule 10.2.2 Identification of Employee's Documents.
  - Rule 10.2.3 Number of Copies.
- Rule 10.3 Objection to Inclusion of Documents.
- Rule 11. Hearing on the Merits – Burden of Proof.
  - Rule 11.1 Place and Time of Hearing.
  - Rule 11.2 Conduct of Hearing.
    - Rule 11.2.1 Manner of Hearing.
    - Rule 11.2.2 Admissibility of Evidence.
    - Rule 11.2.3 Oath.
    - Rule 11.2.4 Right to Call Witnesses.
    - Rule 11.2.5 Rules of Evidence.
    - Rule 11.2.6 Order of Presentation.
  - Rule 11.3 Witnesses.
    - Rule 11.3.1 Additional Witnesses and Documents.
    - Rule 11.3.2 Subpoenas.
      - Rule 11.3.2.1 Subpoena Fees.
      - Rule 11.3.2.2 Enforcement of Subpoena.
    - Rule 11.3.3 Duty Status.
    - Rule 11.3.4 Treatment of Witnesses.
  - Rule 11.4 Record of Hearing.
    - Rule 11.4.1 Other Recordings.
    - Rule 11.4.2 Copies of Recordings.
- Rule 11.5 Opening and Closing.
  - Rule 11.5.1 Limitation in the Scope of Hearings on the Merits.
- Rule 11.6 Deliberations.
  - Rule 11.6.1 Access to Evidence.
- Rule 11.7 Decision.
  - Rule 11.7.1 Sustain Adverse Action.
  - Rule 11.7.2 Revoke Adverse Action.
  - Rule 11.7.3 Modification of Adverse Action.
  - Rule 11.7.4 Procedural Defect.
  - Rule 11.7.5 Judgment.
  - Rule 11.7.6 Compliance with Judgment.
  - Rule 11.7.7 Reconsideration or Amendment (Time to Seek Judicial Review)
  - Rule 11.7.8 Judicial Review.
- Rule 12 Termination of Appeal.
  - Rule 12.1 Death of Employee.
- Rule 13 Representation of Employees By Persons Who are Not Employees.
  - Rule 13.1 Rules Relative to Lay Representatives.
  - Rule 13.2 Entry of Appearance.
  - Rule 13.3 Withdrawal as Lay Representative.
  - Rule 13.4 Lay Representative Required Reading.
- Rule 14 Hearing Counsel.

Rule 14.1           Hearing Procedure.  
Rule 14.2           Written Findings.  
Rule 14.3           Parties' Input.

**RULE 1     JURISDICTION**

The Civil Service Commission (hereafter "the CSC") is empowered to create these Rules pursuant to 4 G.C.A. §§ (4403(b)), 4406, and 4409.

These rules are effective INSERT NEW DATE .

**RULE 2     PURPOSE**

The purpose of these Rules is to create a fair process with which to adjudicate Adverse Action Appeals (hereafter referred to as an "action").

**RULE 2.1   UNREPRESENTED PARTY**

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

**RULE 3     CITATION**

These Rules may be cited as CSC AA R. #, and then the number (ex. "CSC AA R. 3"); and may also be referred to as the AA Rules of the Civil Service Commission.

**RULE 4     CITATION TO LAWS AS RULES**

Many of these Rules paraphrase existing laws. For example, Rule 5.2 states that an appeal from an adverse action must be taken within twenty (20) days from the effective date of the action. 4 G.C.A. § 4406 establishes the twenty (20) day period by

law.

#### **RULE 4.1    CITATION TO RELATED LAW**

The reason certain laws are paraphrased as Rules is that Employees against whom adverse actions are taken are generally given a copy of these Rules by Management or have these Rules available. The CSC believes it important to inform Employees of laws critical to their appeal by including some of these laws in these Rules. When a Rule is related to a law, a citation to the law shall be included.

#### **RULE 5    RIGHT TO APPEAL**

A person may appeal an adverse action to the CSC, if the person meets all of the following criteria:

- A. Is a permanent, classified Employee, and
- B. Has successfully completed his (hereafter his also means her) probationary period, and
- C. Is subjected to an Adverse Action, and
- D. Is entitled under his department's or agency's Personnel Rules to appeal to the CSC.

See: 4 G.C.A. § 4403(b) and 4406.

#### **RULE 5.1    ADVERSE ACTION**

An adverse action is a termination from employment, or a suspension from employment or a demotion in employment.

See: 4 G.C.A. § 4403(b)

#### **RULE 5.2    TIME FOR FILING APPEAL**

An appeal from an adverse action must be filed in writing with the CSC, during normal working hours, within twenty (20) days of the employee's receipt of the Final Notice of Adverse Action from Management.

If the Employee willfully evades service of the Final Notice of Adverse Action, the twenty (20) day period referred to above begins to run on the day the Employee first willfully evades service.

The term "service" is defined in Rule 6.

"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.

See: 4 G.C.A. § 4406.

### **5.2.1 FILING PAST THE TWENTY (20) DAY PERIOD**

The CSC may not excuse the filing of a Notice of Appeal beyond the twenty (20) day period if the Employee proves a compelling reason for his failure to timely file.

See: *Guam Dept. of Ed. v. Narcisso and CSC*, Superior Court of Guam Special Proceedings Case No. SP0245-08 (Sept. 2009)

### **5.2.2 COMPUTATION OF TIME**

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 Notice of Appeal, if the last day falls on a weekend or holiday, the document shall be accepted via facsimile to the Commission on or by the twentieth (20<sup>th</sup>) day.



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 5.3 CONTENTS OF APPEAL**

The Notice of Appeal shall be in the following format:

**CIVIL SERVICE COMMISSION  
GOVERNMENT OF GUAM**

**(Name of Employee)** \_\_\_\_\_ **ADVERSE ACTION #** \_\_\_\_\_  
**EMPLOYEE**  
vs.

**(Name of Department/Agency)** \_\_\_\_\_ **NOTICE OF APPEAL**  
**MANAGEMENT**

**RULE 5.3.1 CONTENTS**

The Notice of Appeal shall be a brief, plain statement, either typed or hand-written, stating why the Employee believes the adverse action should not have been taken against him. Employee or designated person with power of attorney must sign the notice of appeal.

The parties to an adverse action appeal are to be identified as the **EMPLOYEE** and as **MANAGEMENT**. The Employee and Management to an action are collectively referred to as the "parties".

**RULE 5.4 RIGHTS OF EMPLOYEE WHO FILES AN APPEAL**

The Employee shall:

- a. have a reasonable time which may not exceed twenty (20) work days to prepare his case, if on duty;
- b. have the right to be represented by an attorney, another person who

is not an attorney, or represent himself; and

- c. not suffer from Management any restraint, coercion, discrimination or reprisal for filing an appeal of an adverse action, either during the appeal process or after it has been adjudicated;
- d. read, understand, and indicate such by signing the "Disclosure and Release of Information" form provided by the CSC upon filing of his appeal.

## **RULE 6     SERVICE OF DOCUMENTS**

All documents filed with the CSC, except for the Final Notice of Adverse Action and the Notice of Appeal, shall be served by the parties on each other or to the other's representative or lawyer. The exception to this is when the CSC Board Chairman requests the prevailing party to provide a draft Decision and Judgment. Service means giving a copy of a document to a party, a party's representative or lawyer on record with the Commission.

### **RULE 6.1    HOW SERVICE IS PERFORMED**

Service may be made by the parties and Commission as follows:

- a. Personal delivery, with a copy of the document acknowledged in writing to have been received; 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 as to the date of mailing; or certified mail with a signed return receipt; or
- d. By any method of service established by the Superior Court of Guam's Rules of Civil Procedure.

## **RULE 7     CONFERENCES**

### **RULE 7.1    STATUS CALL CONFERENCE**

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

At the status call, the parties shall ensure that an Entry of Appearance is provided. At the Status Call conference, the parties or their representatives shall be prepared to discuss:

- a. The legal issues of the action;
- b. Pre-hearing motions;
- c. Witnesses and documentary evidence;
- d. The possibility of settlement; and
- e. The date of the hearing on the merits.

**RULE 7.2    PRE-HEARING CONFERENCE**

Four (4) weeks or at a designated time set by the Executive Director or his designee, before the hearing on the merits, the parties shall meet with the Executive Director or his designee at a pre-hearing conference to finalize witness lists and exhibits, and to discuss stipulations or other matters that may expedite the hearing on the merits.

**RULE 8    DISCOVERY**

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

- A. Issuing orders compelling discovery;
- B. Issuing orders limiting the scope and nature of discovery;

- C. Issuing orders establishing dates for completion of discovery; and
- D. Issuing protective orders regarding discovery.

**RULE 8.1 REVIEW OF ORDERS**

Any order regarding discovery that is issued by the Executive Director or his designee is subject to review by the Civil Service Board of Commissioners, if a party requests such a review by filing an appropriate motion with the CSC within two (2) days (holidays and weekends excluded) of receipt of the order.

See: 4 G.C.A. § 4406

**RULE 9 PRE-HEARING MOTIONS AND BURDEN OF PROOF**

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

All pre-hearing motions must be in writing and must be filed and then served on all other parties at the time designated by the Executive Director or his designee. No late filings shall be accepted.

**RULE 9.1 ARGUMENTS ON MOTIONS**

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

**RULE 9.1.1 ISSUES RAISED BY THE COMMISSION**

Any Commissioner may, at any time, raise issues not raised by motion of the parties. Upon a majority vote of the CSC, such issues must be addressed by the parties and decided

by the CSC.

**RULE 9.2 MOTION FILING SCHEDULE**

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

A motion may be supported by affidavits, but no live testimony shall be taken at a motion hearing unless the Commission approves a request beforehand for live testimony to assist in a determination of the motion.

Unless otherwise predetermined by an Order established at the Status Call by the Executive Director or his 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.

No reply briefs shall be filed or accepted by the Commission unless with the written approval of the Executive Director or his designee.

**RULE 9.3 FAILURE TO FILE**

Failure of either party to file their motion on time will result in the matter proceeding to a hearing on the merits.

**RULE 9.4 MOTIONS TO POSTPONE HEARINGS**

A motion to continue a date of hearing shall set forth the factual bases for the motion.

Continuances based on illness, emergencies, or stipulation of the parties, may be granted without hearing by the Executive Director or his designee, if said decision may be

made seven (7) days before the hearing sought to be postponed.

**RULE 9.4.1 CONTINUANCES OTHER THAN IN RULE 9.4**

The Commission's Executive Director or his designee, is empowered to grant continuances of the date of hearing, so long as the continuance is applied for more than seven (7) days before the date sought to be continued.

**RULE 9.4.2 STAYS**

The Commission's Executive Director or his designee is empowered to grant "stays" of actions when a motion to stay proceedings is brought by an Employee on the basis that the Employee has been or may be charged with a criminal offense which arises from the same factual transaction which is the basis of the adverse action.

**RULE 9.5 MOTIONS TO DISMISS**

Motions to dismiss an adverse action appeal may be made on the bases of lack of jurisdiction, untimely filing of the appeal, untimely filing of the adverse action, procedural defects in the proceeding or other significant reasons. The legal and factual bases of such motions must be sufficiently set forth in the motion and supporting affidavits.

A motion to dismiss may also be made upon stipulation of the parties. A stipulated motion to dismiss, however, must be approved by the CSC.

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.

The Parties may settle an action, but any settlement must be read into the record and approved by the CSC before the action is dismissed with prejudice.

*See: Limtiaco v. Guam Fire Dept., 2007 Guam 7.*

**RULE 9.6 MOTION TO ALLOW HEARING IN THE ABSENCE OF THE EMPLOYEE**

The CSC may dismiss an appeal if the Employee is not present for the hearing on the merits or motion hearing, unless the Employee has a reasonable excuse.

A motion to permit an Employee to be absent from the hearing on the merits or motion hearing shall set forth the factual basis for the motion. The CSC may require affidavits in support of the motion.

**RULE 9.7 PRESENCE OF MANAGEMENT REQUIRED**

The appointing authority or his deputy shall be present at all adverse action hearings. The Commission may excuse the presence of the appointing authority or deputy for reasonable cause.

The Commission may dismiss the adverse action for the failure of the appointing authority or his deputy to appear.

**MANAGEMENT** is defined to be the appointing authority or his deputy with settlement authority. An appointing authority who wishes to have his deputy appear on his behalf shall file such authorization at a Status Call or prior to a hearing, which also shall indicate that the deputy has settlement authority.

**RULE 10 SUBMISSION OF DOCUMENTS FOR INTRODUCTION INTO EVIDENCE**

**RULE 10.1 TIME FOR SUBMISSION OF DOCUMENTS**

No later than twenty-eight (28) days before a hearing on the merits or a motion

hearing, or at a time designated by the Executive Director or his designee, each party shall submit to the CSC all documents it wishes the CSC to consider.

With the exception of the notices of proposed and final adverse action, all documents submitted by the parties to the CSC must be edited beforehand to conceal 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 not considered by the CSC for purposes of the scheduled hearing.

**RULE 10.1.1 REQUIRED DOCUMENTS FROM MANAGEMENT**

Management shall submit to the CSC the Notice of Proposed Adverse Action and the Notice of Final Adverse Action.

**RULE 10.1.2 REQUIRED DOCUMENTS FROM EMPLOYEE**

Employee shall submit to the CSC the Notice of Appeal of Adverse Action.

**RULE 10.2 DOCUMENTS TO BE BOUND**

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

**RULE 10.2.1 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 10.2.2 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 10.2.3 NUMBER OF COPIES**

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

**RULE 10.3 OBJECTION TO INCLUSION OF DOCUMENTS**

The opposing party may object to the inclusion of a document for a hearing on the merits or motion hearing prior to it being sent to the CSC Commissioners by filing a written objection to that document, along with the reason and other documents supporting the exclusion, within one (1) day after receipt by the CSC.

The objected document will be excluded from the packet and its submission will be decided during the hearing on the merits or motion hearing if such document is introduced or referred to.

**RULE 11 HEARING ON THE MERITS --- BURDEN OF PROOF**

The burden of proof on the merits is on Management to prove its allegations by clear and convincing evidence. If, however, Management's allegations would constitute criminal charges, then Management bears the burden of proof to prove the allegations by substantial evidence.

The Commission may dismiss the adverse action in favor of Employee for the failure of Management to comply with a Commission's order regarding discovery.

See: 4 G.C.A. §§ 4407(a) and 4407(c)

**RULE 11.1 PLACE AND TIME OF HEARING**

The Commission shall set the place, date and time of hearing as expeditiously as possible.

**RULE 11.2 CONDUCT OF HEARING**

The hearing is open to the public.

**RULE 11.2.1 MANNER OF HEARING**

The hearing will be conducted so as to bring out pertinent facts, including the production of certain records.

**RULE 11.2.2 ADMISSIBILITY OF EVIDENCE**

Decisions on the admissibility of testimony or other evidence are made by the presiding officer of the CSC after consulting with the Administrative Counsel. When a Commissioner objects to a decision of the presiding officer, the objection shall be sustained by not less than four (4) concurring votes.

The CSC may designate the Administrative Counsel as Hearing Counsel pursuant to Rule 14 et seq. herein.

**RULE 11.2.3 OATH**

Testimony is under oath or affirmation.

**RULE 11.2.4 RIGHT TO CALL WITNESSES**

Each party shall have the right to call, examine, or cross-examine witnesses, and introduce exhibits.

The CSC may subpoena to testify any person upon a majority vote.

Any Commissioner may direct relevant questions to a witness after examination of the witness has been completed by both parties; except that questions may be asked during examination by a Party to clarify a response by a witness.

**RULE 11.2.5            RULES OF EVIDENCE**

The Rules of Evidence, Title 6 G.C.A., shall not apply. The only grounds for excluding any proffered evidence are that the evidence is irrelevant or unduly repetitious or is filed untimely.

**RULE 11.2.6            ORDER OF PRESENTATION**

The order of presentation at the hearing shall be as follows:

- a. Opening statement of Management;
- b. Opening statement of Employee;
- c. Presentation by Management of evidence in support of the charges;
- d. Presentation by the Employee of such evidence in defense or rebuttal;
- e. Closing statement of Management;
- f. Closing statement of Employee.

**RULE 11.3    WITNESSES**

Both parties are entitled to produce witnesses. The party who calls for the witness is responsible for whatever witness fee the witness is entitled to.

Except as otherwise provided in Rule 9.7, the department or agency head or his deputy shall be in attendance without subpoena.

Except as otherwise provided in Rule 9.6, the Employee shall be in attendance without subpoena.

**RULE 11.3.1            ADDITIONAL WITNESSES AND DOCUMENTS**

The CSC may call additional witnesses, as it may deem necessary, and require the production of documents.

**RULE 11.3.2            SUBPOENAS**

The Chairperson of the Civil Service Commission or the Executive Director, upon their own initiative, or upon the request of any member of the CSC Board, or upon the request of any party before the CSC, may summons in writing any person to attend a meeting of the CSC as a witness and, in a proper case, to bring with him any book, record, computer print-out, paper or thing which may be deemed material evidence in the case.

Subpoenas shall be served by the party who requested the issuance of the subpoena as per Rule 6 and Rule 6.1.

**RULE 11.3.2.1        SUBPOENA FEES**

The fees for such attendance shall be the same as the fees of the witnesses before the Superior Court, except that if the witness is a government employee no witness fee shall be given. Upon motion, the fee may be waived by the CSC.

The subpoena shall issue in the name of the Civil Service Commission, and shall be directed to the person and served in the same manner as subpoenas to appear and testify before the Superior Court of Guam. The party requesting the subpoena is responsible for whatever witness fee the witness may be entitled to.

**RULE 11.3.2.2      ENFORCEMENT OF SUBPOENA**

If any person summoned to testify shall refuse or neglect to obey said subpoena, upon petition, the Superior Court of Guam may compel the attendance of such person before the CSC, or punish said person 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.

**RULE 11.3.3      DUTY STATUS**

An Employee is considered to be on duty status during the time he is made available as a witness. Such employee is entitled to compensatory time-off if he serves during a time he is not normally scheduled to work. The CSC shall furnish the head of the department or agency in which the witness is employed, if so requested in writing, a certification showing the time devoted to the hearing. "Employee" in this section does not include the parties to the appeal or their representatives.

**RULE 11.3.4      TREATMENT OF WITNESSES**

The CSC shall ensure that all witnesses are treated with courtesy and respect while giving testimony at the hearing.

The Government of Guam shall assure witnesses freedom from restraint, interference, coercion, discrimination, or reprisal in presenting testimony.

See: 9 G.C.A. § 5545.

**RULE 11.4      RECORD OF HEARING**

All hearings shall be audio tape or digitally recorded by the CSC and maintained thereafter in accordance with the CSC's records management policy. The CSC's recordings and the exhibits admitted during the hearing, together with all pleading and documents filed by the parties, shall constitute the official record of a hearing.

**RULE 11.4.1      OTHER RECORDINGS**

Filming, still photography, video taping or audio recording of a hearing or other proceeding before the CSC by any person is permitted by the CSC only upon written motion or request. The CSC may delegate such approval to the Executive Director.

**RULE 11.4.2      COPIES OF RECORDINGS**

Copies of the audio tape or digital recording of hearings will be made available to any person at cost.

**RULE 11.5.      OPENING AND CLOSING**

Each party shall be limited to an opening statement and closing argument not to exceed 15 minutes in length. The CSC presiding officer may grant additional time not to exceed 5 minutes upon the request of the party.

**RULE 11.5.1      LIMITATION IN THE SCOPE OF HEARINGS ON THE MERITS**

The scope of the hearing on the merits shall be limited to:

- a. the issue in dispute; and
- b. a review of compliance with procedural requirements for effecting an adverse action;

**RULE 11.6 DELIBERATIONS**

The deliberation of the CSC regarding the merits of actions and motions shall be made in public. (See *GMHA v. CSC v. Manzon*; Superior Court of Guam Case No. SP0052-00 (DATE))

**RULE 11.6.1 ACCESS TO EVIDENCE**

The Commissioners shall have available to them during their deliberation all items received into evidence in the action.

**RULE 11.7 DECISION**

The CSC shall decide the appeal on the basis of the evidence presented.

See: 4 G.C.A. 4406

**RULE 11.7.1 SUSTAIN ADVERSE ACTION**

Except as provided in Rule 11.7.3 below, if Management proves the charges against the Employee, the CSC shall sustain the adverse action.

**RULE 11.7.2 REVOKE ADVERSE ACTION**

If Management fails to prove the charges, the CSC shall revoke the adverse action.

**RULE 11.7.3 MODIFICATION OF ADVERSE ACTION**

If Management proves the charges, but the CSC finds, that because of the Employee's past record or the gravity of the offense, or the facts and circumstances of the case, that the adverse action should be modified, it may modify the adverse action accordingly. The reasons for such modification shall be stated in the decision of the CSC.

Any compensation or benefits due as a result of the modification shall be restored to the Employee. The CSC may not modify an adverse action to the Employee's detriment.

In the event the CSC modifies the adverse action taken by Management, the CSC shall make a separate determination as to whether the Employee has prevailed for purposes of awarding attorney fees to the Employee.

See: 4 G.C.A. § 4406.

**RULE 11.7.4            PROCEDURAL DEFECT**

If the CSC finds that the adverse action was procedurally defective because it violated personnel rules or law, it may void or revoke the adverse action as it considers fair and equitable under the facts and circumstances of the action.

See: 4 G.C.A. §§ 4403(d) and 4406

**RULE 11.7.5            JUDGMENT**

A judgment is the final administrative adjudication of the Commission on an ~~an action~~ 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, 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. 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.

A quorum of the Commission shall be four (4) members.

The judgment shall recite the numerical vote of the Commission in deciding an adverse action. 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 G.C.A. § 4402.

#### **RULE 11.7.6 COMPLIANCE WITH JUDGMENT**

Within thirty (30) days of the entry of any judgment that requires a department or agency to take affirmative action(s), the director or agency head shall report to the Commission what steps he or she has taken to implement the terms of the judgment.

#### **RULE 11.7.7 RECONSIDERATION OR AMENDMENT (Time to seek Judicial Review)**

A party may move the Commission to reconsider or amend its judgment by filing a motion with the Commission within ten (10) days of entry of the judgment.

The filing of a motion to reconsider or amend does not affect the time limit imposed by law to file a Petition for Judicial Review with the Superior Court of Guam.

If a motion to amend or reconsider is not decided within thirty (30) days of the entry of a judgment, the motion is denied.

#### **RULE 11.7.8 JUDICIAL REVIEW**

Judicial review of the judgment of the CSC may be had by filing appropriate pleadings with the Superior Court of Guam within thirty (30) days after judgment is entered. See *Superales v. CSC and GIAA*; Superior Court of Guam Case No. SP261-00 (DATE).

**RULE 12    TERMINATION OF APPEAL**

In addition to adjudication on the merits, the CSC may terminate an Employee's appeal:

- a.     At the Employee's request;
- b.     When the Employee fails to furnish information necessary to adjudicate the appeal.

**RULE 12.1    DEATH OF EMPLOYEE**

If an Employee dies after he has filed an appeal of an adverse action taken against him, 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 so apply within six (6) months, then the appeal shall be dismissed upon a motion by Management.

If the Estate of the Employee does so apply, then the appeal shall be adjudicated.

In the event the Employee prevails, the Estate of the Employee shall receive the compensation, but not the benefits, the Employee would have recovered up to the date of his death.

**RULE 13    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 as follows:

- a. 7 GCA § 9215(c)(16) permits a person who is not an attorney to represent an employee before the CSC in actions related to government service.
- b. 7 GCA § 9215(c)(12) permits a government employee to represent a government agency in "**administrative hearings**" as part of such person's official duties.

**RULE 13.1 RULES RELATIVE TO REPRESENTATIVES**

A non-lawyer or attorney not licensed to practice on Guam who represents an Employee before the CSC or who represents a government agency before the CSC, shall be called a "**Lay Representative.**"

All Representatives shall enter his appearance in an action by filing with the CSC an entry of appearance which shall include the written approval of his client and shall also contain the address and telephone number of the Representative.

**RULE 13.2 ENTRY OF APPEARANCE**

By entering his appearance before the CSC, the 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, the following:

- a. Disqualification from appearing before the CSC, so long as the disqualification does not prejudice the client's interest.

By agreeing to be a Representative, the Representative assumes an ethical and agency relationship with the Employee that he represents. Lay Representatives may not be

compensated for their services but may seek reimbursement for reasonable, actual costs incurred and substantiated with receipts in preparing for and appearing at hearings and status calls and conferences before the CSC related to the action such as, but not limited to, photocopying costs.

**RULE 13.3 WITHDRAWAL AS LAY REPRESENTATIVE**

No Lay Representative or attorney/law firm may withdraw from representing an Employee except upon motion, cause shown, and an Order of the CSC.

**RULE 13.4 LAY REPRESENTATIVE REQUIRED READING**

Every Lay Representative and attorney shall agree in writing that he has read, and is familiar with, 4 G.C.A., Chapter 4, these Rules, and the Personnel Rules applicable to the government agency that took adverse action against the Employee.

**RULE 14 HEARING COUNSEL**

The CSC, by a majority vote, may designate its Administrative Counsel to act as Hearing Counsel. When so designated, the CSC shall assign the Hearing Counsel to conduct evidentiary hearings on specific issues. The issues shall be within the jurisdiction of the CSC.

**RULE 14.1 HEARING PROCEDURE**

Hearing Counsel shall use these Rules in conducting hearings.

Hearing Counsel shall administer oaths to witnesses.

**RULE 14.2 WRITTEN FINDINGS**

Hearing Counsel shall make written proposed findings of fact and conclusions of law which shall be served on the Parties. The findings shall then be submitted to the CSC who may accept, reject or modify the findings or may conduct its own hearing on the issue(s).

**RULE 14.3 PARTIES' INPUT**

The Parties shall be informed of the date on which the CSC shall deliberate the adoption of the findings and may file written objections or other written comments regarding the findings for the CSC's consideration.