



GOVERNMENT OF GUAM



**CIVIL SERVICE COMMISSION
KUMISION I SETBISION SIBIT**

7TH 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
www.csc.guam.gu

CSC NO. 2010-07

January 20, 2010

30-16-0059

TO: Honorable Speaker Judith Wonpat
30th Guam Legislature
I Liheslaturan Guahan

FROM: Executive Director

SUBJECT: **Transmission of Proposed Rules of Procedure for Public Employee Protection Act Complaints (aka "Whistleblower" Complaints)**

[Handwritten signature]
11/22/10
11/22/10

Hafa adai Speaker Wonpat!

The Civil Service Commission is hereby providing a copy of proposed rules, 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 promulgate **Rules of Procedure for Public Employee Protection Act Complaints (aka "Whistleblower" Complaints)** pursuant to 4 GCA § 4503, in compliance with 5 GCA § 9301, "Rule Making Procedures" of the Administrative Adjudication Act.

Notice of the 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 and Board concerns, the Civil Service Commission Board of Commissioners ratified the attached Rules of Procedure for Public Employee Protection Act Complaints on December 10, 2009 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 pertinent 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,
[Handwritten signature]

11/27/10

Attachments: EIS PEPA Complaints, Record of Public Hearing, Minutes of Public Hearing, Proposed Rules

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

ECONOMIC IMPACT STATEMENT

PROPOSED
RULES OF PROCEDURES FOR PUBLIC EMPLOYEE PROTECTION ACT
COMPLAINTS.

Definition of Impact:

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

PURPOSE AND NEED: The request to propose the Civil Service Commission's, Rules of Procedures for Public Employee Protection Act complaints, is to provide guidelines in a quasi judiciary setting on administrative matters. The proposed 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 propose the Civil Service Commission, Rules of Procedures for Public Employee Protection Act complaints is primary contributed to the fact that there are no rules in place. This is essential in providing guidelines to employees and management or their representatives, in the conduct of the Hearing.

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 complaints filed by employees, making it difficult to determine an average cost impact. Should an employee prevail in an "whistle blower" complaint, back pay, benefits, attorney fees, hearings, and operational costs are things to consider as cost to the government agency. Should management prevail in an "whistle blower" complaint, the total man hours and operational costs associated with defending the complaint which escalated to the hearing level are things to consider as cost to the government.

However, estimated costs associated with the proposed 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 proposal 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 proposal of these rules.

EMPLOYMENT IMPACT: NONE

The proposal 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 proposal of these rules.

BUSINESS IMPACT: NONE

The proposal 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 proposal of these rules.

ECOMOMIC IMPACT: NONE

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



GOVERNMENT OF GUAM



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7TH 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

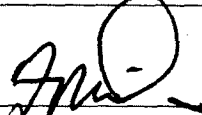

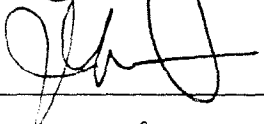

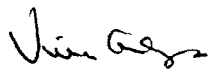
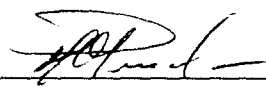

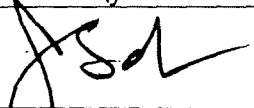
} Public testimony received

NAOMI E. LUJAN-GONZALES
Executive Director

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

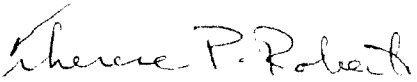



CIVIL SERVICE COMMISSION
WITNESS LIST / Attendance
SIGN-IN ROSTER
November 17, 2009

Testified
 Testified
 Testified

	PRINT NAME	SIGNATURE	DATE	TIME IN	TIME OUT
1	FRANK DIAZ		11-17-09	5:15p.	
2	Margaret Cruz		11/17/09	5:21p.	
3	JOAQUIN C. FLECK		11/17/09	5:30	
4	Kathy Diaz, DOA HR		11-17-09	5:30pm	
5	Vivian Arriaga / GSAA		11/17/09	5:40p.m.	
6	David D. Reed		11-17-09	5:45pm	
7	Art Aguerro / GTHURA-HR		11/17/09	5:45	
8	Jeff Sablan		11/17/09	5:55	

C-merit
 Check

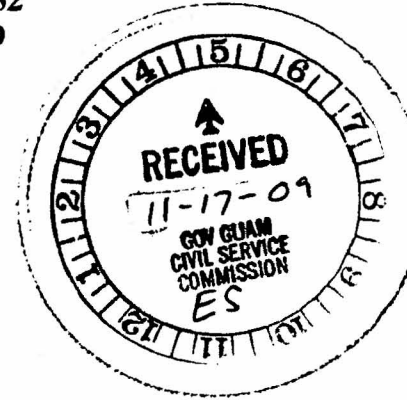
CIVIL SERVICE COMMISSION
WITNESS LIST / Attendance
SIGN-IN ROSTER
November 17, 2009

	PRINT NAME	SIGNATURE	DATE	TIME IN	TIME OUT
1	Therese P. Roberto		11/17/09	5:45	
2	HERIOTNE TATTAGUE (Attendance)		11/17/09	6:10pm	
3	Graham Botha		11/17/09		
4	Julie L. Juranek		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
7th 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 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 file, 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.

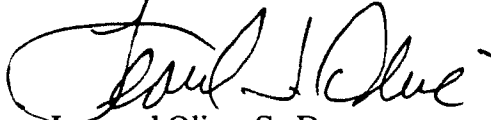
18. Rule 13.2.

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". The signature is written in black ink and is positioned above the printed name.

Leonard Olive, Sc.D.
GWA General Manager

Kin Flores
(GTM - CIPA) ✓



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)
7th Floor, International Trade Center (ITC)
Marine Drive, Tamuning, Guam 96913
P.O. Box 3156, Hagatna, Guam 96932



Dear Ms. Lujan-Gonzales,

Hafa Adai 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:

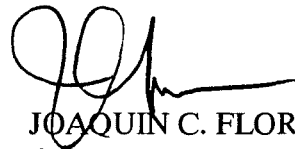
- a.) Provide a definition for the term "*reasonable time*" that is permitted an employee to prepare his/her case under Rule 5.4.a. Without some form of definition or specified period this term may be subject to various interpretations of what the term "*reasonable time*" means. Should a definition not 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

Attn: Maria Masnayan

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

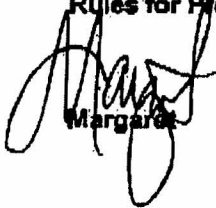
Phone: 671-647-1850 **Date:** 11/18/2009

Re: verbal testimony **CC:**

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 designec

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 Nishihara - 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.

Board members present were:	CSC staff present were:
Luis R. Baza, Chairman	Naomi Lujan Gonzales, Executive Director
Manuel R. Pinauin, Vice Chairman	Roland P. Fejeran, PMA III
John Smith, Commissioner	Maria P. Masnayan, PMA III
Lourdes B. Hongyee, Commissioner	Rachel G. Paulino, Clerk Typist III
Board members absent were:	
Priscilla R. Tuncap, Commissioner	

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 Aguero-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.

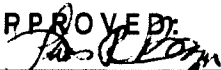
V. GENERAL BUSINESS: NONE

1. Bills and Laws Affecting CSC

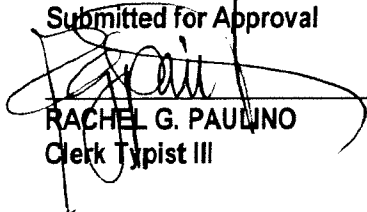
VI. EXECUTIVE SESSION: NONE

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

GOVERNMENT OF GUAM CIVIL SERVICE COMMISSION

PROPOSED

RULES FOR PUBLIC EMPLOYEE PROTECTION ACT COMPLAINTS (PURSUANT TO 4 GCA § 4503) (aka “Whistleblower” Complaints)

RULE 1: JURISDICTION

The Civil Service Commission is empowered to create these Rules pursuant to 4 GCA §§ 4502(e), 4105, (4403(i)), and 4409.

These rules are effective INSERT NEW DATE.

RULE 2: PURPOSES

The purpose of these Rules is to create a fair process with which to adjudicate Complaints filed pursuant to 4 GCA § 4503.

2.1 Unrepresented Party

The Personnel Board 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 the "Public Employee Protection" (PEP) Rule, and then the number: “CSC PEP R. #”

3.1 Citation to Laws as Rules

Many of these Rules paraphrase existing laws.

3.2 Citation Related to Law

The reason certain laws are paraphrased as Rules is that Employees who desire to take this action, would be given a copy of these Rules. The Civil Service Commission believes it is important that the employee be aware of such laws and rules.

RULE 4: DEFINITIONS

- (a) Agency: *Means any board, commission, department, division, section or other agency of the Executive Legislative or Judicial Branch of the government of Guam.*
- (b) Disciplinary Action: *Means any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below standard performance evaluation, reduction in force, withholding of work, or the threat of any such discipline or penalty.*
- (c) Disclosure of Information: *Means the written provision of evidence to any person, or the testimony before any committee of the Guam Legislature, regarding any action, policy, regulation, practice or procedure, including, but not limited to, the waste of public funds, abuse of authority or mismanagement of any agency.*
- (d) Employee: *Means any person employed by an agency.*
- (e) Personnel Board: *Means the Civil Service Commission, the Judicial Council or other government entity charged with hearing the appeal of a classified employee pursuant to Section 4105 of this Chapter or under the personnel rules governing such employee.*
- (f) Supervisor: *Means any board, commission, department head, division head or other person who supervises or is responsible for the work of one (1) or more employees.*

See: 4 GCA § 4502.

RULE 5: ACTION AGAINST THE EMPLOYEE PROHIBITED

- (a) Except as provided in (b) of this Rule, no appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information. This Section shall not apply to:
1. An employee who discloses information that he knows to be false or who discloses information with disregard for the truth or falsity thereof;
 2. An employee who discloses information from public records which are closed to public inspection pursuant to Chapter 10 of Title 5, Guam Code Annotated;
 3. An employee who discloses information which is confidential under any other provision of law.

(b) It shall be the obligation of an employee who wishes to disclose information under the protection of this Article to make a good faith effort to provide to his supervisor or appointing authority or member of the Guam Legislature, the information to be disclosed prior to the time of its disclosure.

See: 4 GCA § 4503.

RULE 6: STANDARD FOR FILING AN ACTION BY CLASSIFIED EMPLOYEES

Once a complaint is filed with the Civil Service Commission and prior to the Personnel Board reviewing a complaint, an assessment shall be undertaken by the Executive Director and the staff.

The Executive Director shall determine through its assessment whether the employee demonstrated reasonable communication to his supervisor, appointing authority or member of the Guam Legislature with regards to the alleged violation as indicated in Rule 5(b).

Such efforts should include such items as phone log records, written memorandums, or any oral acknowledgement, or acknowledgement of receipt of complaint by the supervisor or appointing authority or a member of the Guam Legislature.

If the Executive Director determines that there was no reasonable communication made, and the Personnel Board agrees with this determination, the matter will be terminated.

See: 4 GCA § 4504.

RULE 7: PROCESS FOR INVESTIGATING THE COMPLAINT

Once the Employee has established that reasonable communication was made, the Personnel Board shall cause an investigation to be made of the charges of the complaint to determine whether there is a reasonable basis for the complaint. The Executive Director shall inform the Personnel Board as to the results of this investigation.

1. The Executive Director or his/her designee will provide Management and Employee all documents obtained in its assessment to determine there are no violations of Rule 5.
2. The Personnel Board will, if the investigation establishes that there is a reasonable basis for the charges, inform the appointing authority or supervisor of the charges and shall be given written notice thereof along with any recommendation made by the Executive Director.
3. Within ten (10) days after receiving such notice, the appointing authority or supervisor may petition the Personnel Board for a hearing on the matter. The Personnel Board shall grant such hearing.

4. If the Executive Director determines that no reasonable basis for the complaint exists, and the Personnel Board agrees with this assessment, the matter will be terminated.

See: 4 GCA § 4504.

7.1: Cooperation with the Civil Service Commission Staff

All agencies and departments to whom an investigation is undertaken, shall immediately and fully cooperate with all requests made by the Civil Service Commission staff. Any unreasonable delay or refusal to cooperate will be cause to determine that a violation did take place and for the Personnel Board to issue any appropriate remedy as described in Rule 8 below.

RULE 8: SANCTIONS BY PERSONNEL BOARD

The Personnel Board, after hearing the complaint, determines that a violation of 4 GCA § 4503 and these Rules did occur, or if the alleged agency or department fails to cooperate with the Civil Service Commission staff, or if the investigation establishes a reasonable basis for the charges and no hearing is requested, the Personnel Board may order appropriate relief. Such relief shall include, but not limited to the following:

1. Reinstatement, and/or
2. Back pay, and/or
3. Restoration of lost service credit; and/or
4. Expungement of the records of the employee who disclosed information, and/or
5. Reimbursement for any costs incurred in the proceedings. Such reimbursement shall be made out of moneys appropriated to the agency which employs such employee.

RULE 9: COMPUTATION OF TIME

Whenever these Rules or orders of the Personnel Board provide for a time period of ten (10) or less days, weekends and government of Guam holidays are not to be included in the computation. Whenever these Rules provide for a time period over ten (10) days, weekends and government of Guam holidays are to be included in the computation. For purposes of filing documents, if the last day falls on a weekend or holiday, the document shall be accepted on the next business day following the weekend or holiday.

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 10: TIME FOR FILING COMPLAINT

Any employee who feels aggrieved by the retaliatory action as described in 4 GCA § 4502(b) by the appointing authority or supervisor for alleging a violation of 4 GCA § 4503, must file a complaint in writing with the Personnel Board, during normal working hours, within twenty (20) days of the action.

10.1: Filing Past the Twenty (20) Day Period

The Personnel Board may excuse the filing of a complaint beyond the twenty (20) day period if the Employee proves a compelling reason for the employee's failure to timely file.

RULE 11: HEADING OF COMPLAINT

The Notice of Complaint shall be the following format:

**CIVIL SERVICE COMMISSION
PERSONNEL BOARD
GOVERNMENT OF GUAM**

PEPA Case No. _____

(Name of Employee)
EMPLOYEE,

**PUBLIC EMPLOYEE PROTECTION
COMPLAINT**

vs.

(Department of Agency/Department)
MANAGEMENT.

11.1 Contents

The Complaint shall be a brief, plain statement, either typed or hand-written, stating why the Employee believes the Complaint is justified. The parties to the Complaint are to be identified as the EMPLOYEE and as MANAGEMENT. The Employee and Management to an action are collectively referred to as the "parties".

11.2 Right of Employee Who Files a Complaint

The Employee shall:

- a) have 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 at his own cost, lay representative, or represent himself; and
- c) not suffer from Management any restraint, coercion, discrimination or reprisal for filing the complaint.

RULE 12: HEARING OF COMPLAINT

Should the appointing authority request for a hearing, the hearing shall be heard as quickly as possible. The burden of proof on the merits is on Employee to show that the action of the appointing authority was improper. The hearing will be conducted so as to bring out the pertinent facts.

12.1 Pre-Hearing Conference

At least four (4) weeks before the hearing on the merits at a designated time by the Executive Director or his designee, 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 stipulation or other matters that may expedite the hearing on the merits.

12.2 Discovery

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

1. Issuing orders compelling discovery;
2. Issuing orders limiting the scope and nature of discovery;
3. Issuing orders establishing dates for completion of discovery; and
4. Issuing protective orders regarding discovery.

12.3 Review of Discovery Order

Any order regarding discovery that is issued by the Executive Director or his designee is subject to review by the Personnel Board, if the party requests such a review by filing an appropriate motion with the Civil Service Commission within forty-eight (48) hours (holidays and weekends excluded) of receipt of the order.

RULE 13: CONDUCT OF HEARING

The hearing shall be open to the public.

RULE 14: OATH

The testimony is under oath or affirmation

RULE 15: RULES OF EVIDENCE

The Rules of Evidence, Title 6 of the Guam Code Annotated shall not apply. The only grounds for excluding any proffered evidence are that the evidence is irrelevant or unduly repetitious.

RULE 16: ORDER OF PRESENTATION

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

1. Presentation of investigation report by the Executive Director or his designee.
2. Presentation by Management of evidence in defense or rebuttal.

RULE 17: WITNESS

Both parties are entitled to produce witnesses.

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

The Personnel Board may issue subpoena to any person to testify upon a majority vote.

Any Personnel Board member 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.

The department/agency head or his deputy along with his department's/agency's representative shall be in attendance without subpoena on all matters presented before the Personnel Board. The department's/agency's representative is a separate representative from that of the department/agency head or his deputy.

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

RULE 18: SUBPOENAS

The Chairperson of the Personnel Board or the Executive Director, upon their own initiative, or upon the request of any member of the Personnel Board, or upon the request of any party before the Personnel Board, may summons in writing any person to attend a meeting of the Personnel Board 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 in the following manner:

1. On each other, or to the other's representative or lawyer.

2. Personal delivery, with a copy of the document acknowledged in writing to have been received; or
3. By facsimile to a representative or attorney's place of business with a confirmed receipt; or
4. Regular mail with supporting affidavit as to the date of the mailing; or certified mail with a signed returned receipt or;
5. By any method of service established by the Superior Court of Guam's Rules of Civil Procedure.

See: 4 GCA § 4404.

18.1 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 Personnel Board.

The subpoena shall issue in the name of the Civil Service Commission - Personnel Board, 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.

18.2 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 Personnel Board, 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.

18.3 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 Personnel Board shall furnish the head of the department or agency in which the witness is employed, a certification showing the time devoted to the hearing. "Employee" does not include the parties to the appeal or their representatives.

18.4 Witness Treatment

The Personnel Board 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: 4 GCA § 4404.

RULE 19: RECORD OF HEARING

All hearings shall be audio taped recorded by the Civil Service Commission. The Civil Service Commission'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.

19.1 Other Recording Methods

Still photography, filming, videotaping or audio recording of a hearing or other proceeding before the Personnel Board by any person is permitted by the Civil Service Commission only upon advance written motion or request.

19.2 Charge for Copies of Recording

Copies of the audio tape or digital recording of a hearing may be requested in writing to the Civil Service Commission, which will inform the requesting individual of the cost, and if agreed to by the individual making the request, then the reproduction will be made at the cost indicated.

RULE 20: LIMITATION IN THE SCOPE OF THE HEARING OF THE MERITS

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

1. The issue in dispute; and
2. A review of compliance with procedural requirements for affecting the complaint.

RULE 21: DELIBERATIONS

The deliberation and decision of the Personnel Board regarding the merits of action and motions shall be made in public.

RULE 22: DECISION

The Personnel Board shall decide the Complaint on the basis of the evidence presented

RULE 23: MODIFICATION OF COMPLAINT

If after the hearing, the Personnel Board determines that the initial determination of the Personnel Board needs to be modified either procedurally or substantively, it may modify accordingly. Such determination will take into account the type and amount of relief authorized under Rule 9.

RULE 24: JUDGMENT

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

The vote taken by the Personnel Board to decide an action does not constitute a judgment.

An Order of the Personnel Board 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 Personnel Board member sign the judgment at a Personnel Board meeting attended by a sufficient number of Personnel Board member to constitute a quorum. Notice that a proposed judgment is before the Personnel Board 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 Personnel Board shall be four (4) members.

The judgment shall recite the numerical vote of the Personnel Board in deciding an action. The signing of the judgment by the Personnel Board does not reflect how they actually voted in deciding the action. The signing of the judgment simply affirms that the judgment accurately reflects the decision that was made.

See: 4 G.C.A. § 4402

24.1 Compliance with Judgment

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

24.2 Request For Reconsideration or Amendment of Judgment

A party may move the Personnel Board to reconsider or amend its judgment by filing a motion with the Civil Service 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 25: TERMINATION OF COMPLAINT

In addition to adjudication on the merits, the Personnel Board may terminate an Employee's Complaint based on the following:

1. At the Employee's request.
2. When the Employee fails to cooperate and provide information requested by the Civil Service Commission staff.

25.1 Death of Employee

If an Employee dies after he has filed a Complaint, the Complaint shall automatically be stayed for a period of up to six (6) months in order for the Estate of the Employee to apply to the Personnel Board to continue with the Complaint.

If the Estate of the Employee does not apply within the six (6) months, then the Complaint shall be automatically dismissed.

If the Estate of the Employee does apply, the Complaint will proceed. In the event that the Employee does prevail, 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 26: DEFENSE IN ANY DISCIPLINARY PROCEEDING

It shall be a defense in any disciplinary proceeding against an employee under 4 GCA Section 4406, that such proceeding was initiated in violation of 4 GCA Section 4503 and the issue of such violation shall be determined by the Personnel Board as a part of the disciplinary proceeding,

See: 4 GCA § 4504(c).

RULE 27: ACTION AGAINST APPOINTING AUTHORITY OR SUPERVISOR

Whenever the Personnel Board determines that an appointing authority or supervisor has violated 4 GCA § 4503, it shall cause an entry to that effect to be made in the supervisor's personnel records. Additionally, such appointing authority or supervisor shall be subject to a fine of no less than five-hundred-dollars (\$500) and no more than one-thousand-dollars (\$1,000) to be determined by the Personnel Board. Government funds shall not be used to pay such fine.

See: 4 GCA § 4504(d).

RULE 28: PRIVATE CIVIL ACTION

Any employee not in the classified service, or any employee in the classified service who has filed a complaint under 4 GCA § 4504(a) but no reasonable basis was found for the charges, may bring a civil action in the District Court alleging a violation of 4 GCA § 4503. If the employee prevails, the employee may recover damages, together with court costs, and the court may order such other relief as it deems appropriate.

See: 4 GCA § 4505.

RULE 29: NOTICE TO PUBLIC AUDITOR

Whenever the Personnel Board finds that a violation of 4 GCA Section 4503 involving the disclosure of information concerning waste of public funds or mismanagement of an agency has occurred, the Personnel Board shall transmit a copy of the investigation report to the public auditor, who shall proceed in accordance with 1 GCA Section 1908 and 1909. Any person found guilty of violating 4 GCA Section 4503 shall be guilty of a misdemeanor.

See: 4GCA § 4506.

RULE 30: REPORT TO THE LEGISLATURE AND GOVERNOR

The Personnel Board shall report annually to the Guam Legislature and Governor concerning the complaints filed, hearings held, and actions taken pursuant to the Act.

See: 4GCA § 4507.

RULE 31: PUBLIC DISCLOSURE

The Personnel Board recognizes the duty of disclosure must be weighed against the duty of insuring fairness for the accused. As such, Complaints and related documents that are received by the Personnel Board will not be released until a signed judgment by the Personnel Board is issued.

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

The vote taken by the Personnel Board to decide an action does not constitute a judgment.

An Order of the Personnel Board 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 Personnel Board sign the judgment at a Personnel Board meeting attended by a sufficient number of Personnel Board to constitute a quorum. Notice that a proposed judgment is before the Personnel Board 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 Personnel Board shall be four (4) members.

The judgment shall recite the numerical vote of the Personnel Board in deciding an action. The signing of the judgment by the Personnel Board does not reflect how they actually voted in deciding the action. The signing of the judgment simply affirms that the judgment accurately reflects the decision that was made.

RULE 32: 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 Civil Service Commission as follows:

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

32.1 Rules Relative to Representatives

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

All Representatives shall enter his appearance in an action by filing with the Civil Service Commission 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.

32.2 Entry of Appearance

By entering his appearance before the Civil Service Commission and Personnel Board, the Representative becomes subject to the Orders and these Rules of the Civil Service Commission and Personnel Board and to reasonable discipline and to contempt proceedings by the Personnel Board.

Reasonable discipline may include, but not limited to actions that the Courts may take, the following:

- a) Disqualification from appearing before the Personnel Board, so long as the disqualification does not prejudice the client's interest; and

By agreeing to be a Representative, the Representative assumes an ethical and agency relationship with the Employee that he represents. 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 related to the action such as, but not limited to, photocopying costs.

32.3 Withdrawal as Representative

No Representative may withdraw from representing an Employee except upon motion, cause shown, and an Order of the Personnel Board.

32.4 Representative Required Reading

Every Representative shall agree in writing that he has read, and is familiar with 4 GCA, Chapter 4, Article 5 and these Rules and the Personnel Rules applicable to the government agency that the Employee is charging with violation of 4 GCA Section 4503.

RULE 33: MOTIONS

Since the law and rules state that the Personnel Board must determine whether or not there is a reasonable basis for the charges, once the Personnel Board determines such basis does exist, no motions other than a Motion to Postpone a Hearing, or a Motion to Allow the Hearing in the Absence of the Employee; or to Dismiss will be entertained.

33.1 Motions to Postpone Hearings

A motion to continue a date of hearings 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.

If in the event a hearing is requested within seven (7) days before the hearing, the parties must make the request before the Personnel Board, who will determine whether to grant such request by majority vote.

33.2 Motions to Dismiss

Motions to Dismiss a Complaint may be made on the bases of lack of jurisdiction, untimely filing of the appeal, procedural defects in the proceedings 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 Personnel Board by an affirmative vote of four.

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 approved by the Personnel Board by a majority vote before the action is dismissed with prejudice.

33.3 Motion to Allow Hearing in the Absence of the Employee

The Personnel Board may dismiss a Complaint if the Employee is not present for the hearing on the merits or a 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 for the factual basis for the motion. The Personnel Board may require affidavits in support of the motion.

RULE 34: SUBMISSION OF DOCUMENTS FOR INTRODUCTION INTO EVIDENCE

34.1 Time for Submission of Documents

Not later than twenty-eight (28) days before the hearing on the merits or on a motion hearing, or at a time designated by the Executive Director or his designee, each party shall submit to the Civil Service Commission all documents it wishes the Personnel Board to consider.

34.2 Documents to be Bound

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

Management shall identify its documents using consecutive numbers preceded by "M" (M1, M2, M3, etc.) for every page inclusive of exhibits. Employee shall identify his documents using consecutive numbers preceded by "E" (E1, E2, E3, etc.) for every page inclusive of exhibits.

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