

# CUYAHOGA COUNTY PERSONNEL REVIEW COMMISSION



## ADMINISTRATIVE RULES

2429 Superior Viaduct, 2<sup>nd</sup> Floor  
Cleveland, Ohio 44113  
Phone: 216-443-5675 Fax: 216-443-3694  
<http://prc.cuyahogacounty.us>

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# TABLE OF CONTENTS

<b>SECTION 1 DEFINITIONS.....</b>	<b>4</b>
1.01    DEFINITIONS.....	4
<b>SECTION 2 GENERAL PROVISIONS.....</b>	<b>6</b>
2.01    ORIGIN .....	6
2.02    PURPOSE.....	7
2.03    RELATIONSHIP TO COLLECTIVE BARGAINING AGREEMENTS .....	7
2.04    RECORDKEEPING.....	7
2.05    CONSTRUCTION .....	7
2.06    SAVINGS CLAUSE .....	7
<b>SECTION 3 POWERS AND DUTIES OF THE COMMISSION .....</b>	<b>8</b>
3.01    AUTHORITY AND JURISDICTION .....	8
3.02    CLASSIFICATION PLANS.....	9
3.03    CIVIL SERVICE TESTING .....	9
3.04    COUNTY HUMAN RESOURCES POLICIES AND SYSTEMS.....	9
3.05    SUBPOENA POWERS.....	10
3.06    DELEGATION OF CERTAIN ADMINISTRATIVE FUNCTIONS.....	10
3.07    ETHICS .....	11
<b>SECTION 4 MEETINGS.....</b>	<b>12</b>
4.01    PUBLIC MEETINGS .....	12
4.02    NOTICE .....	12
4.03    QUORUM.....	12
4.04    EXECUTIVE SESSION.....	12
4.05    MINUTES.....	13
<b>SECTION 5 RULE-MAKING .....</b>	<b>13</b>
5.01    RULE-MAKING PROCEDURE.....	13
<b>SECTION 6 CLASSIFICATION AND COMPENSATION PLANS .....</b>	<b>14</b>
6.01    CLASSIFICATION PLAN.....	14
6.02    COMPETITIVE AND NONCOMPETITIVE CLASSES .....	14
6.03    CHANGES TO THE CLASSIFICATION PLAN .....	15
6.04    COMPENSATION PLAN .....	15
6.05    UNCLASSIFIED SERVICE .....	15
<b>SECTION 7 ANNOUNCEMENTS &amp; APPLICATIONS .....</b>	<b>16</b>
7.01    EXAMINATION ANNOUNCEMENT.....	16
7.02    APPLICATIONS .....	16
7.03    REJECTION OF APPLICANTS.....	17
7.04    ACCOMMODATION.....	17

7.05	EQUAL EMPLOYMENT OPPORTUNITY .....	18
<b>SECTION 8 EXAMINATIONS .....</b>		<b>18</b>
8.01	CHARACTER OF EXAMINATION .....	18
8.02	SCHEDULING OF EXAMINATION.....	18
8.03	CONTENTS OF EXAMINATION .....	18
8.04	IDENTITY OF EXAMINEE CONCEALED .....	19
8.05	FRAUD IN EXAMINATIONS.....	19
8.06	METHOD OF GRADING .....	20
8.07	CREDIT FOR MILITARY (UNIFORMED) SERVICE .....	20
8.08	EXAMINATION RECORDS.....	21
8.09	NOTICE OF RESULTS.....	21
8.10	NONCOMPETITIVE EXAMINATIONS .....	21
<b>SECTION 9 ELIGIBILITY LISTS.....</b>		<b>21</b>
9.01	POSTING OF LISTS .....	21
9.02	DURATION OF LISTS .....	22
9.03	BREAKING TIED GRADES.....	22
9.04	CHANGE OF ADDRESS.....	22
9.05	REMOVAL FROM LIST .....	22
9.06	CREATION BY NONCOMPETITIVE EXAMINATION.....	23
<b>SECTION 10 CERTIFICATION .....</b>		<b>23</b>
10.01	CERTIFICATION REQUEST.....	23
10.02	NUMBER OF NAMES TO BE CERTIFIED .....	23
10.03	CERTIFICATION NOT MORE THAN THREE TIMES.....	24
<b>SECTION 11 APPOINTMENTS .....</b>		<b>24</b>
11.01	ORIGINAL APPOINTMENTS .....	24
11.02	TEMPORARY APPOINTMENTS.....	24
<b>SECTION 12 EMPLOYMENT ACTIONS .....</b>		<b>25</b>
12.01	NOTICE REQUIREMENTS .....	25
12.02	LACHES .....	26
12.03	MERGER AND BAR .....	26
12.04	INQUIRIES .....	27
<b>SECTION 13 APPELLATE PROCEDURE .....</b>		<b>27</b>
13.01	MANNER OF FILING APPEALS.....	27
13.02	TIME FOR FILING APPEALS .....	28
13.03	INTERIM APPEALS.....	28
13.04	PRELIMINARY JURISDICTIONAL REVIEW .....	28
13.05	HEARINGS .....	29
13.06	DECISIONS OF THE PERSONNEL REVIEW COMMISSION .....	32
13.07	APPEALS TO THE COURT OF COMMON PLEAS .....	33

# SECTION 1

## DEFINITIONS

### 1.01 Definitions

- (1) *Abolishment* – Means one of the following:
- a. *Abolishment of Classification* – The permanent deletion of a classification from the organization due to lack of continued need for the classification, due to reorganization for efficient operation, economy or lack of work, or other lawful purpose; or
  - b. *Abolishment of Position* – The permanent deletion of a position from the structure of an Appointing Authority due to lack of continued need for the position, due to reorganization for efficient operation, economy or lack of work, or other lawful purpose.
- (2) *Appeal*—An action by which an affected party challenges the decision or determination of an Appointing Authority, the Director, and/or the Commission.
- (3) *Appointment* – Placement of an employee in a position.
- (4) *Appointing Authority* – Means the same as defined in Section 9.04 of the Cuyahoga County Charter.
- (5) *Charter* – The Cuyahoga County Charter.
- (6) *Classification* – Means one of the following:
- a. A group of positions of sufficiently similar duties that the same title and specification may be assigned to each; or
  - b. The act of assigning a classification title to a position(s) based upon the duties performed.
- (7) *Commission* – The Cuyahoga County Personnel Review Commission.
- (8) *Competitive Examination*— Method used by the Commission to assess the relative capability of qualified applicants to perform the duties and responsibilities of the classification.
- (9) *County* – As defined in the Charter.

- (10) *County Code* – The Code of Cuyahoga County established by Ordinance No. 02013-0001.
- (11) *County Council* – The Cuyahoga County Council.
- (12) *County Executive* – The Cuyahoga County Executive.
- (13) *Demotion* – The act of placing an individual in a position, at the request of an Appointing Authority or the employee, the classification for which carries a lower salary range than that of the classification the employee currently holds.
- (14) *Director* – The Director of the Cuyahoga County Human Resources Department as appointed by the County Executive.
- (15) *Eligibility List* – A list of names established by the Commission for the purpose of filling vacancies in the classified service.
- (16) *Ethics Code* – Title IV of the Cuyahoga County Code and any revisions thereto.
- (17) *Human Resources Department* – The Cuyahoga County Department of Human Resources.
- (18) *Layoff* – A suspension of employment due to either a lack of work or a lack of funds, or other lawful purpose.
- (19) *Meeting* – Any prearranged discussion of the public business of the PRC by a majority of its members.
- (20) *Noncompetitive Examination* – An examination that evaluates individual candidates based upon established criteria to determine which applicants are qualified to fill appointments to positions requiring exceptional qualifications of a scientific, professional, educational, or managerial character or positions where it is impractical to develop and administer competitive examinations.
- (21) *Pay* – The annual, non-overtime compensation due an employee.
- (22) *Pay Equity Ordinance* – Chapter 303 of the Cuyahoga County Code and any revisions thereto.
- (23) *Pay Range* – The pay grade assigned to a position or classification.
- (24) *Position* – The name that applies to a group of duties intended to be performed by an employee.

- (25) *Promotion* – The appointment of an employee to a different position assigned a higher pay range than the employee’s previous position.
- (26) *Reassignment* – The assignment of an employee to a different classification.
- (27) *Reclassification* – The assignment of a position to a different classification.
- (28) *Reduction in Pay* – An action that diminishes an employee’s pay. When the conditions of entitling an employee to supplemental pay end, the ending of supplemental pay shall not be considered a reduction, nor shall a change in the cost of an appointing authority’s insurance or other contributions be considered a reduction.
- (29) *Reduction in Position* – An action that diminishes an employee’s duties or responsibilities to the extent an audit of the employee’s position would result in a reclassification to a classification assigned a lower pay range.
- (30) *Removal* – Termination of an employee’s employment.
- (31) *Request for Reconsideration* - A request made by an affected party seeking the Commission’s reconsideration of certain pre-employment determinations made by the Commission. See Rules 7.03 and 9.05.
- (32) *Suspension* – The interruption of an employee’s employment and compensation for a fixed period of time.

## **SECTION 2**

### **GENERAL PROVISIONS**

#### **2.01 Origin**

On November 3, 2009, the citizens of Cuyahoga County, Ohio, adopted a County Charter pursuant to the authority granted to them in Article 10, Section 3 of the Ohio Constitution. Section 9.01 of the Charter required the creation of a Human Resource Commission:

*The County Executive, subject to confirmation by the Council, shall appoint the members of a Human Resource Commission, consisting of three electors of the County having experience in personnel matters or personnel administration and who are supportive of equal opportunity considerations.*

On November 5, 2013, the citizens of Cuyahoga County, Ohio, adopted amendments to the Charter. Section 9.01 of the Charter was amended to change the name of the

Human Resource Commission to the Personnel Review Commission, the members of which shall now be appointed by County Council.

These Administrative Rules have been adopted pursuant to County Code Section 301.02.

## **2.02 Purpose**

Pursuant to Section 9.01 of the Charter, the Personnel Review Commission (“Commission”) is responsible for administering, for and in cooperation with the officers, agencies, boards and commissions of the County, an efficient and economical system for the employment of persons in the public service of the County according to merit and fitness.

## **2.03 Relationship to Collective Bargaining Agreements**

If an employee’s collective bargaining agreement provides for a final and binding arbitration of grievances, such employee and union are subject solely to that grievance procedure and the Commission shall have no jurisdiction to receive and determine any appeals relating to matters that were the subject of a final and binding grievance procedures.

## **2.04 Recordkeeping**

The Commission shall maintain a record that shall be open to public inspection, in which it shall keep records of all of its proceedings and of the vote of each of its members upon every action taken by it.

The Commission shall properly adopt a records retention schedule in accordance with Chapter 149 of the Ohio Revised Code.

## **2.05 Construction**

These Rules shall be construed so as to carry out their purposes as determined from both the literal reading of the Rules and their context. The Rules shall not be construed in a way that limits the Commission’s power to interpret and apply the Rules within the scope of their authority under the Charter, Council Ordinances and Resolutions, and general law.

## **2.06 Savings Clause**

If any section of these Rules is held by a court of competent jurisdiction to be invalid, the same shall not invalidate or impair the validity, force, and effect of any other section or part of a section of these Rules unless it clearly appears that such other section or

part of a section is wholly or necessarily dependent for its operation upon the section or part of a section held invalid.

## **SECTION 3**

### **POWERS AND DUTIES OF THE COMMISSION**

#### **3.01 Authority and Jurisdiction**

Pursuant to the Charter, the Commission shall have:

- (1) Responsibility for the resolution or disposition of all personnel matters, with authority to appoint hearing officers to hear all employee appeals previously under the jurisdiction of the State Personnel Board of Review, including those of classified employees who work for the County Executive, Prosecuting Attorney, County Planning Commission, and the County Public Defender;
- (2) Responsibility for administration of countywide compliance with federal and state laws regarding personnel matters for which the County is the reporting unit and for maintenance of records required by such laws;
- (3) For the County Executive's organization and departments, authority to ensure:
  - a. Pay equity for like positions;
  - b. Standardization of benefits;
  - c. Approval of qualifications;
  - d. Consistent discipline;
  - e. Training of management in personnel practices;
  - f. Training of employees in job functions;
  - g. Training for total quality management;
  - h. Consistent administration of performance management system;
  - i. Coordination of recruitment;
  - j. Compliance with ethics resolutions or ordinances as passed by the Council;
- (4) Responsibility for creation of rules and policies related to the Personnel Review Commission's authority set forth in the Charter, County Code, and general law where applicable;
- (5) Responsibility for administering a clear, countywide classification and salary administration system;
- (6) Responsibility for ensuring compliance with ethics resolutions and ordinances passed by County Council, including the authority to hear whistleblower appeals



pursuant to the Ethics Code, as well as, appeals of job audit determinations including step placement per the Pay Equity Ordinance;

- (7) Responsibility for conducting inquiries regarding the abuse of the power of appointment, layoff, removal, reduction, suspension, or otherwise violating laws, rules or ordinances the Commission is charged with enforcing and to report the inquiry findings to County Council (See Rule 12.04); and
- (8) Such other functions as may be deemed necessary by the Council for the Commission to carry out its mission and purpose.

### **3.02      Classification Plans**

Pursuant to Section 9.03 of the Charter, the Commission shall administer a clear, countywide classification and salary administration system in accordance with the requirements set forth in the Charter.

### **3.03      Civil Service Testing**

Pursuant to Section 9.01 of the Charter, the Commission shall be responsible for administering an efficient and economical system for the employment of persons in the public service of the County according to merit and fitness. To this end, the Commission has authority, including but not limited to the following:

- (1) To prepare, conduct, grade, and validate all competitive examinations for positions in the County's classified service;
- (2) To evaluate qualifications for all noncompetitive positions in the County's classified service; and
- (3) To prepare and maintain eligible lists containing the names, scores, and rankings of persons qualified for appointment to positions in the County's classified service.

*[Reference Section 303.03(A) of the County Code]*

### **3.04      County Human Resources Policies and Systems**

The County's human resources policies and systems shall be established by ordinance. The Commission shall review and submit a recommendation regarding any ordinance concerning County personnel policies prior to passage by County Council. In the event the Commission does not endorse an ordinance, the Commission may provide a Statement of Non-Endorsement to the Council.

### **3.05      Subpoena Powers**

The Commission has authority to subpoena and require the attendance and testimony of witnesses and the production of books, papers, public records, and other documentary evidence pertinent to any matter it has authority to hear.

All officers in the civil service of the County shall attend and testify when summoned to do so by the Commission. Depositions of witnesses may be taken by the Commission or designee, or any member of the Commission, in the manner prescribed by law for like depositions in civil actions in the courts of common pleas. In case any person, in disobedience to any subpoena issued by the Commission, or any member of the Commission, fails or refuses to attend and testify to any matter regarding which the person may be lawfully interrogated, or produce any documentary evidence pertinent to any hearing, the court of common pleas of any county, or any judge of the court of common pleas of any county, where the disobedience, failure, or refusal occurs, upon application of the Commission, or any member of the Commission, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court.

Parking fees and mileage shall be allowed to witnesses and, on their certificate, duly audited, shall be paid by the Cuyahoga County Treasurer.

### **3.06      Delegation of Certain Administrative Functions**

The Commission delegates the following administrative functions to the Human Resources Department, which shall serve under the day-to-day direction of the Director:

- (1) Management and implementation of personnel policies and practices that comply with federal and state employment laws and for the maintenance of records required by such laws;
- (2) Providing copies of all Human Resources Policies and Procedures to all County employees, as well as, providing copies of Ohio laws and County ordinances relating to ethics policies to County public officials and employees;
- (3) Conducting ethics training programs and classes for County public officials and employees;
- (4) Ensuring that public officials and employees acknowledge, in writing, receipt of the materials and attendance to all programs and classes identified in the preceding paragraphs of this Section; and
- (5) Post whistleblower provisions of the Ethics Code on the Cuyahoga County website and in all physical locations where other human resources policies are posted.

The Commission retains the authority to exercise all its Charter mandated duties and administrative functions not expressly delegated in this Section. The Commission may modify this Rule via resolution of the Commission. The Commission shall retain an oversight role regarding all powers and duties delegated under this Section. The Department of Human Resources shall provide reports to the Commission regarding the Department's performance of the delegated functions. The specific reporting schedules and content of reports shall be determined by the Commission and will be adopted by resolution of the Commission.

### **3.07      Ethics**

Pursuant to Section 9.02 of the Charter, the Commission shall have the authority to ensure compliance with ethics resolutions or ordinances passed by County Council. The Commission shall be the ethics compliance and training body for the County as set forth in the Ethics Code.

The Commission delegated certain portions of its duties under the Ethics Code to the Human Resources Department as set forth in Rule 3.06 herein.

The Commission shall hear appeals from disciplinary or retaliatory actions taken against all classified or unclassified employees of the County, as a result of the employee's whistleblower report made pursuant to the Ethics Code. When an employee files a whistleblower appeal, the Commission will determine whether a proper report was made under the Ethics Code and whether a causal relationship exists between such report and the County's actions. If the Commission finds a violation of the Ethic's Code, the Commission may impose a remedy up to and including reinstatement. [*Reference Title IV of the County Code*]

Additionally, the Ethics Code grants the Commission the authority to write and send letters of notification, admonition, and censure regarding ethics law violations, when applicable. The Commission, however, shall not exercise this authority unless one of the following occurs:

- The Inspector General requests assistance from the Commission due to a conflict of interest; or
- The Commission, by a majority vote, determines that it is necessary to exercise this authority.

## **SECTION 4 MEETINGS**

### **4.01      Public Meetings**

The Commission shall hold meetings as often as necessary to complete Commission business. All meetings of the Commission shall be open to the public and include a time for public comment.

The Commission's conducting of quasi-judicial hearings and its deliberations when acting in its quasi-judicial capacity are not "meetings" for purposes of this Section or Section 121.22 of the Ohio Revised Code.

The Commission shall elect one of its members as the Chairperson and elect one of its members as Vice-Chairperson of the Personnel Review Commission at their first meeting in January on a biennial basis beginning in 2015.

In the event of a vacancy in the Chair position, the Vice-Chair shall assume the duties of the Chair for the remainder of the biennial period.

### **4.02      Notice**

The schedule for regular meetings shall be posted under the "Public Notices" section of Cuyahoga County's main webpage (<http://www.cuyahogacounty.us>). In addition, notices of meetings, meeting agendas and minutes shall be posted on the Commission's webpage (<http://PRC.cuyahogacounty.us>).

Notices of special meetings shall be posted in the manner described above. When a special meeting is held to discuss particular issues, the statement of the meeting's purpose must specifically indicate those issues, and only those issues may be discussed at that meeting.

### **4.03      Quorum**

The physical presence of two members of the Commission at any scheduled meeting constitutes a quorum. The Commission cannot act without a quorum.

### **4.04      Executive Session**

The members of the Commission may hold an executive session at a regular or special meeting for the purpose of considering one of the authorized matters provided in Section 121.22 of the Ohio Revised Code.

## **4.05      Minutes**

The minutes of any meeting of the Commission shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions.

# **SECTION 5 RULE-MAKING**

## **5.01      Rule-Making Procedure**

As used in this Section:

- (A) “Rule” refers to the PRC Administrative Rules, Cuyahoga County Personnel Policies and Procedures Manual and employee classifications in the County’s Class Plan;
- (B) A “rule change” means the addition of a new rule, or rescission or amendment of an existing rule.

Rule changes may be proposed to the Commission by the PRC Administrator, the Director, or by an individual Commission member. Proposed rule changes shall be submitted with a coversheet containing the following information:

- (1) A statement declaring the intention to consider adopting, amending or rescinding the rule;
- (2) A synopsis of the proposed rule change a general statement of the subject matter to which the proposed rule change relates; and
- (3) A statement of the reason or purpose for the rule change.

Upon receipt, the Commission shall post the proposed rule changes and the coversheet on its webpage (<http://PRC.cuyahogacounty.us>). The posting shall include the date, time and place of the Commission meeting where the proposed rule change will be heard. The public shall be permitted to comment regarding the proposed rule change in accordance with Section 4.01 of these Rules. The Commission may act on a proposed rule change only after such rule change has been posted for a minimum of twenty (20) days.

If a proposed rule change to the Cuyahoga County Personnel Policies and Procedures Manual or employee classifications in the County’s Class Plan is approved by a majority vote of the Commission, such rule change will be referred to County Council for its consideration and becomes effective only after approval by County Council.

Notwithstanding the foregoing, the PRC Administrator is authorized to approve minor revisions to a rule if such revision does not alter the meaning or intent of the rule. If the PRC Administrator makes such a change, a record will be created to reflect the modification and the purpose of the change.

## **SECTION 6**

### **CLASSIFICATION AND COMPENSATION PLANS**

#### **6.01      Classification Plan**

As required by the Charter, the Commission shall administer a countywide classification and compensation plan that includes the classified employees (if any) of the County Executive, County Council, Fiscal Office, Law Department, Sheriff's Department, Public Works, Medical Examiner, Clerk of Courts, Treasurer, Public Defender, Prosecutor, Personnel Review Commission, Inspector General, and the County Audit Committee.

The classification plan shall be adopted and maintained by the Commission and approved by County Council. The plan shall provide for the classification and standardization of all positions in the County's classified service. The classification system will serve to organize the work performed by the County's classified employees, and will organize positions into classifications on the basis of duties and responsibilities. Classifications are organized into class series, which groups two or more classes that are similar in the type of work but differ in levels of complexity, difficulty and managerial responsibility. Each position within the classified service shall have a corresponding classification specification which shall contain the minimum qualifications for appointment to the class.

Each position within the unclassified service shall have a corresponding job description which shall identify the basis upon which the position is exempted from the classified service.

*[Reference Sections 303.01 and 303.04(A) of the County Code]*

#### **6.02      Competitive and Noncompetitive Classes**

Following the effective date of this section and anytime a classification is created thereafter; the Commission shall determine whether the class is to be designated as competitive or noncompetitive. In making this determination, the Commission shall consider the following factors:

- (1) The practicality of testing for the class by competitive examination in accordance with generally accepted psychometric standards;
- (2) Whether the class requires peculiar or exceptional qualifications of a scientific, managerial, professional or educational character as demonstrated by:
  - a. the level of education, the field of study and the degree of specialization required;
  - b. the kind, level and amount of work experience required;
  - c. a special license or certificate required; and/or
  - d. any recruiting or other information relating to the number or availability of qualified applicants.
- (3) Whether the class consists of positions that are impractical to test for competitively; and
- (4) Any other relevant information.

Upon revision of a classification or at the request of the Director, the assignment of a class as competitive or noncompetitive shall be reviewed by the Commission.

### **6.03 Changes to the Classification Plan**

The Commission may consider changes to the class plan upon request via the procedure set forth in Rule 5.01 herein.

### **6.04 Compensation Plan**

The Commission shall administer a compensation plan for the County's non-bargaining unit, classified employees, and shall recommend to County Council such modifications as needed to ensure the system provides for compensation based on merit and fitness and to ensure pay equity in like classifications. The PRC's administration of the classification and compensation plans includes but is not limited to performing job analysis, salary surveys, periodic system reviews, development of position descriptions and classification specifications, and research/recommendation of best classification and compensation practices. Job audits performed at the request of classified employees will be conducted by the Human Resources Department.

*[Reference Section 303.04(B) of the County Code]*

### **6.05 Unclassified Service**

The unclassified service consists of positions that are specifically exempted from the classified service by law. Persons employed in a position in the unclassified service serve at the pleasure of the appointing authority and may be removed from their unclassified position at any time for any lawful reason.

All appointing authorities shall provide reports detailing the appointment of employees to the unclassified service to the Commission in accordance with the procedures that shall be determined by the Commission.

*[Reference Section 303.04(A) of the County Code]*

## **SECTION 7**

### **ANNOUNCEMENTS & APPLICATIONS**

#### **7.01      Examination Announcement**

The Commission shall give reasonable notice of the time, place, and general scope of competitive examinations for positions in the classified civil service. Examination announcements shall be posted electronically on both the Personnel Review Commission's and Cuyahoga County's website.

The examination announcement shall contain the title, definition, salary range, and minimum qualifications for the classification. The examination announcement shall also indicate the last day and hour that applications will be accepted.

In addition, if the eligibility list resulting from the examination will be limited to a particular Appointing Authority per Rule 9.02 herein, such limitation shall be set forth in the examination announcement.

The Commission shall establish and publish minimum qualifications for each position, which shall be included in the official announcement of each examination.

*[Reference Section 303.03(B) of the County Code]*

#### **7.02      Applications**

Applicants for classified civil service positions shall file one application that will serve as both the request to take the examination and as the application for employment with the County.

Job postings and Applications are available at the County's Human Resources Department website (<http://hr.cuyahogacounty.us>).



Once filed, applications become the property of the County and shall not be returned to the applicant.

*[Reference Section 303.03(B) of the County Code]*

### **7.03        Rejection of Applicants**

All applications shall be reviewed by an authorized representative of the Commission. Applications may be rejected for any of the following reasons:

- (1) It was not filed within the prescribed time period.
- (2) That the applicant has not met one or more of the minimum qualifications of the position.
- (3) That the applicant has made a false statement on the application.
- (4) Any just or reasonable cause that is job-related, and not discriminatory, as determined by the Commission.

Upon rejecting any application, the Commission shall promptly notify the applicant of the reason for the rejection at the electronic mail address provided on the application. The applicant may, within five (5) calendar days after the date of the notice, file a written request for reconsideration of such rejection that shall set forth why the rejection was in error and providing evidence of the same.

The Commission will not consider requests that contest the qualifications established for the position. If a request for reconsideration from a rejection is pending at the time an examination is scheduled to be held, the applicant shall be allowed to take the examination pending the resolution of the request. If the Commission, within its sole discretion, finds the rejection justified, the examination paper shall not be graded. Consideration of an applicant's request for reconsideration shall not be quasi-judicial and shall not result in a final order that entitles the applicant to an administrative appeal to the Commission.

*[Reference Section 303.03(C) of the County Code]*

### **7.04        Accommodation**

The examination announcement will advise potential applicants as to the procedures by which a potential applicant may request reasonable accommodation for a disability, as defined by applicable law, in order to participate in the application process and/or examination process.

## **7.05 Equal Employment Opportunity**

Applications will be accepted without regard to the race, ethnic background, national origin, sex, sexual orientation, genetic information, medical condition, political affiliation or opinion, military status, religious belief, or age of any applicant unless otherwise lawfully required.

# **SECTION 8 EXAMINATIONS**

## **8.01 Character of Examination**

Examinations will be developed so as to be job-relevant and to measure the relative capacity and fitness of the persons examined to discharge the duties of the positions to which they seek to be appointed.

## **8.02 Scheduling of Examination**

The time, place, and type of an examination shall be determined by the Commission. The Commission may cancel, or postpone an examination because of inadequate number of applicants, a change in requirements, or for other sufficient cause. Cancellations or postponements shall be posted on the Commission's website and each applicant shall be notified via electronic email.

## **8.03 Contents of Examination**

Examinations may include an evaluation of such factors as education, training, capacity, knowledge, manual dexterity, and physical or psychological fitness. Tests may be written, oral, physical, demonstration of skill or an evaluation of training and experiences and shall be designed to fairly test the relative capacity of the persons examined to discharge the particular duties of the position for which appointment is sought. Tests may include: structured interviews; assessment centers; work simulations; examinations of knowledge, skills and abilities; and any other acceptable testing method.

No question on the examination shall relate to the race, ethnic background, national origin, gender, sexual orientation, genetic information, medical condition, political affiliation or opinion, or religious belief or age of any applicant unless otherwise lawfully required.

A Commission-approved EEO applicant information form shall be furnished to all applicants for employment or examination. The completion of the EEO form shall be wholly voluntary, and no applicant shall be adversely affected in any way for having

refused to complete such form. If completed by an applicant, the EEO form shall be physically separated from the application.

## **8.04 Identity of Examinee Concealed**

The identity of all persons taking competitive examinations shall be concealed by the use of an identification number, which shall be used on all examination papers. This number shall be used from the beginning of the examination until after the papers are rated. Any papers bearing the applicant's name or any other identification mark shall be rejected and the candidate so notified.

## **8.05 Fraud in Examinations**

Fraud in examinations is prohibited and shall result in automatic disqualification. No person shall:

- (1) Falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of the civil service law, or aid in so doing;
- (2) Make any false representations concerning the results of such examination or concerning any person examined;
- (3) Furnish to another person special or secret information for the purpose of either improving or injuring the prospects or chances of another person so examined, registered or certified, or to be appointed, employed or promoted;
- (4) Impersonate another person, or permit or aid in any manner another person to impersonate an applicant, in connection with any examination, registration or appointment or application or request to be examined, registered or appointed;
- (5) Furnish false information about himself/herself, or other person, in connection with any examination, registration, or appointment or application or request to be examined, registered or appointed;
- (6) Make known or assist in making known to any applicant for examination any question to be asked on such examination;
- (7) Acquire, through fraudulent means, any exam content or question(s) to be asked on the examination prior to the examination; or
- 8) Personally solicit a favor from any appointing officer, or have any person on his/her behalf solicit a favor pertaining to the testing procedures of the PRC.

Any person or persons attempting to deceive any of the examiners in any manner whatsoever by impersonation or by assisting or receiving assistance shall be prohibited from taking any examination for employment with the County for a period of two (2) years. If the person is already in the County service, such conduct shall be grounds for disciplinary action.

*[Reference Section 303.03(D) of the County Code]*

## **8.06      Method of Grading**

The method of grading—including the setting of minimum passing scores, weighting of multiple test components, rank ordering, banding, protests, or any other consideration in determining an applicant's score on an employment test—shall be determined by the Commission on a test-by-test basis.

*[Reference Section 303.03(E) of the County Code]*

## **8.07      Credit for Military (Uniformed) Service**

Any person who has completed service in the uniformed services and who has been honorably discharged from the uniformed services or transferred to the reserve with evidence of satisfactory service may file with the Commission proof of military service, and, upon verification, the person shall receive an additional credit of five (5) numerical points or 5% of his or her score, whichever is greater, provided the applicant has received a passing grade in all phases of the examination before addition of the military service credit.

As proof of military service, the applicant shall file Form DD214, member copy 4 . Credit for military service will not be given if the request for such credit is received by the Commission after the closing date for applications.

As used in these Rules, "service in the uniformed services" and "uniformed services" have the same meaning as the "Uniformed Services Employment and Reemployment Rights Act of 1994,..." 38 U.S.C.A. 4303" which meaning shall be:

The Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or a full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in the time of war or national emergency.

*[Reference Section 303.03(F) of the County Code]*

## **8.08 Examination Records**

All selection devices and examination papers are the property of the Commission and shall be treated as confidential records to the maximum extent possible under law.

## **8.09 Notice of Results**

After the grading of the examination has been completed, all applicants shall be notified via electronic mail of their final grade and relative position on the eligibility list established from the examination.

## **8.10 Noncompetitive Examinations**

The Commission may suspend competition for positions which require exceptional qualifications of a scientific, managerial, professional or educational nature as provided in Rule 6.02.

For positions designated as noncompetitive, the applicants shall file an application for employment together with such proof of education, training, experience, ability and character, as shall be set forth in the examination announcement.

The Commission shall evaluate the applications to determine if the applicants meet the minimum requirements of the class specifications for the class being examined. Following this review, an eligibility list shall be prepared including the names of all applicants who met the minimum requirements. Applicants will appear in alphabetical order.

*[Reference Section 303.03(G) of the County Code]*

# **SECTION 9 ELIGIBILITY LISTS**

## **9.01 Posting of Lists**

From the results of each competitive examination, the Commission shall establish and keep open to public inspection a list of the persons whose grade in any examination meets or exceeds the minimum passing grade and who are otherwise eligible.

## **9.02 Duration of Lists**

Eligible lists created by the Commission shall remain in force not longer than one (1) year; however, the Commission may, at its discretion, extend the eligible list. The Commission may limit an eligibility lists to a particular Appointing Authority, notice of such limitation shall be provided in the examination announcement.

## **9.03 Breaking Tied Grades**

In the event two (2) or more applicants receive the same grade on an open competitive examination in which rank ordering is used in establishing the eligibility list, priority in the time of filing the application shall determine the order in which their names shall be placed on the eligible list; applicants eligible for uniformed service credit shall receive priority in rank on the eligible list over non-veterans on the list with a rating equal to that of the veteran. Ties among applicants receiving military service credit shall be decided by which application was filed earlier with the Commission.

*[Reference Section 303.03(1) of the County Code]*

## **9.04 Change of Address**

Each person on an eligibility list shall file with the Commission a written notice of any change of address, and failure to do so may be considered sufficient reason for not certifying the applicant's name to the appointing authorities for consideration for appointment.

## **9.05 Removal from List**

Upon receiving notification from the Appointing Authority, Director, or the PRC Administrator, names may be removed from an eligibility list by action of the Commission for the following reasons:

1. At the request of the eligible candidate.
2. After three certifications or considerations without receiving an appointment.
5. Failure to pass a pre-employment background check and/or drug or alcohol screen.
6. Failure to appear for an interview.
7. Inability to locate the eligible at his or her last known address.
8. Practice or attempt to practice any deception in his or her application or in securing eligibility or appointment.
9. Any other just or reasonable cause.

If a candidate requests removal, and the request is based on illness, military service, or conflict with schooling, that candidate may be restored to the eligibility list when that

candidate indicates renewed availability for consideration if the eligibility list is still in effect per Section 9.02.

If a candidate's name is removed for any of the other reasons set forth in this Rule, the candidate may make a written request for reconsideration to the Commission for the restoration of his or her name to the eligibility list. Such request shall be made within five (5) calendar days of date the notification of removal was electronically mailed and shall set forth why the removal was in error, stating the reasons that would justify restoration to the list, and providing evidence of the same. Restoration to the eligibility list is within the sole discretion of the Commission. Consideration of a candidate's request for reconsideration shall not be quasi-judicial and shall not result in a final order that entitles the candidate to an administrative appeal to the Commission.

*[Reference Section 303.03(J) of the County Code]*

## **9.06      Creation by Noncompetitive Examination**

After the completion of the review as provided in Rule 8.10, an eligibility list shall be prepared including the names of all applicants, placed in alphabetical order, who met the minimum requirements as set forth in the examination announcement.

The Commission shall provide the Appointing Authority with the eligibility list and the application materials of the individuals on the list for interview and subsequent selection.

# **SECTION 10 CERTIFICATION**

Permanent appointments to all positions in the classified service that are not filled by promotion, transfer, or reduction shall be made from those persons whose names are certified to the Appointing Authority in accordance with these Rules.

## **10.01      Certification Request**

When an Appointing Authority desires to fill a vacancy in any position in the classified service, the Appointing Authority shall submit a request to the Commission specifying the department, title of the position, grade, whether the service is temporary or permanent, and the anticipated date of the vacancy.

*[Reference Section 303.03(K)(1) of the County Code]*

## **10.02      Number of Names to be Certified**

Following such request from an Appointing Authority, the Commission, through its staff, shall certify the names, addresses, and rank of the top twenty-five percent (25%) or a minimum of ten (10) names of the applicants on the eligibility list for the class or grade to which the position is classified.

When less than 10 names appear on an eligibility list, the Commission may certify less than ten (10) names and a new examination may be scheduled.

*[Reference Section 303.03(K)(2) of the County Code]*

### **10.03      Certification Not More Than Three Times**

A person certified from the same eligible list three (3) times to the same Appointing Authority may be omitted from future certifications. A person is “certified,” for purposes of this section, each time an appointment is made from a certified eligibility list containing that person’s name.

*[Reference Section 303.03(K)(3) of the County Code]*

<h2><b>SECTION 11</b></h2> <h1><b>APPOINTMENTS</b></h1>
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### **11.01      Original Appointments**

A person who has been selected by an Appointing Authority from an open competitive eligibility list, certified in accordance with Rules 9.01 and 10.01 to fill a vacancy in the classified service is said to have received an original appointment. Those persons receiving original appointments do not become permanent employees until they have satisfied the applicable probationary period.

*[Reference Section 303.05(A) of the County Code]*

### **11.02      Temporary Appointments**

Temporary appointments shall not exceed one hundred eighty (180) days in duration and shall be filled in the following manner:

(1) Eligibility List

If an applicable eligibility list is available, the temporary appointment shall be offered to the candidates on the eligibility list, provided that the acceptance or



declination of appointment to such position shall not affect the right of an eligible person to certification for appointment to a permanent position. At the expiration of the temporary appointment, which in no case shall exceed one hundred eighty (180) days, the services of the temporary employee shall be terminated and the candidate shall be restored to the eligibility list in rank order.

(2) No Applicable Eligibility List

In the absence of an applicable eligibility list, the Appointing Authority may appoint a qualified person for a temporary period of service, not to exceed one hundred eighty (180) days in duration, when the need of service is urgent and necessary to prevent the loss of public property, serious inconvenience to the public, or damaging delay to the public service.

In the event of a subsequent appointment to a permanent position, the temporary appointment shall not be counted as part of a probationary period.

Successive temporary appointments to the same position shall not be made under this Rule.

Temporary appointments made necessary by reason of sickness, disability, or other approved leave of absence shall not continue beyond such period of sickness, disability, or other absence.

The HR Department shall provide the Commission with a monthly report identifying the previous month's temporary appointments, the date of the appointment, the date the appointment expires, the position, and department.

*[Reference Section 303.05(B) of the County Code]*

## **SECTION 12**

# **EMPLOYMENT ACTIONS**

### **12.01      Notice Requirements**

Any action taken by an Appointing Authority, the County Executive or the Director (collectively referred to as "the Employer" for purposes of this Section) that creates a right of appeal for an employee shall be done in the following manner:

- In writing and signed by the Appointing Authority or designee;

- The original or a copy of the action shall be served upon the employee on, before or as soon as practicable after the effective date of the action;
- The document should, on its face, indicate the particulars that form the basis for the action; and
- The document should specifically describe the procedures required for the employee to exercise their appellate rights.

The notice document shall be “served upon the employee” when:

- It is personally served upon the employee;
- It is received by the employee at the employee’s last known address, by certified mail, return receipt requested; or
- It is left at the usual place of residence, or last known address of the affected employee, with an adult residing therein.

If the service by certified mail under this Section is returned with an endorsement showing the service was refused or unclaimed, then the notice may be sent by ordinary mail, evidenced by a certificate of mailing (or employee affidavit). Such notice shall be deemed “served” on the third calendar day after the order is mailed.

An action will not be disaffirmed based upon failure of service where the employee has failed to notify the Employer of a change of address. The burden is on the employee to prove the Employer was notified of a change in the employee’s address.

## **12.02 Laches**

Employees shall not be disciplined for acts that have been known or should have been known to the Employer more than two years prior to the effective date of the disciplinary action.

This rule does not bar discipline based upon a criminal conviction, less than two years old, although the incidents giving rise to such conviction occurred more than two years prior to the imposition of discipline.

## **12.03 Merger and Bar**

All incidents that occurred prior to the incident for which a non-oral disciplinary action is being imposed, of which the Employer has knowledge and for which an employee could be disciplined, are merged into the non-oral discipline imposed by the Appointing Authority. Incidents occurring after the incident for which a non-oral disciplinary action is being imposed, but prior to the issuance of the non-oral disciplinary order, are not merged and may form the basis for subsequent discipline.

## **12.04      Inquiries**

In furtherance of the Commission's Charter mandated duty to ensure compliance with federal, state and local employment laws, the Commission may conduct an inquiry when, upon receipt of a written complaint or on its own motion, it has reason to believe that an individual is abusing the power of appointment, layoff, removal, reduction, suspension, or otherwise violating laws, rules or ordinances that the Commission is charged with enforcing.

Inquiries shall be conducted by an exchange of correspondence, interviews, and/or requests for documents and information. Unless a party can show good cause for its failure to respond to the Commission, decisions will be based on the information received within the response time allowed by the Commission. In the Commission's discretion, investigations may be set for hearing. Upon completion of the Inquiry, the Commission shall provide County Council with a report of its findings.

The inquiries shall not be quasi-judicial and shall not result in a final order that creates a right of administrative appeal to the Commission.

*[Reference Section 303.06 of the County Code]*

# **SECTION 13 APPELLATE PROCEDURE**

## **13.01      Manner of Filing Appeals**

All appeals to the Commission shall be in writing and shall include the following information:

- The Employee's name;
- The Employee's address and telephone number;
- Employee's Department; and
- A copy of the action being appealed or a brief summary of the subject of the appeal.

Information regarding how to file an appeal, including initial appeal forms, can be obtained on the PRC's website at <http://PRC.cuyahogacounty.us>. Appeals shall be filed with the Personnel Review Commission by mail, in person, by email ([personnelreviewcommission@cuyahogacounty.us](mailto:personnelreviewcommission@cuyahogacounty.us)) or facsimile (216-443-3694).

## **13.02 Time for Filing Appeals**

All appeals shall be filed with the Commission within ten (10) calendar days of the date on which the employee was served with the action in question, by the end of the PRC business day at 4:30 p.m. The date the employee receives the notice is not counted as part of the 10 days. In the event the Personnel Review Commission Office is closed due to a holiday or weekend on the 10<sup>th</sup> calendar day, appeals received the following business day will be deemed filed timely. Appeals filed after that date will not be considered.

An appeal shall be deemed to be “filed” when one of the following occurs:

- The appeal is received in person and date stamped by the Commission;
- The appeal is postmarked; or
- The appeal is received by facsimile or e-mail (date of filing shall be the date marked on the appeal by the Commission’s facsimile machine or e-mail system).

## **13.03 Interim Appeals**

The Commission retains jurisdiction over all applicable employment actions that were taken during the time period from January 1, 2011 through the effective date of these Rules. All employees who properly perfected appeals in accordance with the instruction provided by the Human Resources Department shall be considered to have met all of the filing requirements of this section. Employees who did not properly perfect appeals in accordance with the instruction provided by the Human Resources Department shall be deemed to have waived their right to appeal the underlying employment action.

## **13.04 Preliminary Jurisdictional Review**

Upon receipt of an appeal, the Commission shall conduct a preliminary review to determine the following:

- Whether the appeal was properly perfected in accordance with these Rules; and
- Whether the Commission has jurisdiction to hear the appeal.

If the Commission’s Administrator determines that an appeal was not properly perfected or that the Commission lacks jurisdiction to hear the appeal, the Appellant will be notified in writing of the Administrator’s determination. The Appellant may file written objections to the determination within fourteen (14) calendar days after the date on which the determination was mailed. The Appellant must also send a copy of the objections to the Appellee’s legal representative (Law Department or the Prosecutor’s Office). The Law Department or Prosecutor’s Office shall have fourteen (14) calendar days from receipt of the objections to file a written response to the objections. At the first meeting following the expiration of the period for objection and response (if applicable), the Commission shall make a final determination of the jurisdictional issue. The Commission may accept jurisdiction over the appeal, dismiss the appeal or assign

the appeal to a hearing officer for a determination of the jurisdictional issue. If the Commission accepts jurisdiction, the appeal will proceed in accordance with these Rules.

## **13.05     Hearings**

### Discovery/Subpoenas

The Hearing Officer shall have discretion to set dates for the exchange of documents and both parties must agree to these dates, or the default procedure will require that at least fourteen (14) calendar days prior to the scheduled hearing, the parties shall provide the opposing party copies of the documents intended to be introduced at the hearing and a list of witnesses to be called by the party to testify at the hearing. If a party fails to comply with this requirement, the Hearing Officer has discretion to exclude such testimony or documents from the hearing. In all cases, the Hearing Officers should make every effort to ensure that the appeal record is fully developed.

Prior to the hearing, the parties may make requests to the Commission (or Hearing Officer) to issue procedural orders commanding the opposing party to disclose certain documentation and/or information.

Upon the request of either party made on or before the tenth calendar day prior to hearing, the Hearing Officer or the Commission may, in its own discretion, issue subpoenas for such persons, documents, and attendance of witnesses as the requesting party deems necessary.

Parties are limited to five (5) subpoenas absent good cause. Discovery depositions shall not be permitted.

### Failure to Appear

Upon failure of the Appellant to appear for the record hearing within at least 30 minutes of the scheduled hearing time, and on showing of proof of service of the notice of hearing, the Commission (or Hearing Officer) may dismiss the appeal.

Upon failure of the Appellee to appear for the record hearing within at least 30 minutes of the scheduled hearing time, and on showing of proof of service of the notice of hearing, the Commission (or Hearing Officer) may grant appropriate relief, including the disaffirmance of the employment action.

### Burdens of Proof

With regard to a disciplinary action, the Employer is required to prove by a preponderance of the evidence:

- That the Employer has substantially complied with the procedural requirements detailed in Section 6 of these Rules; and
- That the employee committed a sufficient disciplinary offense(s) to justify the discipline received.

With regard to an abolishment (classification or position), the Employer shall demonstrate by a preponderance of the evidence:

- that the Employer substantially complied with the procedural requirements associated with the abolishment; and
- that the abolishment was undertaken due to a lack of a continuing need for the position based on: a reorganization for the efficient operation of the Appointing Authority, reasons of economy, or a lack of work expected to last one year or longer. Certification of lack of funds or lack of work is not required for abolishments.

With regard to a layoff, the Employer shall demonstrate by a preponderance of the evidence:

- that the Employer substantially complied with the procedural requirements associated with the layoff; and
- that a layoff was undertaken due to a lack of work or lack of funds.

Abolishments (classification or position) and layoffs shall also be disaffirmed if the Commission determines that the action was taken in bad faith. The Employee is required to prove the Employer's bad faith by a preponderance of the evidence.

With regard to reclassifications and assignments to classifications:

When an appeal presents the issue of whether an employee is properly classified, or properly assigned to a classification, the Hearing Officer shall conduct a fact-finding hearing to determine the duties performed by the employee in the position at issue. Prior to the hearing, the parties should file with the Hearing Officer a designation of what classification each contends best matches the employee's duties. The Appellant can request a copy of the most recent audit of the employee's position from Human Resources, and parties can access job descriptions or class specifications for the positions that each party has designated, and the class specifications for any adjacent classifications within the same classification series, through the Human Resources' department website. If the Appellant does not have on-line access to these records, the Appellant may request the Human Resources department to provide hard copies of these records.

- If the employee's position has not been audited within two years, or if either the employee or the Appointing Authority contends that the employee's duties significantly changed since the last audit, the Hearing Officer may recommend to the PRC that the appeal be stayed pending completion of a new position audit.
- In an evidentiary hearing concerning the proper classification of an employee, the witnesses should be limited to the audited employee, the employee's immediate supervisor, and/or the designee of the authority who conducted the position audit. In this type of evidentiary hearing the Hearing Officer might choose to conduct the primary examination of the witnesses, followed by limited examination by the parties.

- The Hearing Officer's Report and Recommendation should compare the duties performed by the audited employee to the appropriate specifications and determine which classification most appropriately describes the duties performed by the employee. It is not anticipated that evidence about whether other employees are properly classified would be relevant.

The standard of proof for all other appeals before the Commission shall be a preponderance of the evidence.

#### Determination of Unclassified Status

When an employee has been adversely affected as an unclassified employee, the burden of proving the unclassified status of the employee is on the appointing authority. The Commission will take evidence of the employee's duties over a reasonable period of time, which is generally defined as one calendar year immediately prior to the adverse action, provided that the employee was in an active work status in the position at issue during that time period.

#### Official Record

All hearings shall be recorded by the use of audio electronic recording devices. The audio record is the official record and shall be maintained / destroyed in accordance with the Commission's record retention schedule.

#### Post-Hearing Briefs

The Hearing Officer or Commission, in its own discretion, may allow the parties to a hearing to submit post-hearing briefs. A reasonable briefing schedule shall be established by the Hearing Officer or Commission in such cases. The official record shall be held open in such cases until the time for submittal of the briefs has passed. Any brief submitted within this time period shall be included as part of the official record.

#### Reports and Recommendations

After the official record has been closed, the Hearing Officer or the Commission will consider all evidence and submissions and issue a Report and Recommendation making findings of fact and conclusions of law. The Report and Recommendation shall be sent by electronic mail and regular mail to the last known post office address of the Appellant, and by electronic mail to the Appellee's legal representative.

Either party may file with written objections to the Report and Recommendation with the Commission within fourteen (14) calendar days after the date on which the Report and Recommendation was mailed. For purposes of filing the objection, the written objection must actually be received by the Commission within the fourteen (14) day period. A party filing a written objection must also serve a copy of the objections on the opposing party. The opposing party shall have fourteen (14) calendar days from receipt of the objections to file a written response to the objections. The response to objections must be actually received by the Commission within this fourteen (14) day period.

The Objections and Responses must be received by the Commission within the time periods set forth in the preceding paragraph and by the end of the PRC's business day at 4:30 p.m.

Motions for extension of time to object or respond to objections shall be submitted to the Commission at the address listed on the PRC's website, by email (personnelreviewcommission@cuyahogacounty.us) or facsimile (216-443-3694). The PRC Chairperson shall have the authority to rule on the parties' motions for extension of time to file Objections or Responses thereto. The parties may request one extension of not more than seven (7) days. Except for good cause shown no further extensions will be granted.

#### Electronic Filing/Service

The parties may submit documents, including notices, motions, objections and responses along with any attachments/exhibits via the PRC's database which can be accessed through the PRC's website.

Parties will receive service of such filings at the electronic mail address on file with the PRC. If the opposing party does not have an electronic mail address listed on the notice of appeal or the notice of appearance, then the filing party is responsible for effectuating service via regular U.S. Mail.

The deadlines and requirements for filings with the PRC remain as set forth in these Rules.

### **13.06 Decisions of the Personnel Review Commission**

At the first regular meeting of the Commission following the receipt of objections or responses, if applicable, the Commission will, as a regular item of business, consider the Report and Recommendation along with any objections or responses received in a timely manner. At that time, the Commission may take the matter under advisement.

At the point in time when the Commission acts upon a Report and Recommendation, it shall perform one of the following actions:

- Vote to affirm the Report and Recommendation as written;
- Vote to disaffirm the Report and Recommendation and submit a new decision;
- Vote to modify the Report and Recommendation;
- Vote to remand the matter back to the Hearing Officer to reopen the official record for additional evidence.

All votes taken under this Section shall be recorded in the minutes. The Commission shall notify the parties in writing of its decision. The notification shall also inform the parties of their rights (if any) to appeal to the Court of Common Pleas.



### **13.07      Appeals to the Court of Common Pleas**

The decision of the Personnel Review Commission shall be a final order, and may be appealed by either the Appellant or by the County, as provided by general law.