

# CUYAHOGA COUNTY PERSONNEL REVIEW COMMISSION



## ADMINISTRATIVE RULES

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Revised May 16, 2024

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# 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 of HR, 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 or PRC* — The Cuyahoga County Personnel Review Commission.
- (8) *Competitive Examination* — Means the 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. 2013-001.
- (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 pay grade than that of the classification the employee currently holds.
- (14) *Department of Human Resources* — The Cuyahoga County Department of Human Resources.
- (15) *Director of HR* — The Director of the Cuyahoga County Department of Human Resources as appointed by the County Executive and confirmed by County Council.
- (16) *Eligibility List* — A list of names established by the Commission for the purpose of filling vacancies in the classified service.
- (17) *Ethics Policy* — Title IV of the Cuyahoga County Code and any revisions thereto.
- (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 Commission 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 Grade* — The pay range assigned to a position or classification.
- (23) *Position* — The name that applies to a group of duties intended to be performed by an employee.
- (24) *PRC Director* — The Director of the Cuyahoga County Personnel Review Commission as appointed by the Commission.
- (25) *Promotion* — The appointment of an employee to a different position assigned a higher pay grade 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 grade.
- (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 Rule 7.03.
- (32) *Request for Restoration* — A request made by an affected party seeking the Commission's consideration to restore that party to an established eligibility list. See Rule 9.05.
- (33) *Suspension* — The interruption of an employee's employment and/or compensation for a fixed time period.

## 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.

### 2.02 RELATIONSHIP TO COLLECTIVE BARGAINING AGREEMENTS

If an employee's collective bargaining agreement provides for 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 procedure.

Bargaining unit employees may have the right to file appeals based on claims of retaliation pursuant to the County's Code of Ethics, Title IV of the County Code.

[Reference County Code, Chapter 406 and Chapter 407, Section 407.02(B)]

### 2.03 PRC MERIT PRINCIPLES

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 adopted the following Merit Principles to guide its work to fulfill its Charter responsibilities. These Merit Principles in and of themselves do not confer any rights upon an employee before the Personnel Review Commission. Employee's rights to appeal to the PRC are governed by the Charter, Ohio Revised Code Chapter 124, and the County Code. A summary of the PRC's appellate jurisdiction is set forth herein at Rule 3.02.

#### Principle #1

Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force representative of the region, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.



Principle #2

All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to race, , color, ancestry, national origin, language, religion, citizenship status, sex, age, sexual preference or orientation, gender identity/expression, military status/veteran status, disability, genetic information, , membership in a collective bargaining unit, status with regard to public assistance, or political affiliation of any applicant unless otherwise lawfully required.

Principle #3

Equal pay should be provided for work of comparable value, with appropriate consideration of rates paid by employers in the relevant labor market, as determined by the County, and appropriate incentives and recognition should be provided for excellence in performance. Pay equity is achieved when persons performing work in like positions across the Cuyahoga County government organization are paid on the basis of their relative qualifications and performance, with regard to the relevant labor market and within the compensation policy framework designed by the County to achieve internal and external equity in compensation practices.

Principle #4

All County employees should maintain high standards of integrity, conduct, and concern for the public interest of the citizens of Cuyahoga County.

Principle #5

The Cuyahoga County government workforce should be used efficiently and effectively, without duplication of effort, and the County should employ an efficient and economical system for employment of persons in the public service of the County according to merit and fitness, that is, based on employees' qualifications and conduct and capacity in office.

Principle #6

Employees should be retained on the basis of adequacy of their conduct and capacity in office, inadequate performance should be corrected, and employees who cannot or will not improve their performance to meet required standards should be separated from County employment.

Principle #7

Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

## **2.04 CONSTRUCTION**

These Rules shall be construed 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, County Code, Council Ordinances and Resolutions, and general law.

## **2.05 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**

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 reviewing and auditing compliance with federal, state, and local laws regarding personnel matters within the County Executive's organization and departments. This responsibility shall include the authority to submit reports and recommendations to the County Executive and County Council on issues of compliance.
- (3) For the County Executive's organization and departments, authority to review, audit, report, and make recommendations regarding the following:
  - 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, and
  - g. Consistent administration of performance management system.
- (4) Responsibility for creation of rules and policies related to the Personnel Review Commission's authority set forth in the Charter in accordance with the human resources policies established by ordinance.
- (5) Sole responsibility for civil service testing for initial and promotional appointments within the classified service of the County in cooperation with the Department of Human Resources.
- (6) Responsibility for submitting a recommendation regarding any ordinance concerning County personnel policies prior to passage by County Council and, in the event the Commission does not endorse an ordinance, the Commission may provide a Statement of Non-Endorsement to the County Council. ;
- (7) Responsibility 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.

- (8) In furtherance of the Commission's duty to audit and report on compliance with federal, state, and local employment laws, 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 responsible for auditing, and to report the inquiry findings to County Council (See Rule 12.04);
- (9) Such other functions as may be deemed necessary by the Council for the Personnel Review Commission to carry out its mission and purpose.

### **3.02 JURISDICTION**

The Commission shall hear appeals of classified employees from final decisions of Appointing Authorities, the County Executive, the Director of HR, or their designee relative to the following employment actions:

- (1) Reduction in pay or position,
- (2) Job abolishment/layoff,
- (3) Suspension of more than forty (40) work hours for FLSA exempt employees,
- (4) Suspension of more than twenty-four (24) work hours for FLSA non-exempt employees,
- (5) Discharge (removal from employment),
- (6) Assignment or reassignment to a new or different classification,
- (7) Refusal of the Director of HR to reassign an employee to another classification or to reclassify the employee's position with or without a position audit,
- (8) Failure to remove duties deemed outside the employee's classification within the 45-day period per Section 303.01 of the County Code, and
- (9) Other appeals as provided for by Council ordinance.

The Commission shall hear appeals in the following categories for both classified and unclassified employees:

- (1) Whistleblower appeals pursuant to the County's Ethics Policy (Title IV of the County Code),
- (2) Determination of classified or unclassified status, and
- (3) Other appeals as provided for by Council ordinance.

For purposes of this Rule, "discharge" includes disability separations.

Determination of the classified or unclassified status of an employee shall be done in accordance with general law and Council Ordinance.

### Collective Bargaining Agreements

If an employee's collective bargaining agreement provides for 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 procedure. Bargaining unit employees may have the right to file appeals based on claims of retaliation pursuant to the County's Code of Ethics, Title IV of the County Code.

*[Reference County Code, Chapter 406, and Section 407.02(B)]*

## **3.03 CLASSIFICATION PLANS**

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

## **3.04 CIVIL SERVICE TESTING**

Pursuant to Section 9.02 of the Charter, the Commission shall have the sole responsibility for civil service testing for initial and promotional appointments within the classified service of the County in cooperation with the Department of Human Resources. To this end, the Commission has authority, including but not limited to the following:

- (1) To prepare, conduct, score, 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 eligibility lists containing the names, scores, and rankings of persons qualified for appointment to positions in the County's classified service.

*[Reference County Code, Section 303.03(A)]*

## **3.05 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.

*[Reference Cuyahoga County Charter, Article IX, Section 9.01]*

### **3.06 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 employees and officials 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.

### **3.07 ETHICS**

Pursuant to Section 9.02 of the Charter, the Commission shall have the authority to audit compliance with local, state and federal laws regarding ethics, including ethics resolutions or ordinances passed by County Council. Furthermore, in certain circumstances, the Commission has responsibility for hearing complaints of retaliation by County employees who have filed a written whistleblower retaliation complaint.

#### **Whistleblower Appeals**

If an appointing authority, supervisor, or the Department of Human Resources takes any retaliatory action against an employee as a result of the employee's having made a whistleblower complaint under Title 4, Ethics, of the Cuyahoga County Code, the employee's sole and exclusive remedy is to file a written retaliation complaint with the Personnel Review Commission.

Any whistleblower complaint giving rise to an alleged retaliatory act must be filed in writing for an employee to exercise his or her appeal rights under this paragraph. A written whistleblower retaliation complaint may be submitted anonymously, provided, however, that the employee shall bear the burden of proving that the employee was the source of the anonymous complaint upon the filing of a whistleblower retaliation complaint.

If the employee files a written whistleblower retaliation complaint, the Personnel Review Commission shall immediately notify both the employee's appointing authority and the Agency of Inspector General and shall hear the retaliation complaint. The Personnel Review Commission shall determine if retaliation occurred and may issue any order as is appropriate including, but not limited to, rehiring, reinstatement with back pay, or any other

remedy available under general law. Whistleblower retaliation complaints heard by the Personnel Review Commission are appealable to the Court of Common Pleas pursuant to Ohio Revised Code Chapter 2506.

### **3.08 COMPLIANCE**

To meet its obligations under Section 9.02 of the Charter, the Commission will provide periodic compliance reports to County Council regarding the County's personnel practices.

## **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 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**

Notice of regular meetings, meeting agendas, and minutes shall be posted on the Commission's website (<https://www.cuyahogacounty.gov/personnel-review-commission>).

If you wish to be notified via electronic mail of all PRC meetings, please send such request to the PRC via email ([personnelreviewcommission@cuyahogacounty.us](mailto:personnelreviewcommission@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 all meetings of the Commission shall be promptly prepared and will be posted on the PRC's website following approval of the minutes by the Commission. 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 and the Cuyahoga County Employee Handbook.
- (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 Director, the Director of HR, 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; 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 (<https://www.cuyahogacounty.gov/personnel-review-commission>). The public shall be permitted to comment regarding the proposed rule change in accordance with Rule 4.01. 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 Employee Handbook 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.

If a proposed rule change to the PRC Administrative Rules is approved by a majority vote of the Commission, such rule change will be referred to County Council for adoption pursuant to County Code Section 113.02(l).

Notwithstanding the foregoing, the PRC Director 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 Director 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 clear, countywide classification and salary administration system for classified employees of the Charter government.

The classification plan shall be administered and maintained by the Commission and is subject to approval 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 based on 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 County Code, Sections 303.01 and 303.04(A)]*

## **6.02 COMPETITIVE AND NONCOMPETITIVE CLASSES**

Anytime a classification is created, 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 unskilled labor positions; and
- (4) Any other relevant information.

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

### **6.03 COMPENSATION PLAN**

The Commission shall administer a compensation plan for the County's non-bargaining 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 Commission's administration of the classification and compensation plans includes, but is not limited to, performing job analysis, salary surveys, periodic classification and compensation system reviews to ensure system components support the principles of merit, fitness, and pay equity, development of position descriptions and classification specifications, and research of best classification and compensation practices. The Commission shall recommend those best practices in classification and compensation to County Council as needed to ensure pay equity in like classifications. Job audits will be conducted by the Department of Human Resources.

*[Reference County Code, Section 303.04(B)]*

### **6.04 MODIFICATIONS TO THE CLASSIFICATION AND COMPENSATION PLANS**

Proposed modifications to the Classification and/or Compensation Plan(s) shall be posted on the Commission's website for a minimum of seven (7) days prior to the Commission taking any action on the proposed modifications. The posting will state the date of the Commission meeting at which the proposed modifications will be considered.

The public shall be permitted to comment regarding the proposed modifications during the public meeting at which the proposed modifications are being considered by the Commission (see Rule 4.01).

If the proposed modification(s) is approved by a majority vote of the Commission, such modification(s) will be referred to County Council for its consideration. Modifications to the Classification and Compensation Plans are effective only after approval by County Council.

Notwithstanding the foregoing, the PRC Director is authorized to approve minor revisions to the Classification and/or Compensation Plan(s) if such revision does not alter the meaning or intent. If the PRC Director makes such a change, a record will be created to reflect the modification and the purpose of the change.

### **6.05 UNCLASSIFIED SERVICE**

The unclassified service consists of positions that are specifically exempted from the classified service by general law, Council Ordinance, or the Cuyahoga County Code. 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.

## **6.06 CIVIL SERVICE STATUS REPORTS**

All Appointing Authorities shall provide quarterly reports to the Commission detailing the appointment of employees to the classified and unclassified service.

The Department of Human Resources shall provide an annual list to the Personnel Review Commission of all current employees and their civil service status.

The content of any written report described in this Rule shall not confer any additional rights upon the employee before the Personnel Review Commission or in any other appellate body with jurisdiction over an appeal of the employee.

*[Reference County Code, Section 303.04(A)]*

# SECTION 7 — ANNOUNCEMENTS & APPLICATIONS

## 7.01 EXAMINATION ANNOUNCEMENT

When a new eligibility list is needed to fill vacancies in a classification, the Department of Human Resources shall post for the classification on the internal and/or external county job board(s). The posting shall indicate the title, definition, salary range, minimum requirements for the classification, and the last day and hour that applications will be accepted. Following the application period, 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 the Personnel Review Commission's website. Candidates eligible for competitive examination shall also be notified by the Personnel Review Commission via electronic mail.

The examination announcement shall contain the title, definition, salary range, and minimum requirements 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 requirements for each position, which shall be included in the official announcement of each examination.

*[Reference County Code, Section 303.03(B)]*

## 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 Department of Human Resources website (<https://www.cuyahogacounty.gov/human-resources>).

*[Reference County Code, Section 303.03(B)]*

## 7.03 REJECTION OF APPLICATIONS

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) It reflects that the applicant has not met one or more of the minimum requirements of the position.

- (3) It reflects 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 with the Commission a Request for Reconsideration form (available on the PRC's website: <https://www.cuyahogacounty.gov/personnel-review-commission>). Only requests made using the proper form and submitted by the deadline will be considered.

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 after review, it is determined that the rejection is justified, the examination paper shall not be scored. 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 County Code, Section 303.03(C)]*

## **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, to participate in the application process and/or examination process.

## **7.05 EQUAL EMPLOYMENT OPPORTUNITY**

Applications will be accepted without regard to the race, color, ancestry, national origin, language, religion, citizenship status, sex, age, marital status, sexual preference or orientation, gender identity/expression, military status/ veteran status, disability, genetic information, membership in a collective bargaining unit, status with regard to public assistance, or political affiliation of any applicant unless otherwise lawfully required.

# **SECTION 8 — EXAMINATIONS**

## **8.01 CHARACTER OF EXAMINATION**

Examinations will be developed 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 qualified candidate shall be notified via electronic mail.

In certain circumstances, the Commission may allow for examination rescheduling for candidates who cannot attend their regularly scheduled administration for legitimate, verifiable reasons. Candidates will be notified via electronic mail if rescheduling is permitted for an examination. Rescheduling determinations will be made on a case-by-case basis according to the PRC's rescheduling policy, which is available on the PRC's website (<https://www.cuyahogacounty.gov/personnel-review-commission>).

Under no circumstances will additional exam administrations be scheduled or held after the eligibility list for said examination is established, except as provided in Rule 10.03.

## **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 experience 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, color, ancestry, national origin, language, religion, citizenship status, sex, age, marital status, sexual preference or orientation, gender identity/expression, military status/ veteran status, disability, genetic information, membership in a collective bargaining unit, status with regard to public assistance, or political affiliation of any applicant unless otherwise lawfully required.

## **8.04 IDENTITY OF EXAMINEE CONCEALED**

To the extent possible, 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.

## **8.05 FRAUD IN EXAMINATIONS**

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

- (1) Falsely mark, score, 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 a candidate, in connection with any examination, registration, or appointment, or application or request to be examined, registered, or appointed;
- (5) Furnish false information about themselves, or another person, in connection with any examination, registration, or appointment or application or request to be examined (including a request for examination rescheduling or reasonable accommodation), 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 their 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 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; the Commission will notify the Director of HR upon learning of any such conduct.

*[Reference County Code, Section 303.03(D)]*

## **8.06 METHOD OF GRADING**

The method of scoring — including the setting of minimum passing scores, weighting of multiple test components, rank ordering, banding, or any other consideration in determining



a candidate's score on an employment test — shall be determined by the Commission on a test-by-test basis.

*[Reference County Code, Section 303.03(E)]*

## **8.07 CREDIT FOR MILITARY (UNIFORMED) SERVICE**

Any person who has been honorably discharged from the uniformed services or transferred to the reserve with evidence of satisfactory service may file with the Commission Form DD214, member copy 4 as proof of military service, and, upon verification, the person shall receive an additional credit of 5% of the maximum score for the examination, provided the candidate has received a passing score in all phases of the examination before addition of the military service credit.

Any person in good standing of a reserve component of the armed forces of the United States who successfully completes the member's initial entry-level training may submit to the Commission proof of such completion, and, upon verification, the person shall receive an additional credit of 5% of the maximum score for the examination, provided the candidate has received a passing score in all phases of the examination before addition of the military service credit.

Proof of uniformed service shall be filed on or before the date and time of the examination administration to receive the military service credit.

As used in these Rules, "uniformed services" and "reserve component" include service in the Army, Navy, Marine Corps, Air Force, Coast Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard, Air National Guard, Commissioned Corps of the Public Health Service, or any other category of persons designated by the President in time of war or emergency.

*[Reference County Code, Section 303.03(F)]*

## **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 candidates who took the exam shall be notified via electronic mail when the eligibility list has been posted to the Commission's website.

## **8.10 NONCOMPETITIVE EXAMINATIONS**

The Commission may suspend competition for positions in the categories identified 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.

Applications will be evaluated by Commission staff 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 County Code, Section 303.03(G)]*

## **8.11 REEXAMINATION POLICY**

Once an eligibility list has been established as the result of an examination, candidates who attended the examination (including those who voluntarily withdrew) cannot reexamine for that position until that eligibility list expires or is fully exhausted. This rule applies to any exam scheduled as provided in Rules 10.02 and 10.03. Once the original list expires or is fully exhausted, candidates who meet the minimum requirements of the classification may be eligible for reexamination only if a new exam is scheduled to establish a new eligibility list, and then only if they reapply in response to the new exam announcement.

# **SECTION 9 — ELIGIBILITY LISTS**

## **9.01 POSTING OF LISTS**

From the results of each competitive examination, the Commission shall post on its website a list of the persons whose score in any examination meets or exceeds the minimum passing score and who are otherwise eligible (the “eligibility list”) for the duration of the eligibility list per Rule 9.02.

## **9.02 DURATION OF LISTS**

Eligibility lists established by the Commission shall remain in force not longer than one (1) year or until exhausted; however, the Commission may, at its discretion, extend the eligibility list. If the Commission extends the eligibility list, the new expiration date will be noted on the public eligibility list, and all candidates remaining on the list will be notified via email of the extension.

*[Reference County Code, Section 303.03(H)]*

## **9.03 RANKING TIED SCORES**

In the event two (2) or more candidates receive the same grade on an open competitive examination in which rank ordering is used in establishing the eligibility list, those candidates shall receive the same rank on the eligibility list. Within that same rank, those candidates shall appear on the eligibility list in alphabetical order.

*[Reference County Code, Section 303.03(I)]*

## **9.04 CANDIDATE CONTACT INFORMATION**

Each candidate is responsible for notifying the Commission of any change in the candidate’s contact information. Failure to provide up-to-date contact information can affect a candidate’s rights as provided in Rule 9.05(6).

## **9.05 REMOVAL FROM LIST**

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

- (1) At the request of the eligible candidate.
- (2) After declining a conditional offer for the position.
- (3) After three certifications or considerations without receiving a conditional offer.
- (4) Failure to pass a pre-employment background check and/or drug or alcohol screen.

- (5) Failure to appear for an interview or other required pre-hire activity.
- (6) Inability to contact the candidate via the contact information on file with the Commission.
- (7) Practice or attempt to practice any deception in their application or in securing eligibility or appointment.
- (8) Any just or reasonable cause that is job-related and non-discriminatory.

For the purpose of this rule, “removal” from an eligibility list constitutes the removal of the candidate from consideration in any current or future hiring process for the life of the list. This does not mean a candidate’s name will be removed from the eligibility list posted on the PRC’s website. Once the eligibility list is posted on the PRC’s website, it will not be modified or removed until the list expires, the list is exhausted, or the Commission must correct an error on the list.

If a candidate requests removal, and the request is based on illness, military service, or conflict with schooling, that candidate may be restored for consideration when that candidate indicates renewed availability for consideration if the eligibility list is still in effect per Rule 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 to the Commission for the restoration of their name to the eligibility list. Such request shall be made within five (5) calendar days of the 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. The request must be made using the Request for Eligibility List Restoration form, which is available on the Commission’s website (<https://www.cuyahogacounty.gov/personnel-review-commission>). Only requests made using the proper form and submitted by the deadline will be considered. Restoration to the eligibility list is within the sole discretion of the Commission. Consideration of a candidate’s request for restoration 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 County Code, Section 303.03(J)*]

## **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 candidates, placed in alphabetical order, who met the minimum requirements as set forth in the examination announcement.

## **9.07 SHARING ELIGIBILITY LISTS ACROSS APPOINTING AUTHORITIES**

When an Appointing Authority desires to fill a vacancy in the classified service and there is no active eligibility list for that classification in that Appointing Authority, it may request use of an active eligibility list established for the same classification in a different Appointing Authority. This request must be made using the Request to Use a Pre- Existing Eligibility List

form available on the Commission's website (<https://www.cuyahogacounty.gov/personnel-review-commission>).

Upon receipt of such a request, the Commission, through its staff, shall review the positions in each Appointing Authority. If the PRC determines the positions have the same essential functions and require the same knowledge, skills, and abilities, the Commission may grant use of the original eligibility list to the requesting Appointing Authority. Once use of the eligibility list is granted to the requesting Appointing Authority in this way, the list shall be treated as any other eligibility list originally established for that Appointing Authority, including all requirements regarding expiration, exhaustion, and certification of names as outlined in these Rules.

# SECTION 10 — CERTIFICATION

## 10.01 CERTIFICATION REQUEST

Upon establishing an eligibility list, the Commission, through its staff, shall certify names to the Appointing Authority to fill the next vacancy in the classification. This certification is made to the Appointing Authority via the Department of Human Resources. If any vacancies remain after a conditional offer is extended, the Appointing Authority, through HR, may submit a written request for an additional certification to the Commission's staff unless all remaining names have already been certified.

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

## 10.02 NUMBER OF NAMES TO BE CERTIFIED

When certifying names from an eligibility list established through competitive means, the Commission, through its staff, shall certify the names and rank of the top twenty-five percent (25%) or a minimum of ten (10) names, whichever is greater, of the candidates remaining on the eligibility list for the class to which the position is classified. If the last name to be certified from the eligibility list has the same rank as other names, then all names that share that rank shall be certified. When certifying names from an eligibility list established through noncompetitive means, the Commission, through its staff, shall certify all of the names remaining on the eligibility list for the class to which the position is classified.

If a name has been certified to an Appointing Authority, and sufficient justification is found to remove that name from the eligibility list per Rule 9.05 before a conditional offer has been extended from that certification, the name will be removed. After removing the name, if fewer than the top twenty-five percent (25%) or fewer than a minimum of ten (10) names — whichever is greater — remain from the original certification, then a replacement name will be certified to the Appointing Authority. The replacement name will be the highest-ranked name remaining on the eligibility list that was not already certified to the Appointing Authority. If the highest-ranked name remaining on the eligibility list has the same rank as other names remaining on the eligibility list, then all names that share that rank shall be certified to the Appointing Authority.

When fewer than ten (10) names remain on the eligibility list at the time a certification is made, the Commission may certify fewer than ten (10) names and a new examination may be scheduled. If all names remaining on an eligibility list have been certified to an Appointing Authority and there is sufficient justification to remove any names per Rule 9.05 such that the number of remaining names is fewer than ten (10) before a conditional offer is extended, a new examination may also be scheduled.

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

### **10.03 MERGING NEW NAMES INTO AN EXISTING ELIGIBILITY LIST**

When a new examination is scheduled due to fewer than ten names remaining on an active eligibility list, or due to any other reason deemed necessary and appropriate by the Commission, and the results of that examination are to be posted prior to the expiration of that list, the names of those persons who pass the new examination shall be merged with those who remain on the original list.

The same examination and passing score used to establish the original eligibility list shall be used for the new examination. All candidates who pass either the original or new examination shall be placed on the eligibility list in rank order according to their examination scores. In the case of noncompetitive examinations, all candidates who met the minimum requirements of the classification during either the original or new announcement period shall appear on the eligibility list in alphabetical order. The Commission will then certify names per Rule 10.02.

Names appearing on the eligibility list are considered eligible for the duration of the original eligibility list on which they first appeared, as described in Rule 9.02. However, those names may be extended at the discretion of the Commission, as described in Rule 9.02.

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

### **10.04 CERTIFICATION NOT MORE THAN THREE TIMES**

A person certified three (3) times from the same eligibility list to the same Appointing Authority without receiving a conditional offer of employment may be omitted from future certifications. For the purposes of this Rule, a person must have been certified from the eligibility list per Rule 10.01, and the Appointing Authority must have extended conditional offers to three (3) other certified names.

*[Reference County Code, Section 303.03(K)(4)]*

# SECTION 11 — APPOINTMENTS

## 11.01 ORIGINAL APPOINTMENTS

A person who has been selected by an Appointing Authority from an 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 County Code, Section 303.05(A)]*

## 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, temporary appointments 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 may exceed the 180-day limitation; however, the temporary appointment shall not continue beyond such period of sickness, disability, or other absence.



The Department of Human Resources 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 the department.

*[Reference County Code, Section 303.05(B)]*

# SECTION 12 — EMPLOYMENT ACTIONS

## 12.01 NOTICE REQUIREMENTS

Any action taken by a County Executive Appointing Authority or its designee (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:

- (1) In writing and signed by the Employer;
- (2) 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;
- (3) The document should, on its face, indicate the particulars that form the basis for the action; and
- (4) The document should specifically describe the procedures required for the employee to exercise his or her appellate rights.

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

- (1) It is personally served upon the employee;
- (2) It is sent to the employee’s County e-mail address, except in the case of removal;
- (3) It is received by the employee at the employee’s last known address, by certified mail, return receipt requested; or
- (4) 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 Rule is returned with an endorsement showing the service was refused or unclaimed, then the notice shall be sent by regular U.S. 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 audit and report on the County's compliance with federal, state, and local employment laws, the Commission may conduct an inquiry when, upon 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. At 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 County Code, Section 303.06]*

# SECTION 13 — APPELLATE PROCEDURE

## 13.01 MANNER OF FILING APPEALS

All appeals to the Commission shall be made upon the PRC Appeal Form and include the following information:

- (1) The Employee's name,
- (2) The Employee's address and telephone number,
- (3) The Employee's Department, and
- (4) 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 blank appeal forms, can be obtained on the PRC's website (<https://www.cuyahogacounty.gov/personnel-review-commission>). Forms can also be obtained in person during regular business hours at the PRC offices.

Completed Appeal Forms shall be filed with the Personnel Review Commission by mail, in person, by email ([personnelreviewcommission@cuyahogacounty.us](mailto:personnelreviewcommission@cuyahogacounty.us)), or by facsimile (216-443-3694).

## 13.02 TIME FOR FILING APPEALS

All appeals (except Whistleblower 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 calendar days. In the event the Personnel Review Commission Office is closed due to a holiday or weekend on the tenth calendar day, appeals received the following business day will be deemed filed timely. Appeals filed after that date will not be considered.

Whistleblower appeals filed pursuant to the County's Ethics Policy shall be filed within thirty (30) calendar days after receiving actual notice of the alleged disciplinary or retaliatory action. An appeal shall be deemed to be "filed" when one of the following occurs:

- (1) The appeal is received in person and date stamped by the Commission,
- (2) The appeal is postmarked, or
- (3) 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 PRELIMINARY JURISDICTIONAL REVIEW**

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

- (1) Whether the appeal was properly perfected in accordance with these Rules, and
- (2) Whether the Commission has jurisdiction to hear the appeal.

If the PRC Director 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 PRC Director'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, Public Defender, or the Prosecutor's Office) on the same date it is filed with the Commission. The Law Department, Public Defender, or Prosecutor's Office shall have fourteen (14) calendar days from the date of filing of the objections to file a written response to the objections.

The Commission shall make a final determination of the jurisdictional issue at a public meeting following the expiration of the objection and response period. 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.

## **13.04 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 Officer 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 through the 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 Hearing Officer may recommend that the Commission 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 Hearing Officer may recommend that the Commission grant appropriate relief, including the disaffirmance of the employment action.

## **Burdens of Proof**

Disciplinary Action: The Employer shall demonstrate by a preponderance of the evidence:

(1) that the Employer has substantially complied with the procedural requirements detailed in Section 12 of these Rules; and

(2) that the employee committed a sufficient disciplinary offense(s) to justify the discipline received.

Abolishment (classification or position): The Employer shall demonstrate by a preponderance of the evidence:

(1) that the Employer substantially complied with the procedural requirements associated with the abolishment; and

(2) 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.

Layoffs: The Employer shall demonstrate by a preponderance of the evidence:

(1) that the Employer substantially complied with the procedural requirements associated with the layoff; and

(2) 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.

Reclassifications and Assignments to Classifications:

(1) 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 the Department of 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 Commission's website. 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.

(2) 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.

Whistleblower Appeals: The employee shall demonstrate by a preponderance of the evidence that the disciplinary or retaliatory action was the result of the employee making a report under the Ethics Policy or § 406.02 of the Cuyahoga County Code.

All Other Appeals Before the Commission: The standard of proof 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 and destroyed in accordance with the Commission's records 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 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 Appellant's and Appellee's legal representative.

Either party may file 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. The written objections must be received by the Commission within the fourteen (14) day period. A party filing written objections must also serve a copy of the objections on the opposing party the same day the objections are filed with the Commission. The opposing party shall have fourteen (14) calendar days from the date the objections were filed to file a written response to the objections. The response to objections must be 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.

Prior to the due date of the objections or response to objections, whichever is the case, the parties may seek an extension. 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](mailto:personnelreviewcommission@cuyahogacounty.us)), or by 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.

## **13.05 DECISIONS OF THE PERSONNEL REVIEW COMMISSION**

The Commission will, as a regular item of business, consider a Report and Recommendation along with any properly filed objections and/or responses at a public meeting.

The Commission may take the matter under advisement, vote to remand the matter back to the Hearing Officer, or vote to affirm, disaffirm, or modify the decision of the Appointing Authority, the Director of HR, or their designee.

All votes taken under this Rule 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.

## **13.06 APPEALS TO THE COURT OF COMMON PLEAS**

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