

JUDICIAL COUNCIL OF GUAM
HEARING OFFICER PROCEDURES FOR
THE HEARING OF APPEALS OF
ADVERSE ACTIONS AND GRIEVANCES

Adopted By The Judicial Council of Guam
on December 18, 2003

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I. Adverse Action Appeals

A. Right to Appeal

1. Classified Employees

Any person in the classified service holding a permanent appointment and who is subject to an adverse action by management, except one who is exempted by law from the jurisdiction of the Judicial Council, is entitled to appeal an adverse action to the Judicial Council. A person who has been appointed to a permanent position and who has satisfactorily completed his probationary period holds a permanent appointment.

2. Contract Employees

A contract employee occupying a permanent position in the classified service is entitled to appeal an adverse action to the Judicial Council during the term of his contract. Non-renewal of the contract is not appealable.

B. Contents of an Appeal

An appeal shall be in writing and shall set forth the answer to the charges and the grounds for appeal. An appeal may be amended within fifteen (15) calendar days after filing. A person who is the subject of an adverse action and who files an appeal on his own behalf or through a representative is the appellant.

C. Time Limit for Filing an Appeal

An appeal must be filed with the Judicial Council within twenty (20) calendar days from the effective date of the adverse action.

D. Judicial Council Hearing Officer

The adverse action appeal shall be heard, considered and decided by a Hearing Officer appointed by the Judicial Council.

E. Rights in Pursuit of an Appeal

An appellant shall:

1. Be assured freedom from restraint, interference, coercion, discrimination, or reprisal.
2. Have the right to be accompanied, represented and advised by a representative and/or legal counsel of their choice.
3. Be assured a reasonable amount of official time to prepare his case if he is on duty status.

F. Entitlement

An appellant who files an appeal in accordance with these rules is entitled to a hearing on his appeal before the Judicial Council Hearing Officer. Except, in the case of an emergency, or death, incapacitation, or absence from the island of the appellant, the appellant shall be personally present at the hearing of his appeal. The term "emergency" means an occurrence of a serious nature demanding immediate attention. The term "absence from the island" covers off-island emergencies, relocation, situations in which the appellant was not notified of the hearing date before leaving the island, and situations in which the appellant was excused by the Judicial Council Hearing Officer for off-island purposes.

G. Place and Time of Hearing

The Judicial Council Hearing Officer shall set the place, date, and time of hearing as expeditiously as possible.

H. Conduct of Hearing

1. The hearing is open to the public.
2. The hearing will be conducted so as to bring out pertinent facts, including the production of certain records.
3. Decisions on the admissibility of testimony or other evidence are made by the Judicial Council Hearing Officer.
4. Testimony is under oath or affirmation.

5. Each party shall have the right to call, examine, or cross-examine witnesses, and introduce exhibits. Either party may be called and examined by the Judicial Council Hearing Officer after examination of the witness has been completed by both parties; except that questions may be asked during examination to clarify a response by a witness.
6. Rules of evidence shall not be applied. The only grounds for excluding any proffered evidence are that the evidence is irrelevant or unduly repetitious. If any evidence is ruled inadmissible by the presiding officer, the grounds shall be stated for the record.
7. The order of presentation in the hearing shall be as follows:
 - a. Opening statement of management.
 - b. Opening statement of appellant.
 - c. Presentation by management of evidence in support of the charges.
 - d. Presentation by the appellant of such evidence in defense or rebuttal.
 - e. Closing statement of management.
 - f. Closing statement of appellant.
 - g. Preliminary motions and issues shall be disposed of prior to the hearing on the merits.
8. Burden of Proof

Management shall have the burden of proof by a preponderance of the evidence. In cases involving charges which could be a crime, if the person was charged in a criminal action, the Judicial Council Hearing Officer shall determine the matter based upon substantial evidence.
9. Witnesses
 - a. Both parties are entitled to produce witnesses. The Administrator of the Courts, or his designee, shall be in attendance without subpoena. Except, as otherwise provided in Section I(F), the appellant shall be in attendance without subpoena.

- b. The Judicial Council Hearing Officer may call additional witnesses as he or she may deem necessary and require the production of documents.
- c. The Judicial Council Hearing Officer, upon his or her own initiative, or upon the request of any party, may summon in writing any person to attend a hearing as a witness and, in a proper case, to bring with him or her any book, record or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before the Superior Court, except that if the witness is a government employee, no witness fee shall be given. The subpoena shall issue in the name of the Judicial Council Hearing Officer, and shall be directed to the person and served in the same manner as subpoenas to appear and testify before the court. If any person summoned to testify shall refuse or neglect to obey said subpoena, upon petition, the court may compel the attendance of such person before the Judicial Council Hearing Officer, or punish said person for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the Superior Court.
- d. An employee is considered to be on duty status during the time he is made available as a witness. Such employee is entitled to compensatory time-off if he serves during his normal non-working hours. The Judicial Council Hearing Officer shall furnish the witness, a certificate showing the time devoted to the hearing. "Employee" in this section does not include the parties to the appeal or their representatives.
- e. The Judicial Council Hearing Officer shall ensure that all witnesses are treated with courtesy and respect while giving testimony at the hearing.
- f. The court shall assure that witnesses be free from restraint, interference, coercion, discrimination, or reprisal in presenting testimony.

10. Record of Hearing

- a. The hearing shall be tape recorded. The recordings, testimonies and exhibits admitted during the hearing, together with all pleadings and

papers filed by the parties, shall constitute the official record.

- b. Filming, video taping, or recording of the hearing or other proceedings by any of the parties shall be permitted only upon written request and prior approval by the Judicial Council Hearing Officer, with notice to the other parties in the case.
- c. Transcripts of the hearing may be made available upon request and at a cost of one dollar (\$1.00) per page. Additional copies may be provided for fifty cents (\$0.50) per page. These charges do not apply to the court.

I. Termination of Appeal

The Judicial Council Hearing Officer may terminate an employee's appeal:

- 1. At the appellant's request.
- 2. When an appellant fails to furnish required information necessary to proceed with the appeal.
- 3. When, without reasonable justification or excuse, an appellant fails to personally appear for the hearing.

J. Death of Appellant

When an appeal has been filed properly before the death of the appellant, the Judicial Council Hearing Officer shall process it to completion and adjudicate it. The Judicial Council Hearing Officer may include in its decision, retroactive compensation and benefits to which the deceased employee would have been entitled to at the time of death.

K. Scope of Hearing

The scope of the appeal hearing shall be limited to:

- 1. The issues in dispute.
- 2. A review of compliance with procedural requirements for effecting an adverse action.

L. Decision

1. The Judicial Council Hearing Officer shall decide the appeal on the basis of the evidence presented.
2. Except, as provided in Section I(L)(4) below, if management proves the charges against the appellant, the Judicial Council Hearing Officer shall sustain the adverse action.
3. If management fails to prove the charges, the Judicial Council Hearing Officer shall dismiss the adverse action with prejudice.
4. If management proves the charges, but the Judicial Council Hearing Officer finds that, because of the appellant's past record, the gravity of the offense, or the facts and circumstances of the case, the adverse action be modified, it may modify the adverse action accordingly. The reasons for such modification shall be stated, in sufficient detail, in the decision of the Judicial Council Hearing Officer. Any compensation or benefits due as a result of the modification shall be restored to the appellant.
5. If the Judicial Council Hearing Officer finds that the adverse action was substantially procedurally defective, because it is not in conformity with the applicable rules and regulations for adverse actions, it shall dismiss the adverse action, with or without prejudice, as it considers fair and equitable under the facts and circumstances of the case. The Judicial Council Hearing Officer shall be satisfied that procedural requirements have been met before proceeding with the hearing on the merits.
6. The Judicial Council Hearing Officer shall issue a written decision within thirty (30) calendar days after the hearing is completed and provide copies thereof to the parties and the Judicial Council. If the adverse action is sustained, the effective date of the action shall stand as issued by the Administrator of the Courts or his designee.
7. A written decision or ruling shall be considered final and shall be dispositive of the issues presented therein. Notwithstanding any other Judicial Council Hearing Officer and EEO Review Board rule, regulation, or policy, written decisions and rulings mentioned herein shall be issued within thirty (30) calendar days from the conclusion of the deliberation in which a decision or ruling is made, which forms the basis of the final written decision or ruling.

8. If the adverse action is revoked by the Judicial Council Hearing Officer, all compensation and other benefits which would have accrued to the appellant from the effective date of the decision, shall be restored to the appellant.

M. Compliance

Compliance with any order specified in the decision is required by law. The Administrator of the Courts to whom an order is directed, must report, within ten (10) working days after receipt of the decision, that he has carried the order into effect, or he has taken action to have the decision reviewed by the Superior Court.

N. Judicial Review

The decision of the Judicial Council Hearing Officer is final, but subject to judicial review. In order to seek judicial review of a Judicial Council Hearing Officer decision, the appellant must file a petition for judicial review in the Superior Court within thirty (30) calendar days of the decision.

O. Amendment and Supplemental Policies

These procedures and guidelines may be amended by the Judicial Council as the need arises, or may be amended or supplemented by other written appeal policies of the Judicial Council.

II. Grievance Appeals

A. Right to Appeal

An employee who is entitled to file a grievance under the Judiciary's Personnel Rules and Regulations, and who has complied with the grievance procedures therein may appeal the decision of the Administrator of the Courts.

B. Time Limit for Filing an Appeal

The appeal must be filed with the Judicial Council within five (5) working days of receipt of the decision by the Administrator of the Courts.

C. Judicial Council Hearing Officer

The adverse action appeal shall be heard, considered and decided by a Hearing Officer appointed by the Judicial Council.

D. A grievance appeal shall be allowed by the Judicial Council Hearing Officer only if predicated on:

1. A violation of the Personnel Rules and Regulations;
2. The procedural rights of the employee filing the complaint as outlined have been disregarded;
3. The decision of the supervisor, Grievance Committee, or Administrator of the Courts is unjust, inequitable or not in accord with the facts.

E. Appeal and Decision

1. The Judicial Council Hearing Officer shall review the official grievance file and all relevant written representations.
2. The Judicial Council Hearing Officer, in his or her discretion, may afford the parties an opportunity to appear personally and present oral arguments and representations.
3. The Judicial Council Hearing Officer shall normally be expected to issue a written decision within ten (10) working days after receipt of the grievance. Copies of the decision shall be provided to the parties and the Judicial Council.
4. The decision of the Judicial Council Hearing Officer shall be final but subject to judicial review. In order to seek judicial review of a Judicial Council Hearing Officer decision, the appellant must file a petition for judicial review in the Superior Court within thirty (30) calendar days of the decision.