

Rule #2-20

Merit System Civil Service Council

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§ 2-20-005 Purpose

The Merit System Civil Service Council is established by the County Home Rule Charter and consists of a board of three members, who are appointed by the Multnomah County Board of Commissioners. The Merit Council conducts hearings on appeals from classified management and represented regular employees as described in Section 2-20-020 below. The County recognizes that the Merit System Civil Service Council appeal process may be adversarial in nature at times, and will make efforts to minimize the impact on individuals involved in the process and ensure that the process is trauma-informed.

§ 2-20-010 Appeals

A. Appeals to the Council:

1. Classified management employees may appeal disciplinary actions more severe than a letter of reprimand if the disciplinary action violates Multnomah County Personnel Rules, County Code or the Charter. Appeals must be delivered to the Executive Secretary of the Council no later than ten (10) calendar days from the date of the letter imposing the discipline.
2. Represented regular employees may appeal personnel actions not covered by a grievance procedure if the personnel action violates Multnomah County Personnel Rules, County Code or the Charter. The appeal must be delivered to the Executive Secretary of the Council no later than ten (10) calendar days after

the effective date of that personnel action or for appeals under MCPR 5-20-070 receipt of the Multnomah County Chief Human Resources Officer's response.

3. Executive, temporary, and on-call employees have no appeal rights pursuant to MCPR 4-70-030. Probationary employees have no appeal rights pursuant to MCPR 2-15-040.

B. Appeals to the Council must:

1. Be in writing;
2. Be signed by the employee;
3. Be dated;
4. Be addressed to the Council;
5. Contain an explanation of the action being appealed;
6. Include an explanation of the violation or identify the rule alleged to have been violated;
7. State the date of the action taken or not taken which the employee believes violated the Multnomah County Personnel Rules, County Code or the Charter;
8. Contain a statement of the redress desired;
9. Include a description of the evidence to be used by appellant on appeal.

C. Failure to comply with the requirements of this section will result in dismissal of the appeal by the Executive Secretary.

§ 2-20-020 Processing of Appeals

A. The Council or the Executive Secretary may appoint a Hearings Officer to conduct the Council's hearings functions. In order for a Hearings Officer to be considered for appointment an individual must either be:

1. A member of the Oregon State Bar actively engaged in the practice of law for at least five years, or
2. An individual with at least five (5) years experience hearing contested employment cases, who is not a current county employee nor an employee within the year immediately preceding appointment

B. Upon receipt of an appeal, the Executive Secretary shall:

1. Determine compliance with MCPR 2-20-010 (A-B). Upon a finding of failure to comply, the Executive Secretary will dismiss the appeal. The appellant may

appeal this decision by filing an appeal with the Executive Secretary within ten (10) days of the decision. The County Attorney's Office will issue a decision on the dismissal within ten (10) days of receiving the appeal. This decision is final and may not be appealed.

2. Determine if the appeal contains issues of disputed fact.
 - a. Upon a finding that an issue of disputed fact exists the Executive Secretary will refer the appeal to a Hearings Officer for hearing.
 - b. Upon a finding that the appeal does not involve any issues of disputed fact the Executive Secretary will refer the appeal to the Merit Council.
3. Notify the appellant, counsel for the county, Department HR Manager, and Council members or Hearings Officer, if assigned, of the date, time and place of hearing not less than fifteen (15) days before the hearing, unless the appellant requests the hearing to be through writing.
4. An appellant's failure or refusal to appear for a scheduled hearing may result in dismissal of the appeal. If the appeal is dismissed for failure or refusal to appear, an appellant may not re-file an appeal on that issue.

§ 2-20-030 Repealed by ER 303

§ 2-20-040 Hearings Administration

A. Hearings will be presided over by:

1. The Council Chair;
2. A designated member of the Council; or
3. A Hearings Officer appointed by the Council.

B. Hearings will be conducted in an impartial manner. Any member of the Council or an appointed Hearings Officer will withdraw if unable to impartially or fairly consider an appeal.

1. Any member of the Council or an appointed Hearings Officer will disclose any relationship, which might give the appearance of impropriety.
2. An affidavit of bias may be filed where a party believes hearing by a Hearings Officer or Council member will result in actual bias. The Council or its designee will consider the affidavit of bias prior to hearing and as a part of the record in the case. Upon a finding that a party will suffer actual bias from consideration by the Hearings Officer or Council member, a new presiding Council member or Hearings Officer will be appointed.

§ 2-20-050 Presiding Powers

The Council member or Hearings Officer presiding over a hearing has authority to:

- A. Administer oaths and affirmations;
- B. Issue subpoenas on its own motion, or when requested in writing by a party on a showing of the general relevance and scope of evidence sought;
- C. Rule upon objections to evidence and receive offers of proof subject to MCPR 2-20-070
- D. Regulate the course of the hearing;
- E. Hold conferences for the settlement or clarification of the issues;
- F. Rule on procedural matters;
- G. Recommend decisions in conformity with MCPR 2-20-080;
- H. Call and examine or privately interview witnesses, and introduce into the record or use other measures necessary in obtaining documentary and other evidence;
 - 1. Remote testimony or alternative methods may be used to ensure the process is trauma-informed and to maintain the integrity of the process. Remote testimony is live testimony given by a witness or party from a physical location outside of the location of the hearing.
 - 2. Witnesses may “appear” including, but not limited to, through written questions, in person, by phone, through video, or via Skype or other similar programs.
 - 3. Permit or require the parties to present oral or written arguments and submit proposed findings of fact and violations of County and/or department policies and procedures;
 - 4. Take any other action authorized by Council consistent with MCC Chapter 9 and other applicable law; and
 - 5. The Council may delegate its authority to issue subpoenas to its legal advisor.

§ 2-20-060 Evidence

- A. Every party has the right to present its case by oral or documentary evidence, to conduct cross-examination for disclosure of the facts, and to submit rebuttal evidence.
- B. The presiding Council member or Hearings Officer need not observe the federal or Oregon rules of evidence, but will observe the rules of privilege recognized by Oregon law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious

affairs. The Hearings Officer or presiding Council member must exclude immaterial, irrelevant or unduly repetitious evidence. In the interest of the process being trauma-informed, the Hearings Officer may control the evidence presented by the parties.

- C. Evidence objected to may be received by the presiding Council member or Hearings Officer and a ruling on its admissibility may be made at the time of the final decision.

§ 2-20-070 Decision

- A. Within thirty (30) days after the close of taking evidence, the Council or Hearings Officer will issue a decision in writing that includes the following:

1. Rulings on the admissibility of offered evidence not ruled on during the hearing.
2. Findings of fact; and
3. Rulings on the alleged violation of a Multnomah County personnel rule, County Code or Charter and appropriate remedy.
 - a. Upon a ruling that the personnel action (in the case of a represented employee) or disciplinary action (in the case of a management employee) violated a personnel rule, County Code or Charter with respect to the appellant, the Council or Hearings Officer will identify the appropriate remedy.
 - b. Upon a ruling that the personnel action (in the case of a represented employee) or disciplinary action (in the case of a management employee) was taken in accordance with the Personnel Rules, County Code or Charter with respect to the appellant, the Council or the Hearings Officer will dismiss the appeal.
 - c. A copy of the decision must be delivered to the Executive Secretary. The Executive Secretary will deliver the decision to the appellant, or to the appellant's attorney, through U.S. certified mail, and email the decision to the counsel for the county, Department HR Manager, and Council members.

§ 2-20-080 Appeal of Hearings Officer Decision

- A. A Hearings Officer's decision can be appealed to the Council within ten (10) calendar days after the date listed on the certificate of service.
- B. Prior to the final decision by the Council, the parties will be afforded a reasonable opportunity to present oral or written arguments, but not new evidence. The bases for

appeal of the Hearings Officer's decision are limited to arguments that the Hearings Officer:

1. Exceeded jurisdiction;
 2. Failed to follow the procedure required by the Multnomah County Personnel Rules, County Code or Charter;
 3. Made a finding or ruling not supported by substantial evidence in the whole record; or
 4. Improperly construed the law
- C. The Council will issue its final decision within thirty (30) days after the close of the hearing on review, unless it gives notice to the parties, and extends the period for not more than sixty (60) days.
- D. The Council's decision on appeal from the Hearings Officer's decision must be in writing and must include the appropriate ruling, order, sanction or relief.
- E. The Council may not remand the case back to a Hearings Officer, nor may it hire another Hearings Officer for further consideration.
- F. The Executive Secretary will deliver a copy of the Council's decision on appeal to the appellant, or the appellant's attorney, through U.S. certified mail, and email the decision to the counsel for the county, Department HR Manager, and Council members.

§ 2-20-090 Appeal of a Merit Council Decision to the Board

- A. There is no appeal if a quorum of the Council is unanimous. The Council has a quorum when two of the three members are present. A Council decision is unanimous if all Council members present affirm the decision.
- B. An appeal may be made to the Board of County Commissioners if the Council's decision is not unanimous.
1. Appeals to the Board must be in writing and filed with the clerk of the Board within ten (10) days from the date of the Council's decision.
 2. The basis for appeal of the Council's decision is limited to arguments that the Council:
 - a. Exceeded jurisdiction;
 - b. Failed to follow the procedure required by the Multnomah County Personnel Rules, County Code or Charter;

- c. Made a finding or ruling not supported by substantial evidence in the whole record; or
 - d. Improperly construed the law.
3. Board review will be in the nature of an appeal based on the record of the proceedings and such legal argument as the Board requests.
 4. The Board will make its decision within forty-five (45) days from date of receipt of notice of appeal, based upon those decision guidelines established for the Council by rule MCPR 2-20-080.

§ 2-20-100 Record of Hearing

The record of each hearing must include:

- A. All written materials;
- B. Evidence and testimony received and considered;
- C. Matters officially noticed;
- D. Questions and offers of proof, objections and rulings;
- E. The decision of the Hearings Officer or Merit Council;
- F. Any other matter submitted to the Hearings Officer or the Council in connection with the hearing;
- G. Any decision of the Council or the Board of Commissioners; and
- H. The recording of the hearing.

§ 2-20-110 Electronic Recording of Hearings

All proceedings will be electronically recorded. The record need not be transcribed. The Council may charge the party requesting transcription the cost of any transcription.

§ 2-20-120 Ex Parte Contacts

Unless required for the disposition of ex parte matters authorized by law, members of the Council and the Hearings Officer must not communicate, directly or indirectly, in connection with a hearing with any person or party or their representative, except upon notice and opportunity for all parties to participate.

§ 2-20-130 Disciplinary Action

- A. If the Council finds that the disciplinary action was discriminatory, as defined in MCC 9.009; was an unlawful employment practice described by applicable state law; or was

not for cause, the employee will be reinstated to the prior position and will not suffer any loss in pay.

- B. The Council may modify an appealed disciplinary action if it finds that the action was taken in good faith for cause, upon a finding of mitigating circumstances.
- C. Any other personnel action appealed to the Council from a decision of a department or the Human Resources manager must be affirmed unless the Council concluded the action violates MCC Chapter 9.