

XIII-1 GENERAL

- A. An informal resolution to a complaint or problem is the most appropriate manner of resolution. The Human Resources Department is available to assist employees/supervisors in this process.
- B. If an employee complaint or problem is not resolved by informal consideration, then the employee may formalize the consideration by pursuing one of the following three procedures:
  - 1. If the complaint alleges misinterpretation, misapplication, or unequal enforcement of County Personnel Policies, Law Enforcement Merit System Rules, or Administrative Procedures, or if an employee wishes to grieve a Letter of Reprimand, the Grievance Procedure shall be used.
  - 2. If the complaint alleges unlawful discrimination based on religion, race, color, national origin, age, sex, disability, veteran's status, or sexual orientation, or results of a genetic test received by the County, when applicable, the Discrimination Grievance Procedure shall be used.
  - 3. If the complaint alleges improper suspension, demotion, or dismissal on any grounds including alleged unlawful discrimination, the Appeal Procedure shall be used.

XIII-2 GRIEVANCES NOT ALLEGING DISCRIMINATION

- A. Any permanent employee may file a grievance alleging misinterpretation, misapplication, or unequal enforcement of Personnel Policies or Law Enforcement Merit System Rules, or Administrative Procedures, or a Letter of Reprimand.
- B. The grievance procedure may not be used for matters involving:
  - 1. Compensation issues and/or any related actions;
  - 2. Classification issues and/or any related actions;
  - 3. Performance evaluations;
  - 4. Informal Disciplinary Actions.

An employee may respond in writing to a performance appraisal or an informal disciplinary action; such response shall become part of the appropriate personnel record.

XIII-2 C. GRIEVANCE PROCEDURE

1. STEP I: The grievant states the grievance and the remedy requested on the Pima County Law Enforcement Employee Grievance Form and presents it to his/her Commander within ten (10) working days of the incident being grieved. If there is no Commander between the grievant's immediate supervisor and the Sheriff, the grievant may initiate the grievance procedure at Step II. The Commander shall discuss the grievance with the grievant, give consideration to the grievance and remedy requested and record his/her response on the grievance form. In such discussions the grievant may be assisted by a representative of his/her choosing. The Commander shall complete this action and return the grievance form to the grievant within ten (10) working days of receipt. The grievant may then agree or disagree with the Commander's action by so indicating in the space provided on the form. If the grievant agrees, the grievance form shall be incorporated into the departmental personnel record. If he/she disagrees, the grievant has the right to take the grievance to the Step II level within three (3) working days of receipt of the Commander's response.
2. STEP II: The grievance form is presented by the grievant to the Sheriff. The Sheriff shall investigate and give consideration to the grievance with remedy requested, and the recorded action of the Commander. Upon written request of the grievant, the Sheriff shall meet with the grievant to discuss the grievance within five (5) working days of receipt of the request. In such meetings, the grievant may be assisted by a representative of his/her choosing. The Sheriff shall then record his/her response on the grievance form. The Sheriff shall return the grievance form to the employee within five (5) working days of receipt of the grievance form from the grievant or from the date of the meeting. If the grievant agrees, the grievance form shall be incorporated into the departmental personnel record. If the grievant disagrees with the response of the Sheriff, he/she has the right to take the grievance to Step III within three (3) working days of receipt of the Sheriff's response.
3. STEP III: The grievance form is submitted by the grievant to the County Administrator. The County Administrator shall, upon receipt of the grievance, request Human Resources to facilitate the process. The County Administrator shall direct that the Sheriff and the grievant each select, within five (5) working days, an employee to serve as one (1) member of the Grievance Committee. If the grievant or the department does not select a member within five (5) working days of notification, the random computer selection

- XIII-2 C. 3. process shall be used. The two (2) Grievance Committee members shall select an employee to be the third member within five (5) working days. The Grievance Committee shall notify the County Administrator of its membership. In the event the two (2) Grievance Committee members fail to select a third member within five (5) working days, the third member shall be selected through the random computer selection process. No member of the Grievance Committee shall be:
- a. A direct or indirect supervisor of the grievant;
  - b. An employee of the County Administrator's Office;
  - c. An employee of the Human Resources Department;
  - d. An employee of the County Attorney's Office;
  - e. A relative of the grievant;
  - f. An employee who has a definite personal and/or professional conflict of interest with the grievant or the department as determined by the County Administrator; or
  - g. An employee who has received formal disciplinary action within the past twelve (12) months.
4. Either party may be represented by a representative of his/her choice. However, the parties must be present at any meeting between Committee members and their respective representatives.

The Grievance Committee shall meet and investigate the grievance and shall submit a written report and recommendation to the County Administrator within thirty (30) working days following the first meeting of the Grievance Committee.

The County Administrator will issue a final decision within thirty calendar days of the grievance, which will be distributed to both the grievant and the Sheriff. Should the County Administrator miss the time frame for a decision, the majority opinion of the Grievance Committee will stand. If the time frame for the County Administrator's response is missed and there is not a majority recommendation of the Grievance Committee to sustain the grievance, then the grievance is denied.

- XIII-2 D. All time requirements for filing must be met unless exceptions are granted by the County Administrator. If the Commander or Sheriff fails to meet the time requirements, the grievant has the right to take the grievance to the next step. If the grievant fails to meet the time requirements, the grievance shall be considered abandoned.
- E. Notification of the final determination by the County Administrator shall be addressed to the grievant with a copy to the Sheriff and the Director of Human Resources. If the grievant or the Sheriff finds fault with the contents of the Grievance Committee's Report, he/she is required to report the objection immediately to the County Administrator for the appropriate action. If the County Administrator determines that follow-up action is necessary, a Compliance with Final Determination Form will be sent to the Sheriff listing the actions to be taken. The action statements with follow-up activities regarding the decision must be completed in all cases by the Sheriff and submitted to Human Resources within thirty (30) calendar days of receipt of the final determination of the grievance.
- F. All Grievance Committee reports will be produced out of the Department of Human Resources for purposes of maintaining confidentiality and record retention. All materials pertaining to the grievance shall be filed in the official Human Resources file with a copy of the grievance placed in the employee's official personnel file when filed based on a Letter of Reprimand.

### XIII-3 GRIEVANCE ALLEGING DISCRIMINATION/HARASSMENT

Any employee of Pima County or applicant for employment with Pima County may file a grievance alleging unlawful discrimination based on religion, race, color, national origin, age, sex, disability, veteran's status, sexual orientation or results of a genetic test received by the County, when applicable.

#### A. DISCRIMINATION GRIEVANCE PROCEDURE

1. STEP I: The grievant states the grievance and the remedy requested on the Pima County Law Enforcement Employee Grievance Form and presents it to the Sheriff within thirty (30) calendar days of the incident being grieved. However, under extenuating circumstances, the County Administrator may grant an extension to the thirty (30) calendar day filing period which shall not exceed ninety (90) calendar days. The grievance must state in detail the facts relating to the charges of unlawful discrimination. The grievant may be assisted by a representative of his/her choosing. However, the grievant must be present during any meeting between the Sheriff and the grievant's representative. The Sheriff shall investigate the circumstances involved in the grievance and respond to the grievant within ten (10) working days of receipt of the grievance form.

- XIII-3 A.
1. The grievant may then agree or disagree with the Sheriff's response. If the grievant agrees, the grievance form shall be incorporated into the departmental personnel record. If the grievant disagrees, he/she has the right to take the grievance to Step II.
  2. STEP II: If the grievant elects to pursue the grievance to Step II, it must be filed in writing with the County Administrator within five (5) working days after receipt of the Sheriff's response. The County Administrator shall request the Human Resources Department to investigate the incident and attempt to resolve the grievance. The County Administrator shall promulgate rules of procedure for use in Step II.
  3. Within thirty (30) working days of receipt of the grievance by the County Administrator, Human Resources should report its findings to the County Administrator. Exceptions to this thirty (30) working day limitation may be granted by the County Administrator in circumstances where Human Resources demonstrates it is in the best interest of both the County and the grievant to do so. The County Administrator shall issue a final determination.

#### XIII-4 APPEALS

##### A. MATTERS WHICH MAY BE APPEALED

1. A permanent employee, except as otherwise provided in these Rules, may appeal a dismissal, demotion, suspension or termination as set forth in Law Enforcement Merit System Rule XI-10 A. through D. on any grounds including alleged unlawful discrimination, within ten (10) calendar days of presentation of the notice. Respondent may serve an amended notice of suspension, demotion, or dismissal prior to the beginning of the Appeal Hearing.
2. Matters not specifically stated in this Rule cannot be appealed. Employees on initial probation or employees who are exempt from the Law Enforcement Merit System as provided in the Pima County Law Enforcement Merit System Resolution may not appeal.
3. Claims of discrimination based upon Federal and/or State civil rights laws, including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA) and the Family and Medical Leave Act (FMLA) must be filed with Human Resources or with the appropriate State and/or Federal agency charged by Federal and/or State law with enforcement of those laws.

XIII-4 B. APPEAL PROCEDURE

1. FILING THE APPEAL

Appeals to the Law Enforcement Merit System Council must be filed with Human Resources in writing within ten (10) calendar days of presentation of notice of demotion, suspension, dismissal or termination. In the absence of good cause, failure to file a timely appeal is a jurisdictional defect. The appeal shall state in detail the facts upon which it is based, the identity of all persons or departments concerned in the matter, and the remedy requested. The Sheriff shall be considered the Respondent. Human Resources shall serve a copy of the appeal on the Respondent.

2. ANSWER TO APPEAL

No answer to the appeal need be filed by the Respondent. If an answer is filed prior to the hearing, a copy shall be sent by Human Resources to the Appellant.

3. HEARING OFFICERS

- a. Appeals may be heard by the Council or be assigned by the Council or its Chair to a Council member who shall be the Hearing Officer. When an appeal is so assigned, the Hearing Officer shall be the authorized representative of the Council and is fully empowered to grant or refuse extensions of time, to set the proceedings for hearings, to conduct the hearing, and to take any action in connection with the proceedings which the Council itself is authorized to take by Law or by these Rules other than making the final findings and decisions. No assignment of an appeal to a Hearing Officer shall preclude the Council or its Chair from withdrawing it and conducting the hearing itself or from reassigning an appeal to another Hearing Officer. The Hearing Officer shall prepare and submit a Hearing Officer's Report on a form to be approved by the Council.

Said report shall be submitted to Human Resources for transmittal to the Council not less than fifteen (15) calendar days prior to the Council meeting during which action on the appeal is to be taken. Copies of the Hearing Officer's report shall, upon receipt by the Director of Human Resources, be mailed to all members of the Council and to the employee and the Sheriff, and their respective representatives. The employee and the Sheriff, and their respective representatives, may submit written objections to the

- XIII-4 B. 3 a. Hearing Officer's Report not less than five (5) working days prior to the regular Council Meeting. The Council may, at its discretion, take further testimony or hear arguments at the regular Council meeting.
- b. Appeals heard by the Council shall be held during an open meeting for the purposes of conducting the entire hearing and making a decision on the appeal.

4. TIME FOR HEARING

Every hearing on an appeal shall commence within twenty (20) calendar days from receipt by the Council, unless the time is extended by the Council or the Hearing Officer, or unless the Council or Hearing Officer is unable to hear it within the twenty (20) calendar days, or for good cause.

5. NOTICE OF HEARING; PRE-HEARING STATEMENT

- a. Written notice of the time, date, place of hearing, and the name of the Hearing Officer (if appropriate), shall be delivered or mailed by Human Resources to the Appellant and the Respondent at least fourteen (14) calendar days before the date of such hearing. If this notice is delivered personally, written acknowledgment of time of receipt by the employee shall be obtained or verified.
- b. In any appeal when the Appellant is represented by any person (whether an attorney or not), the Appellant's Representative and the Deputy County Attorney assigned to the hearing shall attempt to meet not less than two (2) working days prior to the time assigned for the hearing, to jointly prepare for submission to the Council a pre-hearing statement in which the following shall be stated:
- i. Any stipulated agreements between the parties;
  - ii. A list of the witnesses who may be called by each party;
  - iii. A list of the Exhibits that may be offered by each party and a statement that all of such Exhibits have been or will be disclosed and made available to the other party and his/her representative;
  - iv. A statement that the parties have discussed possible means of settling the dispute.

XIII-4 B. 5. b. iv. The Appellant and the Sheriff (or designee who took the action against Appellant) may attend said meeting, but are not required to do so. The pre-hearing statement shall be submitted to the Council at or before the time of the appeal hearing.

6. CONTINUANCE OF HEARING

- a. Either Respondent or Appellant may request that a hearing set pursuant to these Rules be continued. Such a request must be submitted to the Hearing Officer/Council Members, in writing at the earliest practicable time but in no event less than twenty-four (24) hours prior to the time set for the hearing. Copies must be sent to Human Resources and to all concerned parties.
- b. Failure to request a continuance in conformance with these Rules and subsequent failure by either party to appear at the time and place set for hearing may result in a recommendation and/or decision adverse to the party who failed to appear upon motion of either party, or on motion of the Hearing Officer/Council Members.
- c. A hearing may be continued by any Council Member assigned to sit as a Hearing Officer or, if the hearing is to be conducted by the Council, by the Chair or designee.

C. NATURE OF HEARING

1. Each hearing by the Council shall be held pursuant to ARS §38-431; and each hearing by a Hearing Officer shall be closed unless the Appellant requests an open hearing. Any parties may represent themselves, be represented by legal counsel, or anyone of their choosing (except as prohibited by law). The hearing shall be informal and technical rules of evidence and “Court Procedure” shall not apply to the proceedings except that irrelevant, immaterial, or unduly repetitious evidence, or evidence protected by the rules of privilege recognized by law, may be excluded. All testimony at the hearings shall be recorded manually or by mechanical or electronic device. The Council shall pay all charges incurred in connection with the presence of a Court Reporter or the utilization of mechanical or electronic devices, excluding, however, the costs of the preparation of all or any part of any transcript. The cost of a copy or copies of any such transcript shall be paid by the party or parties ordering the same.

- XIII-4 C. 2. On any appeal hearing, in the event that there is a dispute as to the jurisdiction of the Council to hear said case, the Hearing Officer/Council Members shall first take evidence with respect to said jurisdictional question. If the Hearing Officer/Council Members conclude that the Council has jurisdiction to hear the appeal, then he/she/they shall proceed to take evidence on all remaining issues and to make a report as herein required. In the event that the Hearing Officer/Council Members conclude that the Council is without jurisdiction, then he/she/they shall terminate said hearing and take no further evidence.

A report shall be made to the Council as herein required, and if it is thereafter determined that the Council had jurisdiction to entertain said appeal, then said Hearing Officer/Council Members or any other Hearing Officer of the Council shall reconvene the hearing to hear the remainder of the evidence.

D. POWER OF SUBPOENA

The Council or any member thereof, may request the Chair of the Board of Supervisors to issue subpoenas to compel attendance of any person and the production of any books, papers, or any other evidence relating to any investigation or hearing authorized by these Rules, in accordance with the power of the Board pursuant to ARS §11-218.

Pursuant to ARS §12-2212 any member of the Council may issue subpoenas to compel the attendance of witnesses and/or the production of documentary evidence. In the event that any person fails to appear, and/or produce a document in response to said subpoena, any member of the Council may, by affidavit setting forth the facts, apply to the Pima County Superior Court for relief as a result of said failure.

E. EXCLUSION OF WITNESSES

The Hearing Officer/Council Members either upon the motion of either party or sua sponte may exclude from the hearing room any witnesses not at the time under examination. The Appellant, Respondent, their attorneys, or other representatives, shall not be excluded.

F. WITNESS FEES

Witnesses, other than employees, who are subpoenaed to attend a hearing or investigation are entitled to the same fee as is allowed witnesses in civil cases of the State of Arizona.

If a witness is subpoenaed by any Hearing Officer/Council Member on his own motion, fees and mileage shall be paid from funds of the Council upon presentation of a duly executed claim. If a witness is subpoenaed

XIII-4 F. upon request of the Appellant or Respondent, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to County employees subpoenaed as witnesses shall be limited to payment of mileage, if appropriate, by the party requesting the witness.

G. DEPOSITIONS; DISCOVERY

1. If a witness does not reside within Pima County or within one hundred (100) miles of the place where the hearing or investigation is to be held, is out of state, or is too infirm to attend the hearing or investigation, any party, at his own expense, may cause a deposition to be taken.

If the presence of a witness cannot be procured at the time of the hearing or investigation, the deposition may be used in evidence by either party or the Council.

2. DISCOVERY BY APPELLANT:

Upon written request to the Respondent, made not less than seven (7) working days before the hearing, with a copy of said request to the Council, any Appellant in any Appeal before the Council shall be entitled to receive, subject to payment of fees pursuant to ARS, not less than four (4) working days before the hearing, copies of the following documents:

- a. The Appellant's entire personnel file, including any personnel file or files retained by offices other than Human Resources;
- b. All memoranda, writings, other documents or printed or recorded materials prepared by or for the Respondent as a result of the events underlying the disciplinary action which is the subject of the Appeal except those which are protected by privilege. In the event any such memoranda, writings, or other documents are claimed by the Respondent to be privileged, the Respondent shall identify each such memorandum, writing, or other document, and inform the Council and the Appellant;
- c. Any and all documents which the Respondent intends to utilize as an exhibit at the hearing, subject to the rules of relevance and privilege set forth above.

3. DISCOVERY BY RESPONDENT:

Upon written request to the Appellant, made not less than seven (7) working days before the hearing, with a copy of said request to the Council, any Respondent in any Appeal before the Council shall be

- XIII-4 G. 3. entitled to receive, subject to payment of reasonable costs, not less than four (4) working days before the hearing, copies of the following documents:
- a. All memoranda, writings, or other documents or printed or recorded material prepared by or for the Appellant as a result of the events underlying the disciplinary action and pending Appeal, except those which are protected by privilege. In the event any such memoranda, writings, or other documents are claimed by the Appellant to be privileged, the Appellant shall identify each such memorandum, writing, or other document, and inform the Council and the Respondent.
  - b. Any and all documents which the Appellant intends to utilize as exhibits at the hearing, subject to the rules of relevance and privilege set forth above.
4. If either the Respondent or Appellant offers as evidence any document not previously provided to the other party, the Council may postpone the hearing to give the other party an opportunity to review the document.

H. WITHDRAWAL OF AN APPEAL

The Appellant may withdraw the appeal at any time prior to the decision by the Council by a written notice of the withdrawal sent to Human Resources or by a statement of withdrawal at the hearing.

I. DECISION BY COUNCIL

If, after the hearing, a majority of the Council determines that there was just cause for the action imposed, then the order shall be affirmed. If the Council determines that there was not just cause for the action taken either: (1) because some or all of the charges were not proven to the satisfaction of the Council; and/or (2) whether or not all of the charges were proven, the action imposed was, in the sole discretion of the Council, too severe a penalty for the conduct proven, then the order shall be revoked or modified. The Council shall have the power to direct appropriate remedial action and shall do so after taking into consideration just and equitable relief to the employee in the best interest of the County and the public.

XIII-4 J. DEDUCTIONS FROM BACK PAY AWARD

If an employee has been dismissed or suspended without pay, and, upon appeal, the Council revokes or modifies said disciplinary order, and said employee is ordered reinstated with back pay, any interim earnings or amounts actually earned or earnable with reasonable diligence, including unemployment compensation, shall be deducted from the back pay award. A calculation of the back pay award, reduced by the amounts determined herein, shall be determined at a subsequent meeting, after appropriate hearing, as needed, before final review of the appeal.

K. ATTORNEY FEES

Pursuant to the provisions of ARS §38-1003 and §38-1004, if the officer was suspended for more than sixteen (16) hours, demoted or dismissed, and is exonerated, the Council may award, in whole or in part, the reasonable costs and attorney fees that the employee incurred in connection with the appeal. The award of attorney fees by the Council shall not exceed ten thousand dollars.

Calculation of attorney fees will be based upon criteria cited in China Doll Restaurant, Inc. v. Schweiger, 119 Ariz. 315, 580 P.2d 776 (Ct.App.1978). In no case will the Council award attorney fees in excess of the actual work generated or a maximum award in excess of \$10,000.00. The affidavit submitted in connection with an application for fees must indicate the agreed upon hourly billing rate by counsel and the appellant for services performed in connection with the appeal. It also must identify the legal service performed, the names of any and all attorneys who provided legal services and the date in which the services were performed. The fee application must be in sufficient detail for the Council to determine the reasonableness of the time incurred.

An award of attorney fees does not apply if either of the following applies:

- a) The order of the Appointing Authority was not for disciplinary purposes but was for administrative purposes such as a reduction in force.
- b) The disciplinary action was related to off-duty activities unrelated to the required duties of the law enforcement officer.

If the Appointing Authority appeals the decision to the court, the award of any costs or attorney fees to an officer shall be stayed pending the conclusion of the appeal. If the Appointing Authority's decision is upheld on appeal, the award of costs or attorney fees in favor of the officer shall be reversed.

XIII-4 L. COMPLIANCE OF APPOINTING AUTHORITY

Within ten (10) working days of a decision by the Council revoking or modifying any order of disciplinary action, in the event that back pay has been awarded and a hearing conducted pursuant to XIII-4 (I), the Sheriff shall take such measures as are necessary to comply with the remedial action directed by the Council and shall render a report of the measures taken to Human Resources.