

# MARICOPA COUNTY MERIT SYSTEMS COMMISSION



## EMPLOYEE MERIT SYSTEM

## APPELLANT'S GUIDE

[www.maricopa.gov/human\\_resources/merit](http://www.maricopa.gov/human_resources/merit)

# Employee Merit System Appellant's Guide

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## Merit System Authority

In 1969, the Arizona State Legislature enacted A.R.S. §11-351 through §11-356 enabling the Maricopa County Board of Supervisors to appoint an employee merit system. Subsequently, the Board of Supervisors adopted a resolution on January 1, 1970, creating the employee merit system and the first meeting of the Commission was held on January 5, 1970.

The purpose of the Employee Merit System (EMS) is to provide a uniform and equitable system of personnel administration for employees in the Maricopa County classified service that is based on merit principles and free from political patronage. All actions affecting the employment of personnel in the classified service shall be made according to merit as demonstrated by the qualifications and work performance of the applicant or employee.

## Merit System Rules

The Employee Merit System (EMS) Rules govern the personnel administration of classified employees. Copies of the Employee Merit System Rules are available on the internet at: [http://www.maricopa.gov/human\\_resources/merit.asp](http://www.maricopa.gov/human_resources/merit.asp).

## Merit Commission Authority

The Maricopa County Merit Systems Commission administers two separate and distinct Merit Systems – the Employee Merit System (EMS) and the Law Enforcement Officers Merit System (LEOMS).<sup>1</sup> Commission members appointed by the Board serve on the two separate and distinct merit systems – EMS and LEOMS.

Pursuant to statutory provisions, Board of Supervisors Resolution, and Merit Rules, the Commission performs such duties as are necessary to carry out the provisions of the Employee Merit System resolution and rules, is charged with representing the public interest in the improvement of personnel administration in the county service, causes the Human Resources Director to prepare such policies and procedures as may be necessary or appropriate to administering the Merit System rules, and serves as an independent personnel board for the County under A.R.S. § 38-532(H). The Commission is comprised of five members appointed by each member of the Board of Supervisors. A Commission Chairperson is elected at the beginning of each calendar year.

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<sup>1</sup> For information on the Law Enforcement Officers Merit System (LEOMS), see the LEOMS Appellant's Guide which can be found online at: [http://www.maricopa.gov/human\\_resources/merit.asp](http://www.maricopa.gov/human_resources/merit.asp).

# Employee Merit System

## Appellant's Guide

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### Appeals

**What actions may be appealed?** Employees in the classified service who have attained regular status may appeal a dismissal, involuntary demotion or suspension. An employee who has been subject to a reduction-in-force (RIF) may file an appeal only on the grounds that the calculation of the employee's retention points was inaccurate and resulted in that employee being selected for separation before another.

**Where do I file an appeal?** The appeal must be in writing and filed with the Human Resources Director within ten (10) calendar days following the date of personal delivery or certified mailing of the final decision of the appointing authority (i.e. department director or designee). An appeal must state the facts upon which it is based and the action requested of the Employee Merit System Commission, hereafter referred to as the Commission.

**When will the hearing be held?** Within 20 calendar days from the filing of an appeal, the Commission will set a hearing date. The initial hearing date may be extended by mutual consent of the Appellant, Respondent and Hearing Officer. Written notice of the time, date, place of the hearing and the name of the Hearing Officer will normally be provided by the Merit Systems Commission Coordinator at least seven (7) calendar days before the date of the hearing.

**What are the duties of the Hearing Officer?** Appeals are generally assigned to a Hearing Officer who is authorized to act on behalf of the Commission for the purpose of conducting a fact finding hearing, ruling on motions and making recommended Findings of Fact and Conclusions of Law, subject to the appropriate EMS Resolutions, Rules and Arizona Revised Statutes. The Hearing Officer is empowered to grant or refuse extensions of time to conduct the hearing and to provide limited advice to the parties involved regarding the appeal if the advice does not conflict with the Hearing Officer's role as a neutral party. It is considered inappropriate for either party to consult with the Hearing Officer privately, due to the nature of the relationship; therefore, the Merit Systems Commission Coordinator and the opposing party should be copied on all communications to the Hearing Officer. A request to change the Hearing Officer assignment must be submitted in writing to the Commission Chairperson in care of the Merit Systems Commission Coordinator. On the first request of a party to change the Hearing Officer, the Commission will grant the request. The Commission may grant all other requests only on a showing that a fair and impartial hearing cannot be obtained to due to the prejudice of the assigned Hearing Officer. Therefore, all subsequent requests to change a Hearing Officer assignment must include clearly articulated reasons in a written request.

**What happens at the hearing?** Parties may represent themselves or be represented by legal counsel of their choosing (and funded by themselves), or lay representatives. Technical rules of evidence do 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. The burden of proof shall be on the department which took the action being appealed. The party with the burden of proof is required to present its case first. If the party with the burden of proof is unable to prove the allegations, at the end of its evidence, motions to dismiss the appeal may be entertained by the Hearing Officer. All testimony at the hearing is recorded by a court reporter. Transcript copies may be purchased at the approved copy charge rate.

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**What if I cannot attend the hearing?** Any party who needs to request a change in the date, time, or place of the hearing, should first contact the other party, and then either submit a stipulation (written agreement) or a motion to the Hearing Officer (See Appendix A for sample). The Merit Systems Commission Coordinator and the opposing party should be copied on all communications to the Hearing Officer. The Hearing Officer has the authority to grant or deny requests for continuances and to set a hearing date if the parties are unable to arrange a mutually agreeable time. If agreement cannot be reached, each party will be expected to attend on the established date. Even when both parties agree, Hearing Officer approval is necessary for all continuances. As a general rule, requests for continuances should be made within five (5) business days of the date of the hearing notice. Typically, requests for continuances made within five (5) business days of the scheduled hearing will not be granted barring emergent circumstances.

**Who is responsible for notifying witnesses regarding a change of hearing date?** Any party who has subpoenaed witnesses has the responsibility of notifying those witnesses of the continuance.

**What happens if I do not attend the hearing or I am late?** In the event that a party is over thirty (30) minutes late in arriving to the appeal hearing or does not appear for a scheduled hearing, testimony may be taken on the record verifying or denying the allegations in the letter of discipline. If such testimony is taken, the Hearing Officer, from that testimony, shall prepare his/her Findings of Fact, Conclusions of Law and Recommendations for submission to the Commission.

**Can I request the attendance of witnesses or the production of documents at the hearing?** An Appellant may request a subpoena to require the attendance of witnesses or the production of documents at the hearing. To do so, the Appellant submits one completed subpoena form for each witness (see Appendix A for sample forms). Each subpoena must include the name, complete address and phone number of the individual. Requests to issue subpoenas should be received by the Merit Systems Commission Coordinator no later than ten (10) business days prior to the scheduled hearing. The Merit Systems Commission Coordinator cannot guarantee timely service for subpoenas received less than ten (10) business days prior to the scheduled hearing. For subpoenas received less than ten (10) business days prior to the scheduled hearing, please contact the Merit Systems Commission Coordinator to discuss other available options for service. When valid subpoena forms are received, the Merit Systems Commission Coordinator requests that the Clerk of the Board of Supervisors issue the subpoenas. When prepared, the subpoenas are delivered by a Deputy Sheriff from the Maricopa County Sheriff's Office. Persons not responding to Board issued subpoenas are subject to the same penalties imposed on those who do not respond to subpoenas issued by a Court of Law (A.R.S. § 11-218). If a non-County witness is subpoenaed upon the request of either party, any fees or mileage shall be paid by the party requesting the witness. Subpoenaed County employees shall be paid their base rate of pay. Fees and mileage may be paid to a non-County employee witness subpoenaed by the Hearing Officer or the Commission upon presentation of a claim. Mileage is paid at the current County reimbursement rate. Non-County employee witnesses subpoenaed are entitled to the same fee as that allowed witnesses in civil cases in courts of record.

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**Can I request a deposition of a witness?** If a witness does not reside within the County or within 100 miles of the place where the hearing is to be held, is out of state, or is too infirm to attend the hearing, parties can, at their own expense, have a deposition taken and used at the time of the hearing if the witness cannot attend to testify.

**What happens after the hearing is concluded?** Both the Appellant and the Respondent may file proposed Findings of Fact in writing with the Hearing Officer following the conclusion of the hearing. After the hearing is completed and within 35 calendar days of the case being submitted for decision, the Hearing Officer prepares and files with the Commission proposed Findings of Fact, Conclusions of Law, and Recommendations. Copies will be sent to both the Appellant and Respondent. Both parties shall have ten (10) calendar days from the receipt of the Hearing Officer's Recommendations to file with the Commission any written objections (not post-hearing evidence). Each party must serve a copy of the written objections upon the other interested parties.

**What if I want to withdraw my appeal?** An Appellant may submit a written request to withdraw an appeal at any time prior to the decision by the Commission.

**What happens after the Hearing Officer's Recommendation is issued?** The parties are notified by letter of the meeting date where the Commission will consider matters relating to the appeal. The Commission will review the Hearing Officer's Recommendation and any written objections filed by Appellant and Respondent. Three members constitute a quorum for the transaction of business and a majority of the quorum may take legal action in all areas of the Commission's duties and powers. The Commission may adopt the Hearing Officer's Recommendation in its entirety, or modify it or may itself decide the case upon the record, including the transcript with or without taking additional evidence. The Commission will vote to determine whether the action of the Appointing Authority was arbitrary and taken without reasonable cause based on the evidence presented. The Commission may either dismiss or sustain the appeal and issue a Final Order. The Appellant will receive a certified copy of the Final Order.

**What happens after the Commission issues the Final Order?** The findings and decisions of the Commission are final and subject only to administrative review by the Superior Court as provided in A.R.S. § 12-901 et seq. The parties have thirty-five (35) days from the date of the decision of the Commission to either file for an administrative review or take such measures as are necessary to comply with the decision of the Commission.

**Can I be punished for filing an appeal?** No Appointing Authority shall take disciplinary or punitive action against an employee or an employee witness, nor impede or interfere with the exercise of the employee's right of review, appeal or of any other right under the Employee Merit System Resolution and Rules.

**What are the common terms used in the appeal process?** The following terms, while not prepared by an attorney, may be useful to the lay person. The Merit Systems Commission Coordinator or the Hearing Officer may be consulted for further assistance.

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**Appeal** – A written request to set aside an involuntary demotion, suspension, dismissal or RIF, usually resulting in a hearing.

**Appellant** – The employee filing an appeal.

**Burden of Proof** – A term referring to the party with the responsibility of presenting evidence to prove its position.

**Commission** – The Employee Merit System Commission.

**Deposition** – A formal interview of a witness who is not available at a hearing due to illness or distance. These are normally done in front of a Court Reporter and under oath.

**Hearing** – A quasi-judicial proceeding resulting from an appeal and leading to a Hearing Officer's written recommendation to the Commission.

**Hearing Officer** – One of a group of persons designated by the Commission to act as its representative in appeal hearings. The Hearing Officer rules on motions, takes testimony, accepts evidence and makes a report to the Commission which includes Findings of Fact, Conclusions of Law and Recommendations.

**Motion** – A request made to the Hearing Officer for a ruling or order on a specific issue related directly to the appeal. Some examples would be: Motions by the respondent to dismiss the appeal, motion by either party to preclude certain evidence.

**Respondent** – The Appointing Authority of the County agency or agencies or their designee.

**Rule for Exclusion of Witnesses** – The requirement that all other witnesses be excluded from the hearing room while another witness is testifying. This does not include the appellant or one designated representative of the respondent.

**Stipulation** – An agreement that has been reached by both parties.

**Subpoena** – A written legal order directing a person to appear at a hearing to testify.

**Subpoena Duces Tecum** – A written legal order directing a person to provide documents.

**Transcript** – A verbatim report of the proceedings of the hearing as prepared by and available from the Court Reporter.

# Employee Merit System Appellant's Guide

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