

MEMORANDUM

October 22, 2009

TO: Management and Fiscal Policy Committee

FROM: Justina J. Ferber,  Legislative Analyst

SUBJECT: Executive Regulation No. 14-09, Amendments to Montgomery County Personnel Regulations to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers

The Management and Fiscal Policy (MFP) Committee will consider the Executive's proposed amendments to the Montgomery County Personnel Regulations (MCPR) to amend Sections 1, 33, and 35 to establish procedures for the Merit System Protection Board to hear and decide appeals of disciplinary actions filed by volunteer firefighters and rescuers. The changes reflect recent amendments to the County Code abolishing the Fire and Rescue Commission. County law now allows a volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief or local fire and rescue department involving any disciplinary action may appeal the action to the Merit System Protection Board. The 30-day appeal period is a part of the current collective bargaining agreement with the Montgomery County Volunteer Fire Rescue Association.

The Executive's transmittal memorandum notes that the regulation was advertised in the August 2009 issue of the *Montgomery County Register*. No comments were received. A fiscal impact statement indicating no fiscal impact is also included at ©15.

The Merit System Protection Board (MSPB) reviewed the proposed changes and expressed concern about setting up a different procedure for volunteer firefighters and rescuers. The proposed amendment creates a different time period for volunteer firefighters and rescuers (30 days) than the current system for all other merit employees (within ten working days) to file an appeal. The MSPB recommended the Personnel Regulations be amended to make the appeal period 30 days for all merit employees. However, the Board agrees that the better course of action would be to seek to lower the 30-day time period during contract negotiations next fall.

Executive staff shares the Board's concern about having a different time period for filing an appeal for volunteer firefighters and rescuers. Since this issue is subject to bargaining with the representatives of the volunteer firefighters and rescuers, the County Executive cannot lawfully change the time period absent an agreement with the Union. When the County and the Montgomery County Volunteer Fire Rescue Association bargain in the fall of 2010, the Executive will seek to reduce the time period for filing an appeal to 10 working days.

Staff Recommendation: The Committee recommends the Council adopt the regulation as submitted and encourages the Executive to seek to reduce the time period for filing an appeal to 10 working days when bargaining with the Montgomery County Volunteer Fire Rescue Association in the fall of 2010.

This packet contains:

circle #

| | |
|--|------|
| Transmittal Memorandum | 1 |
| Regulation 14-09, bracketed and underlined | 2-8 |
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EXEC REG



051268

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

September 17, 2009

Isiah Leggett
County Executive

2009 SEP 17 PM 4:50

RECEIVED
MONTGOMERY COUNTY
COUNCIL

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

Isiah Leggett
Method 1

SUBJECT: Executive Regulation No. 14-09, Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers

I am submitting Executive Regulation No. 14-09 for the Council's review and approval. This regulation amends Sections 1, 33 and 35 of the Personnel Regulations to establish procedures for the Merit System Protection Board (MSPB) to hear and decide appeals of disciplinary actions filed.

Executive Regulation No. 14-09 was advertised in the August 2009 issue of the *Montgomery County Register*. No comments were received in response to this advertisement. The MSPB reviewed the regulation and expressed concern that it creates a different time period for volunteer firefighters or rescuers to file an appeal with the MSPB (30 days) than for County employees and applicants (10 working days). Chapter 21-7 of the Montgomery County Code, as recently revised by the Council, provides that a volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief or a local fire and rescue department involving any disciplinary action "may appeal the action to the MSPB within 30 days after receiving a final notice of disciplinary action unless another law or regulation requires that an appeal be filed sooner." While I agree with the Board that there are benefits to having a uniform period of time for everyone to file appeals with MSPB, this issue is subject to bargaining with the representative of the volunteer firefighters and rescuers under Section 21-6(f)(4) of the Montgomery County Code. Accordingly, I will seek to reduce the time period for filing an appeal to 10 working days when negotiations begin next fall on a new term contract with the Montgomery County Volunteer Fire Rescue Association. Copies of the correspondence between the MSPB and Office of Human Resources are attached. A fiscal impact statement for the regulation is also included.

Should you have any questions about Executive Regulation No. 14-09, please contact Stuart Weisberg, the Labor Relations Advisor in the Office of Human Resources, at (240) 777-5154.

IL:sw

Attachments

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MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|---|-----------------------|
| Subject MCPR Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers | Number 14-09 |
| Originating Department Office of Human Resources | Effective Date |

MCPR Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers

Executive Regulation No. 14-09
Issued by: County Executive
Supersedes: None

Authority: Montgomery County Code, 2004, §21-7(c)
Council review: Method 1

Montgomery County Register Volume 26 Issue 8
Comment deadline: August 31, 2009

Effective date: _____

Summary: This regulation amends Sections 1, 33 and 35 of the MCPR to establish procedures for the Merit System Protection Board to hear and decide appeals of disciplinary actions filed by volunteer firefighters and rescuers.

Address for comments Office of Human Resources, Executive Office Building, 7th Floor
101 Monroe Street, Rockville, Maryland 20850

Staff contact: Stuart Weisberg, 240-777-5051, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

| | |
|------------------------------|---|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing regulation by proposed regulation.</i> |
| [Single boldface brackets] | <i>Deleted from existing regulation by proposed regulation.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing or proposed regulation by amendment.</i> |
| * * * | <i>Existing language unchanged by executive regulation.</i> |



MONTGOMERY COUNTY EXECUTIVE REGULATION

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| Subject MCPR Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers | Number 14-09 |
| Originating Department Office of Human Resources | Effective Date |

SECTION 1. DEFINITIONS

* * *

1-79. Volunteer Firefighter or Rescuer: A person who qualifies as a volunteer firefighter or rescuer as defined in Section 21-1 of the County Code.

[1-79]

1-80. Workday: A day on which the employee works or is scheduled to work.

[1-80]

1-81. Working days: All days except Saturdays, Sundays, and official or special County holidays.

[1-81]

1-82. Workweek or work period: Any repeating seven-day work schedule.

* * *

SECTION 33. DISCIPLINARY ACTIONS

* * *

33-10. Right of a Volunteer Firefighter or Rescuer to appeal a disciplinary action to the MSPB. A volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief or a local fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from participating in fire and rescue activities, may file a direct appeal with the MSPB under Section 35 of these Regulations, as if the individual were a County merit system employee.

* * *

(3)



MONTGOMERY COUNTY EXECUTIVE REGULATION

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| | | | |
|-------------------------------|--|-----------------------|-------|
| Subject | MCPR Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers | Number | 14-09 |
| Originating Department | Office of Human Resources | Effective Date | |

SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS, AND INVESTIGATIONS

* * *

35-1. Definitions.

* * *

- (b) *Appellant*: The County employee, [or] applicant for employment, or volunteer firefighter or rescuer who files an appeal with the MSPB.

* * *

35-2. Right of appeal to MSPB.

* * *

- (f) A volunteer firefighter or rescuer may file an appeal with the MSPB over an adverse final action of the Fire Chief or a local fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from participating in fire and rescue activities, as if the individual were a County merit system employee. A volunteer firefighter or rescuer is entitled to a de novo hearing before the MSPB from a demotion, suspension, termination, dismissal or involuntary resignation. The MSPB must hear and decide each such appeal except for an appeal of a personnel matter subject to an employee grievance procedure under a collective bargaining agreement.

35-3 Appeal period.

* * *

- (c) Per Chapter 21-7 of the Montgomery County Code, a volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief or a local



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| Originating Department Office of Human Resources | Effective Date |

fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from participating in fire and rescue activities, may appeal the action to the MSPB within 30 days after receiving a final notice of disciplinary action unless another law or regulation requires that an appeal be filed sooner.

* * *

35-8 Notification and submission of record in appeal.

* * *

(b) The MSPB must promptly notify the CAO, County Attorney, OHR Director, Fire Chief, and local fire and rescue department in writing that a volunteer firefighter or rescuer filed an appeal and provide the County Attorney and OHR Director with a copy of the appeal.

[(b)]

(c) An appellant must respond to an MSPB request for documentation in support of an appeal within 15 working days. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

[(c)]

(d) The OHR Director and County Attorney must respond to the appeal within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

* * *

35-10. Appellant's right to review; right to hearing

* * *

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MONTGOMERY COUNTY EXECUTIVE REGULATION

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- (b) A volunteer firefighter or rescuer is entitled to a de novo hearing before 2 or more members of the MSPB or a designated hearing officer on appeal from a demotion, suspension, termination, dismissal or involuntary resignation. In all other cases, the MSPB may choose to decide the appeal on the basis of a written record without an evidentiary hearing.
- [b]
- (c) The appealing party, the County Attorney, and the OHR Director must be served with a written notice of the time, date, and place of the pre-hearing conference.
- [c]
- (d) The MSPB may assign a hearing officer to hear any case appealed to the MSPB. If the MSPB refers an appeal to a hearing officer, the hearing officer must issue a notice of hearing within 15 working days. The hearing officer must issue the notice at least 30 working days prior to the date of the hearing. Within 20 working days of completion of a hearing, the hearing officer must submit written findings and recommendations to the parties and the MSPB. Within 15 working days of receipt of the hearing officer's report, the MSPB may schedule oral arguments.
- [d]
- (e) The MSPB or hearing officer designated by the MSPB must conduct hearings under the Administrative Procedures Act, Chapter 2A of the County Code (Appendix D).
- [e]
- (f) The MSPB or hearing officer may:
 - (1) administer oaths

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MONTGOMERY COUNTY EXECUTIVE REGULATION

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- (2) issue subpoenas for witnesses and documents;
- (3) rule on petitions to revoke subpoenas;
- (4) rule on motions and offers of proof;
- (5) dispose of procedural requests or similar matters;
- (6) call, examine and cross-examine witnesses;
- (7) accept evidence by stipulation of facts;
- (8) maintain an orderly procedure at all times;
- (9) set the time limits for a hearing or part of a hearing; and
- (10) take any action necessary to assure a fair disposition of the appeal.

[f]

(g) A hearing must not be open to the public unless the appellant requests it in writing at the time of the prehearing submissions

* * *

35-16 MSPB decisions

* * *

(b) The MSPB must:

* * *

(3) send a copy of each decision to:

* * *

(F) the Fire Chief and the local fire and rescue department in a case where the appellant is a volunteer firefighter or rescuer.

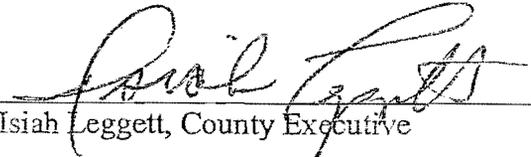
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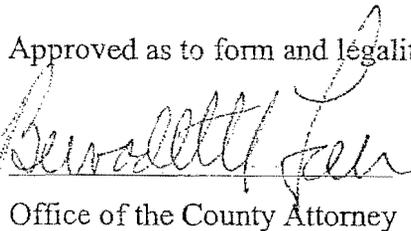
MONTGOMERY COUNTY EXECUTIVE REGULATION

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| Subject MCPR Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and | Number 14-09 Rescuers |
| Originating Department Office of Human Resources | Effective Date |

Approved: 
Isiah Leggett, County Executive

9/17/2009
Date

Approved as to form and legality:
 7/13/09
Office of the County Attorney Date





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MCPR Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers

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Issued by: County Executive
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Authority: Montgomery County Code, 2004, §21-7(c)
Council review: Method 1

Montgomery County Register Volume 26 Issue 8
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Summary: This regulation amends Sections 1, 33 and 35 of the MCPR to establish procedures for the Merit System Protection Board to hear and decide appeals of disciplinary actions filed by volunteer firefighters and rescuers.

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Existing language unchanged by executive regulation.



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* * *

SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS, AND INVESTIGATIONS



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

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|-------------------------------|--|-----------------------|-------|
| Subject | MCPR Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers | Number | 14-09 |
| Originating Department | Office of Human Resources | Effective Date | |

* * *

35-1. Definitions.

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(b) *Appellant*: The County employee, applicant for employment, or volunteer firefighter or rescuer who files an appeal with the MSPB.

* * *

35-2. Right of appeal to MSPB.

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(f) A volunteer firefighter or rescuer may file an appeal with the MSPB over an adverse final action of the Fire Chief or a local fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from participating in fire and rescue activities, as if the individual were a County merit system employee. A volunteer firefighter or rescuer is entitled to a de novo hearing before the MSPB from a demotion, suspension, termination, dismissal or involuntary resignation. The MSPB must hear and decide each such appeal except for an appeal of a personnel matter subject to an employee grievance procedure under a collective bargaining agreement.

35-3 Appeal period.

* * *

(c) Per Chapter 21-7 of the Montgomery County Code, a volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief or a local fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from participating in fire



MONTGOMERY COUNTY EXECUTIVE REGULATION

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and rescue activities, may appeal the action to the MSPB within 30 days after receiving a final notice of disciplinary action unless another law or regulation requires that an appeal be filed sooner.

* * *

35-8 Notification and submission of record in appeal.

* * *

- (b) The MSPB must promptly notify the CAO, County Attorney, OHR Director, Fire Chief, and local fire and rescue department in writing that a volunteer firefighter or rescuer filed an appeal and provide the County Attorney and OHR Director with a copy of the appeal.
- (c) An appellant must respond to an MSPB request for documentation in support of an appeal within 15 working days. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.
- (d) The OHR Director and County Attorney must respond to the appeal within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

* * *

35-10. Appellant's right to review; right to hearing

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- (b) A volunteer firefighter or rescuer is entitled to a de novo hearing before 2 or more members of the MSPB or a designated hearing officer on appeal from a demotion, suspension, termination, dismissal or involuntary



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| Subject | M CPR Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers | Number | 14-09 |
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resignation. In all other cases, the MSPB may choose to decide the appeal on the basis of a written record without an evidentiary hearing.

- (c) The appealing party, the County Attorney, and the OHR Director must be served with a written notice of the time, date, and place of the pre-hearing conference.
- (d) The MSPB may assign a hearing officer to hear any case appealed to the MSPB. If the MSPB refers an appeal to a hearing officer, the hearing officer must issue a notice of hearing within 15 working days. The hearing officer must issue the notice at least 30 working days prior to the date of the hearing. Within 20 working days of completion of a hearing, the hearing officer must submit written findings and recommendations to the parties and the MSPB. Within 15 working days of receipt of the hearing officer's report, the MSPB may schedule oral arguments.
- (e) The MSPB or hearing officer designated by the MSPB must conduct hearings under the Administrative Procedures Act, Chapter 2A of the County Code (Appendix D).
- (f) The MSPB or hearing officer may:
 - (1) administer oaths
 - (2) issue subpoenas for witnesses and documents;
 - (3) rule on petitions to revoke subpoenas;
 - (4) rule on motions and offers of proof;
 - (5) dispose of procedural requests or similar matters;
 - (6) call, examine and cross-examine witnesses;



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

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- (7) accept evidence by stipulation of facts;
- (8) maintain an orderly procedure at all times;
- (9) set the time limits for a hearing or part of a hearing; and
- (10) take any action necessary to assure a fair disposition of the appeal.

(g) A hearing must not be open to the public unless the appellant requests it in writing at the time of the prehearing submissions

* * *

35-16 MSPB decisions

* * *

(b) The MSPB must:

* * *

(3) send a copy of each decision to:

* * *

(F) the Fire Chief and the local fire and rescue department in a case where the appellant is a volunteer firefighter or rescuer.

* * *

Approved: *Isiah Leggett*
Isiah Leggett, County Executive

Sept 16, 2009
Date

Approved as to form and legality:

Bernadette Fausch *7/13/09*
Office of the County Attorney Date



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

July 9, 2009

TO: Joseph F. Beach, Director

VIA: Alex Espinosa, Management and Budget Manager *AE*

VIA: John Cuff, Management and Budget Specialist *JC*

FROM: Lori O'Brien, Management and Budget Specialist *LOB*

SUBJECT: Executive Regulation 14-09, MCPR Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers

REGULATION SUMMARY

This regulation amends Sections 33 and 35 of the Montgomery County Personnel Regulations (MCPR) to establish procedures for the Merit System Protection Board (MSPB) to hear and decide appeals of disciplinary actions filed by volunteer firefighters and rescuers.

FISCAL SUMMARY

The executive regulation will not have a fiscal impact on the County.

The following contributed to and concurred with this analysis: Stuart Weisberg, Office of Human Resources.

JFB:lob

c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
John Cuff, Office of Management and Budget
Stuart Weisberg, Office of Human Resources

OMB REVIEW

Fiscal Impact Statement approved

Joseph F. Beach
OMB Director

Fiscal Impact Statement not approved, OMB will contact department to remedy.

Office of the Director



OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

MEMORANDUM

August 31, 2009

TO: Kathleen J. Taylor, Executive Secretary
Merit System Protection Board

FROM: Joseph Adler, Director
Office of Human Resources 

SUBJECT: Executive Regulation 14-09, Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers

Thank you for the Board's thoughtful and detailed comments in connection with Executive Regulation 14-09.

We share the Board's concern about having a different time period for volunteer firefighters or rescuers to file an appeal with MSPB (30 days) than for County employees and applicants (10 working days). Chapter 21-7 of the Montgomery County Code, as recently revised by the Council, provides that a volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief or a local fire and rescue department involving any disciplinary action "may appeal the action to the MSPB within 30 days after receiving a final notice of disciplinary action unless another law or regulation requires that an appeal be filed sooner." However, since this issue is subject to bargaining with the representative of the volunteer firefighters and rescuers under Section 21-6(f)(4) of the Montgomery County Code, the County Executive cannot lawfully change the time period for a volunteer firefighter or rescuer to file an appeal by regulation absent an agreement with the union. When the County and the Montgomery County Volunteer Fire Rescue Association begin bargaining in the fall of 2010 for a new term agreement, we will seek to reduce the time period for filing an appeal to 10 working days.

We carefully considered the Board's suggestion that we instead change the Personnel Regulations to make the appeal period 30 days for all merit employees as well as for applicants. While recognizing that certain benefits flow from having a uniform period of time for everyone to file appeals with MSPB, we are concerned that this would be outweighed by the ramifications of increasing the time period for others from 10 to 30

days. We note initially in this regard that this period of 10 working days to file an appeal with the MSPB has been in place for many years and has not been a problem requiring change. Moreover, this 10 day period provides a measure of finality to the action, particularly with respect to hiring decisions and job applicants. Therefore, we are reluctant to triple the time period for filing an appeal simply to achieve uniformity. On balance, we believe that the better course of action is to seek to lower the 30 day time period during negotiations next fall with the Volunteer Fire Rescue Association rather than to raise the 10 day period for everyone else.



MERIT SYSTEM PROTECTION BOARD

MEMORANDUM

August 24, 2009

TO: Joseph Adler, Director
Office of Human Resources

FROM: Kathleen J. Taylor *KJT*
Executive Secretary

SUBJECT: Executive Regulation 14-09, Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers

This is in response to your memorandum, dated July 20, 2009, subject as above. The Board has carefully reviewed the proposed changes to the Montgomery County Personnel Regulations (Personnel Regulations). The Board notes that under the proposed amendments, a volunteer Firefighter or Rescuer would be given thirty (30) days to file an appeal. This is very different from the current system which exists for all other merit employees of the County. Specifically, the Personnel Regulations provide all other employees with the right to file a written statement indicating the employee wants the Board to review an action (notice of intent to appeal) within ten (10) working days. Thereafter, the employee is given another ten (10) working days to file a completed appeal form.¹

The Board is very concerned about setting up a different system for volunteer Firefighters and Rescuers. Board staff has discussed this matter with your staff, who advised that because the period of time for filing an appeal is a negotiable matter, the thirty day period could not be changed until contract negotiations commence with the union in a few years. Since the thirty day period cannot be changed absent bargaining, the Board suggests that the Personnel Regulations be changed to make the appeal period thirty days² for all merit employees. Such a change would ensure all employees, including volunteer Fire Fighters and Rescuers, are treated the same.

¹ An employee may elect to skip the notice of intent filing and simply file a completed appeal form directly with the Board.

² If the Board's suggestion is adopted, the Board would propose changing Section 35-4 of the Personnel Regulations to require that any person who wishes to file an appeal with the Board must complete and submit the Board's appeal form, which is available on

The Board has no objections to the remaining changes in the Personnel Regulations.

cc: Board Members

the Board's website. This would streamline the appeal filing process by eliminating the current two-step procedure.