

MEMORANDUM

January 26, 2010

TO: Public Safety Committee

FROM: Minna K. Davidson, ^{MKD}Legislative Analyst

SUBJECT: Repeal of Executive Regulation 4-05AM, *Procedures for Fire and Rescue Commission Appeal Hearings*

The following individuals are expected to be present:

Richard Bowers, Fire Chief, Montgomery County Fire and Rescue Service (MCFRS)
Kathleen Taylor, Executive Director, Merit System Protection Board (MSPB)

Before the enactment of Bill 38-08, Code Section 21-7 required the Fire and Rescue Commission to hear appeals from volunteer firefighters who were aggrieved by certain disciplinary actions of the Fire Chief or local fire and rescue departments. The Commission was required to establish procedures by regulation for hearing and deciding these appeals and issued Regulation 4-05AM, *Procedures for Fire and Rescue Commission Appeal Hearings*.

Bill 38-08, *Fire and Rescue Commission – Abolition*, abolished the Fire and Rescue Commission and replaced it with a new Fire and Emergency Services Commission. Among other things, the bill shifted the authority to hear volunteer firefighter appeals to the Merit System Protection Board (MSPB), and required the Executive to establish procedures by regulation for the MSPB to hear these appeals. The Executive issued, and the Council approved Regulation 14-09, which amended the Personnel Regulations to establish procedures for the MSPB to hear volunteer firefighter appeals. Regulation 14-09 is attached on © 30-34.

Although the repeal of Regulation 4-05AM is pro forma because the regulation has been made obsolete by a change in law, the Public Safety Committee Chair scheduled this review to better understand the new process for volunteer firefighter appeals through the MSPB, and to get an update on how the new process is working.

MSPB and MCFRS staff have provided written responses to questions about the transition to the new process on © 2-4. A summary of the process is provided in the response to Question 5 on © 2-3. As no appeals have been filed since the appeal authority shifted to the MSPB, no issues have arisen with implementation of the new process.

For the Committee discussion, MSPB and MCFRS staff will discuss the new process in more detail, and will be available to respond to Committee questions.

Council staff recommendation: Approve the repeal of Regulation 4-05AM as submitted by the Executive.

<u>This packet contains</u>	<u>circle #</u>
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Resolution No.: _____
Introduced: _____
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND

By: County Council

Subject: Repeal of Fire and Rescue Commission Executive Regulation 4-05AM, *Procedures for Fire and Rescue Commission Appeal Hearings*

Background

1. On December 10, 2009, the Council received a request to repeal Fire and Rescue Commission Executive Regulation 4-05AM, *Procedures for Fire and Rescue Commission Appeal Hearings*, which was originally adopted under Method 2 of Section 2A-15 of the Code. Section 2A-15 requires that to repeal an adopted regulation, an issuer must use the procedure under which the regulation was adopted.
2. County Code Chapter 21 formerly provided for a Fire and Rescue Commission which was authorized, among other things, to hear appeals from volunteer firefighters who were aggrieved by certain disciplinary actions of the Fire Chief or local fire and rescue departments. The law required the Commission to establish by regulation procedures for hearing and deciding these appeals. Regulation 4-05AM established the appeal procedures.
3. Chapter 21 was later amended by Bill 38-08 to abolish the Fire and Rescue Commission and replace it with a Fire and Emergency Services Commission. The bill shifted to the Merit System Protection Board the authority to hear appeals from volunteer firefighters and required the Executive to establish procedures by regulation for the Board to hear these appeals. The Executive issued, and the Council approved, the required regulations.
4. The Executive requests repeal of Regulation 4-05AM because it is obsolete as a result of a change in law.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

Fire and Rescue Commission Executive Regulation 4-05AM,
Procedures for Fire and Rescue Commission Appeal Hearings, is
repealed.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Davidson, Minna

From: Taylor, Kathleen
Sent: Tuesday, January 12, 2010 1:49 PM
To: Davidson, Minna; Bowers, Richard (FRS)
Cc: Giebel, George; Hinde, Alan; Graham, Scott; Dowdy, Linda; Goodloe, Marcine; Bernard, Eric
Subject: RE: 1/28 PS review of repeal of Reg. 4-05AM

Minna,

Here are our responses.

Questions

1. **MCFRS:** In a July 2008 Public Safety Committee packet, MCFRS staff indicated that there had been no volunteer firefighter appeals to the Fire and Rescue Commission since the reorganization of MCFRS under Bill 36-03. How many appeals, if any, were filed with the Fire and Rescue Commission between July 2008 and August 1, 2009, when the Fire and Rescue Commission was abolished?
2. **MCFRS:** If any appeals were filed during that period, how long was the process for each appeal?
3. **MCFRS and MSPB:** Did any appeals to the Fire and Rescue Commission extend beyond the abolition of the Commission? No If so, how were they handled?
4. **MSPB:** How many volunteer firefighter appeals have been filed with the MSPB since the Commission was abolished? None
5. **MSPB:** In November 2009, the Council approved amendments to the Personnel Regulations to establish procedures for the Merit System Protection Board to hear and decide appeals from volunteer firefighters. Please summarize the steps for a volunteer firefighter who appeals to the MSPB under the new regulations.

The steps differ, depending on whether the firefighter is entitled to a hearing on the matter.

For those appeals which do not require a hearing, the Board gives 15 work days to the County Attorney's office to respond to the appeal. After the County Attorney's office serves the Board and the volunteer firefighter (or his/her representative) with its response to the appeal, the volunteer firefighter has 15 work days to provide a reply to the County attorney's response. After receipt of the volunteer firefighter's response, the entire written record is submitted to the Board for its consideration. Once the Board reaches a decision on the matter, a written decision is drafted by the Executive Director and circulated to the Board members for their comments, revisions, etc. When the decision is approved, it is finalized, signed by the Chair, and issued to the parties.

For those appeals which require a hearing, the Board gives 15 work days to the County Attorney's office to submit its Prehearing Submission. After the County Attorney's office serves the

Board and the volunteer firefighter (or his/her representative) with its Prehearing Submission, the volunteer firefighter has 15 work days to submit his/her Prehearing Submission. After receipt of the parties' Prehearing Submissions, the Board schedules a Prehearing Conference. At the Conference, the Board discusses the witness lists and list of exhibits with the parties. It also schedules a date for a hearing. Most hearings only take a day. All hearings are transcribed by a court reporter. After the hearing, the Board confers and reaches a decision on the matter. Once the Board reaches a decision on the matter, a written decision is drafted by the Executive Director and circulated to the Board members for their comments, revisions, etc. When the decision is approved, it is finalized, signed by the Chair and issued to the parties.

6. **MSPB:** During the Council's review of the amendments to the Personnel Regulations, it was noted that the MSPB was concerned that the 30-day period for volunteer firefighters to file an appeal is different from the 10-day filing period for all other merit system employees. As the 30-day filing period for volunteers is subject to negotiation with the MCVFRA (and is required by law), the MFP Committee encouraged the Executive to seek to move to a 10-day filing period for volunteers during the next negotiations. To what extent has the 30-day filing period been an issue since the MSPB assumed responsibility for volunteer firefighter appeals? It has not been an issue. The Board has made sure that staff members are aware of the differences and are able to advise a caller of the applicable time frames.
7. **MSPB and MCFRS:** Have any other issues arisen regarding the process for volunteer firefighter appeals?
No

Let me know if you have any other questions.

Kathleen J. Taylor
Executive Director
Merit System Protection Board
(240) 777-6620

-----Original Message-----

From: Davidson, Minna

Sent: Thursday, December 17, 2009 1:56 PM

To: Bowers, Richard (FRS); Taylor, Kathleen

Cc: Giebel, George; Hinde, Alan; Graham, Scott; Dowdy, Linda; Goodloe, Marcine; Bernard, Eric

Subject: 1/28 PS review of repeal of Reg. 4-05AM

The Executive has submitted to the Council a request to repeal Regulation 4-05AM, *Procedures for Fire and Rescue Commission Appeal Hearings*. Although the repeal itself is pro forma because the regulation was made obsolete by a change in law, the Public Safety Committee Chair has scheduled the repeal for Committee review to better understand the new process for volunteer firefighter appeals through the Merit System Protection Board, and to get an update on how the new process is working. He would like staff from MCFRS and the Merit System Protection Board to attend the discussion.

The Committee will review the repeal request on Thursday, January 28. The meeting will begin at 9:30 a.m., but the repeal is last on the agenda. We will provide an estimated time for the item as it gets closer to the meeting date. The meeting will be held in the 7th floor Council hearing room.

To prepare for the meeting, we would ask that MCFRS and MSPB staff respond to the questions below as indicated. We will need to receive the responses by Thursday, January 21.

If you have any questions, please feel free to contact me at 7-7935.

MCFRS Responses

1. **MCFRS:** In a July 2008 Public Safety Committee packet, MCFRS staff indicated that there had been no volunteer firefighter appeals to the Fire and Rescue Commission since the reorganization of MCFRS under Bill 36-03. How many appeals, if any, were filed with the Fire and Rescue Commission between July 2008 and August 1, 2009, when the Fire and Rescue Commission was abolished?

There were no appeals filed between July 2008 and August 1, 2009.

2. **MCFRS:** If any appeals were filed during that period, how long was the process for each appeal? N/A
3. **MCFRS and MSPB:** Did any appeals to the Fire and Rescue Commission extend beyond the abolition of the Commission? If so, how were they handled?

There were no appeals extended beyond the abolition of the Fire and Rescue Commission.

4. **MSPB:** How many volunteer firefighter appeals have been filed with the MSPB since the Commission was abolished?
5. **MSPB:** In November 2009, the Council approved amendments to the Personnel Regulations to establish procedures for the Merit System Protection Board to hear and decide appeals from volunteer firefighters. Please summarize the steps for a volunteer firefighter who appeals to the MSPB under the new regulations.
6. **MSPB:** During the Council's review of the amendments to the Personnel Regulations, it was noted that the MSPB was concerned that the 30-day period for volunteer firefighters to file an appeal is different from the 10-day filing period for all other merit system employees. As the 30-day filing period for volunteers is subject to negotiation with the MCVFRA (and is required by law), the MFP Committee encouraged the Executive to seek to move to a 10-day filing period for volunteers during the next negotiations. To what extent has the 30-day filing period been an issue since the MSPB assumed responsibility for volunteer firefighter appeals?
7. **MSPB and MCFRS:** Have any other issues arisen regarding the process for volunteer firefighter appeals? No

Exec Reg



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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

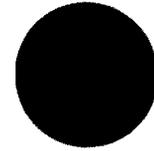
Method 2

December 10, 2009

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Repeal of Executive Regulation No. 4-05AM,
Procedures for Fire and Rescue Commission Appeal Hearings



RECEIVED
MONTGOMERY COUNTY
COUNCIL
2009 DEC 10 PM 3:54

At the request of Fire Chief Richard Bowers, I am recommending the repeal of Executive Regulation 4-05AM, *Procedures for Fire and Rescue Commission Appeal Hearings*, which the Council adopted on July 18, 2005 under Method (2) requirements. Executive Regulation 4-05AM adapted the language of the Administrative Procedures Act to govern Fire and Rescue Commission (FRC) appeals under Section. 21-7 of the County Code. However, the regulation became obsolete on August 1, 2009, when the Council adopted Bill 38-08 abolishing the FRC and creating the Fire and Emergency Services Commission. Under current law, the responsibility for hearing appeals of certain disciplinary actions now rests with the County's Merit System Protection Board under procedures which I have established.

Notice of the proposed repeal was published in the Montgomery County Register on October 1, 2009; no comments were submitted. The Montgomery County Volunteer Fire/Rescue Association and Local 1664 of the International Association of Fire Fighters were provided notice and opportunity to comment, and neither offered comments. The Fire and Emergency Services Commission has recommended the repeal of this regulation.

A copy of the regulation proposed for repeal is attached. If additional information is needed, please call Fire Chief Richard Bowers on Ext. 7-2435.

Attachment

IL:bf

Resolution No.: 15-1083
Introduced: July 18, 2005
Adopted: July 18, 2005

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Approval of Fire and Rescue Commission Regulation 04-05AM, Procedures for FRC Appeal Hearings

Background

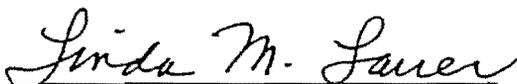
1. The Council received Temporary Regulation 04-05T, Procedures for FRC Appeal Hearings, on January 28, 2005. The original expiration date for Temporary Regulation 04-05T was April 28, 2005. At the Fire Chief's request, the Council extended the expiration date to July 27, 2005.
2. The Council received a proposed Method 2 permanent regulation (Executive Regulation 04-05) with the same title on June 9, 2005.
3. The Public Safety Committee reviewed the proposed permanent regulation on June 27, 2005, and requested certain amendments. In particular, the Committee requested that the Fire and Rescue Commission re-issue the regulation instead of the Executive, consistent with the requirement in County Code Section 21-7(c) for a Fire and Rescue Commission regulation on this matter. The Committee recommended approval with the requested amendments.
4. The Fire and Rescue Commission amended Regulation 04-05 as the Committee requested, and re-issued and re-numbered it Fire and Rescue Commission Regulation 04-05AM to indicate that it was amended after transmittal to the Council.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

Fire and Rescue Commission Regulation 04-05AM, Procedures for FRC Appeal Hearings, is approved.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject PROCEDURES FOR FRC APPEAL HEARINGS	Number 04-05AM
Originating Department MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	Effective Date July 18, 2005

PROCEDURES FOR FRC APPEAL HEARINGS

Issued by: Fire and Rescue Commission
Executive Regulation No. 04-05AM

Authority: Montgomery County Code Section 21-7.(c)
Council Review: Method (2)

Supersedes: Executive Regulation 02-03AM, Temporary Executive Regulation No. 04-05T
Register Volume 22, Issue 2

Effective Date: July 18, 2005

SUMMARY: The Fire and Rescue Commission is adopting by regulation these Procedures for Appeal Hearings ("Procedures") to govern hearings of Fire and Rescue Commission appeals, in accordance with Section 21-7 of the Montgomery County Code, 1994, as amended.

DEADLINE: All comments regarding the proposed regulation must be submitted to the attention of Beth Feldman in the Office of the Fire Chief, 12th Floor, 101 Monroe Street, Rockville, MD, 20850, not later than **February 28, 2005**. Comments may also be emailed to beth.feldman@montgomerycountymd.gov

STAFF: For additional information, please call Beth Feldman, Montgomery County Fire and Rescue Service, on (240) 777-2423.

BACKGROUND: These Procedures for FRC Appeal Hearings adapt the language of the Administrative Procedures Act ("APA") to specifically correspond to procedures for Fire and Rescue Commission hearings. This regulation is authorized by Section 21-7 of the Montgomery County Code, 1994, as amended.

Sec. 1. Purpose: These Procedures are designed to provide prompt and efficient resolution of appeals over which the Commission has jurisdiction under Section 21-7 of the County Code.



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Sec. 2. Applicability. These procedures apply to an appeal filed by a volunteer firefighter or rescuer aggrieved by an adverse final action by the Fire Chief or a local fire and rescue department involving the removal, demotion, or suspension of, or other disciplinary action applied specifically to that individual. However, the Commission must not consider an appeal of a personnel matter subject to an employee grievance procedure: (1) under a collective bargaining agreement; (2) under County personnel laws or regulations; or (3) which is otherwise subject to a complaint or appeal to the Merit System Protection Board.

Sec. 3. Definitions. The words and phrases below have the following meanings, except when otherwise indicated in these Procedures.

Appeal. A proceeding brought before the Fire and Rescue Commission under Section 21-7 of the County Code.

b. **Appeal Document.** A written appeal from any alleged violation or action by a Local Fire and Rescue Department, or by the Fire Chief, over which the Commission has jurisdiction under Sec. 21-7 of the County Code.

c. **Appellant.** Any person with standing who properly files an appeal document with the Fire and Rescue Commission seeking administrative relief under Section 21-7(a) of the Montgomery County Code.

d. **Ex parte.** A proceeding taken or granted at the instance, and for the benefit of one party only, without notice to any person adversely affected.

e. **Fire and Rescue Commission ("Commission," or "FRC").** The body established under Section 21-2 of the County Code.

f. **Hearing.** A hearing of an appeal under Section 21-7, by the Commission, or by a hearing examiner designated by the Commission.

g. **Hearing Authority.** The Fire and Rescue Commission ("Commission"), or a hearing examiner designated by the Commission to conduct a hearing under Section 21-7 of the County Code.



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- h. Local Fire and Rescue Department (LFRD). An entity as defined in Section 21-1 of the County Code.
- i. Person. An individual or entity, including a governmental entity.
- j. Presiding Officer. The Chair or Vice-Chair of the Fire and Rescue Commission, another public member of the Commission appointed by the Vice-Chair as temporary chair, or a hearing examiner designated by the Commission to conduct a hearing. The Presiding Officer is authorized to conduct a hearing.
- k. Responding Party. The person or body who took the action from which the appeal arises.
- l. Response Document. A written response to an appeal filed under Sec. 21-7.
- m. Standing. A person's legally protected and tangible interest at stake in an appeal.

Sec. 4. **Policy**. The Fire and Rescue Commission has jurisdiction in, and must decide each appeal filed by a party with standing. These Procedures derive from, but prevail over any conflicting provision in Chapter 2A of the County Code, and have the force of law authorized under Section 21-7(c) of the County Code.

Sec. 5. Procedure.

- I. **Initiation of Hearing Process**.
 - a. A person must have standing to participate as a party to an appeal under these Procedures. Any proceeding governed by these Procedures must be initiated by a person, by filing an appeal document in writing with the Fire and Rescue Commission. The appellant must serve the appeal document on the responding party by certified mail, return receipt requested, or by personal service. The appellant must file proof of service with the Commission or its designee, including date, time, and mode of service, within 4 business days after service. Thereafter, all parties must serve on all parties of record a copy of any other document or paper by hand-delivery, or by regular, first class mail, postage pre-paid.

1. The appeal document must be filed within the applicable 30 day filing time



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

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Subject

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Number

O4-05AM

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MONTGOMERY COUNTY FIRE AND RESCUE SERVICE

Effective Date

period stated in Section 21-7(b) of the County Code.

2. If the **Commission** receives more than one appeal involving the same individual's personnel action, the **Commission** must consolidate the appeals.
 3. This appeal document must specify all questions or issues being raised and must include a description of the nature and specifics of the decision or action from which the appeal is being taken, with references to sections of applicable laws, regulations, or policies, if known, that are alleged to have been violated or relied upon.
 4. Unless otherwise ordered by the **Hearing Authority**, the appeal document must be limited to 10 pages, excluding supporting documentation. The appellant must provide 10 copies of the appeal document to the **Commission** at the time of filing. The appeal document must be titled "**Appeal from the Action of (the Fire Chief or name of LFRD) that Occurred on (or was Taken on) (date).**"
 5. The appeal document must indicate the nature of the relief requested, the name(s) and address(es) of the **responding party(ies)** alleged to have committed a violation, or to have undertaken an action that is the subject of a proceeding governed by these Procedures, a description of the alleged violation or action, and the date the violation or action allegedly took place or was undertaken. The statement may be accompanied by supporting documentation. If the decision or action from which an appeal has been taken was in writing, a copy of the decision or action must be attached to the appeal as an exhibit.
 6. Any issue not specifically raised by the appellant in the appeal document is waived.
- b. The **Commission** has authorized its Staff Director or designee to receive the filing of an appeal, and all other filings, under these Procedures. Upon receiving an appeal or other filing, the Staff Director or designee must note directly on the document filed the date and time that it was received, and provide 1 copy of the filed document to the **Presiding Officer** and each Commissioner within 5 business days after receiving the document.



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Subject PROCEDURES FOR FRC APPEAL HEARINGS	Number O4-05AM
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- c. The party filing an **appeal document** is responsible for obtaining a date stamp on the original document the party is filing, to accurately indicate when the party filed the document with the **Commission's Staff Director** or designee.
- d. Unless otherwise ordered by the **Hearing Authority**, a **responding party** must file a **response document** addressing the issue(s) raised in an **appeal document** not more than 21 days after being served by an **appellant** with an **appeal document**.
 - 1. The **response document** must include a description of the nature and specifics of any defense(s) to each allegation, with references to sections of applicable laws, regulations, or policies, if known, that are relied upon.
 - 2. Any supporting documentation upon which the **responding party** relies must accompany the **response document**, unless the **Commission** orders otherwise.
 - 3. Unless otherwise ordered by the **Hearing Authority**, the **response document** must be limited to 10 pages, excluding supporting documentation. The **responding party** must provide 10 copies of the **response document** to the **Commission** at the time of filing.
- e. Unless the **Commission** orders an **evidentiary hearing** because it has determined that it must receive testimony or other additional evidence to resolve a matter on its merits, all **appeals** to the **Commission** must be based on the record. The record must consist of the **appeal document**, **response document(s)** filed by the **responding parties**, if any, and any properly filed documents and transcripts of testimony filed or compiled in accordance with these Procedures, or under orders or directives of the **Commission** while the **appeal** is pending.
- f. In accordance with Section 5.1.e., the **Commission** may, in its sole discretion, permit the introduction of relevant testimony, documents, and other evidence, upon determining an **evidentiary hearing** is needed to resolve the matter.
- g. When the **Hearing Authority** is not in session, its **Presiding Officer** may rule on a motion to continue, to extend time, or to increase the number of pages permitted in an **appeal document**, or in a **response document**.



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- h. Unless the **Hearing Authority** otherwise orders, a **hearing** must be held within 45 days after the time the **responding party** is required to file a response.
- II. Notice of Hearing.
- a. The **Commission** must provide reasonable notice regarding any **hearing**. This notice must be provided to all parties not less than 30 calendar days before the **hearing**, except as provided in Section 5.II.b., or as otherwise ordered by the **Commission**.
- b. Notwithstanding Section 5.II.a., the **Commission** may schedule a **hearing** on a motion, upon reasonable notice given to all parties not less than 15 days before the **hearing**. Furthermore, the **Commission** may decide a preliminary matter or a non-dispositive motion, or a motion for reconsideration, or to alter or amend its decision without a **hearing**. With agreement of all parties, or as otherwise ordered by the **Hearing Authority**, a **hearing** may be held on less notice than stated in Section 5.II.b., or in Section 5.II.a. This agreement of the parties, or order of the **Hearing Authority**, must be in writing or placed on the record. A motion to dismiss, or other dispositive motion, may be heard either at the **hearing** on the merits; or at a time before or after a **hearing** on the merits, in the sole discretion of the **Commission**.
1. The **Hearing Authority** must provide written notice of a **hearing** to the **appellant** and **responding party**: by regular, first class mail; or by personal service at the address(es) indicated in the **appeal** or **response document**; or as otherwise determined in writing by the **Commission**.
 2. If the **Commission** staff is unable to serve a party, as noted in Section 5. II.b.1., after making diligent and reasonable efforts to locate the party, the staff member must file in the record an affidavit of attempts to make service. If the **Commission** is satisfied with the efforts made to serve Notice of a **hearing** on a party, it may direct alternative means to actually serve the party, or proceed to hear the matter.
 3. The written notice of a **hearing** must contain the following information:
 - A. a copy of the **appeal document**;



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- B. the time, place, and date of the hearing;
- C. that the parties may be represented by counsel, or may represent themselves;
- D. if the **Commission** orders an evidentiary hearing, that the parties may present witnesses, cross-examine witnesses, and present supporting documentation; and
- E. that procedural requirements are established by these Procedures, and in County Code Section 21-7.

4. A request for a continuance of a hearing must be made by filing a written request not less than 5 business days before the date of the hearing. A request for a continuance must set forth the reason(s) for the requested continuance, and must specify whether any or all of the parties to the matter have consented to the request. When the **Hearing Authority** is not in session, a request for continuance may be ruled upon by the **Presiding Officer**.

III. Hearings.

a. **Time and Place/Referral to Hearing Examiner.** A hearing on a contested matter, including a hearing on the merits, must be held at the time and place designated in the notice(s), except when continued to another date. Hearings must be open to the public, except where otherwise ordered by the **Commission**, or as provided by law. Unless the **Commission** expressly orders otherwise, all matters must be heard by the **Commission** on the basis of the written record, as noted in Section 5.1.e.

The **Commission**, in its sole discretion, may hold a hearing, or may refer a matter to a hearing examiner, to take evidence and determine factual issues. If the **Commission** finds at any time before a decision on the merits that a matter cannot be resolved without a determination of factual issues, the **Commission** must notify the parties and decide, in writing or on the record:

- 1. whether, or to what extent, it will permit the parties to present witnesses or other evidence not otherwise in the record; and



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2. whether it will refer the matter to a **hearing** examiner for factual findings or recommendations.

b. Official Record.

The **Commission** must prepare, maintain, and supervise the custody of an official record in each case. The record must include any permitted testimony and documentary evidence, if any are submitted during the **hearing** or at other times the record is open to receive evidence and to develop a verbatim transcript. Any party may arrange for a verbatim record and transcript of the **hearing** to be made at that party's expense. Relevant documentary evidence may be received in the form of: copies; excerpts of documents that satisfy the **Hearing Authority** that they are accurate portions of larger documents or transcripts; photographic reproductions; or documents incorporated by reference from other documents. The **Hearing Authority** must make the official record available for inspection to all parties and their counsel before any **hearing**.

c. Ex parte Communication.

1. Section 5.III.c. **Ex parte** Communication applies to any **ex parte** communication, written or oral, received by a member of the **Hearing Authority** if:

- A. the communication relates to an **appeal** before the **Commission**;
- B. all appellate rights regarding the contested matter have not been exhausted; and

C. the **Commission** is required by law to make a decision on the matter based on the record, or based on any permitted relevant testimony or documentary evidence before it.

2. Section 5.III.c. does not apply to:

- A. legal or technical advice rendered by government agency staff or an attorney for the County at the request of the **Commission**;



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B. any communication about the status or procedure of a pending matter; or

C. any communication between members of the **Commission**, or between members of the **Commission** and any attorney for the County or **MCFRS** staff member assigned to the **Commission**.

3. If a member of the **Hearing Authority** receives an oral *ex parte* communication, that member must reduce the substance of the communication to writing within a reasonable time after receipt of the communication. A member of the **Hearing Authority** must provide any written or oral *ex parte* communication to the entire **Hearing Authority**.

4. If a final administrative decision has not been made before receipt of the *ex parte* communication, the **Commission** must send a written notice to all parties that discloses the contents of the communication, and states whether the **Commission** will consider the communication as a basis for its decision under Section 5.III.c.5.

5. The **Commission** must include the *ex parte* communication in the record and may:

A. consider the communication as a basis for its decision, after giving all parties an opportunity to respond to the communication; or

B. decide the matter, while expressly finding that it has not considered the communication as a basis for its decision.

6. The substance of an *ex parte* communication received after a final administrative decision has been made, and before appellate rights have been exhausted, must be maintained in the case file, and must be treated in accordance with all other provisions of Section 5.III.c.

7. In the event of a remand to the **Commission** by a higher appellate authority, the **Commission** may seek additional evidence, subject to the remanding authority's instructions, provided that the evidence is included as part of the record and the parties are given notice and an opportunity to respond.



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d. Subpoena Power and Depositions.

1. The **Commission**, through its Chair, Vice-Chair, another public member of the **Commission** appointed by its Vice-Chair as temporary chair, or a **hearing examiner**, may issue subpoenas and require depositions under Section 21-7(d) and (e) of the County Code.
2. The **Commission** may compel the attendance of witnesses and require that they produce books, papers, documents, and other materials relevant to any case under consideration.
3. Subpoenas may be served by certified mail, by private process server designated by the **Commission**, or by anyone who could lawfully serve a subpoena in a judicial proceeding of a civil nature.
4. A **person** has the right to inspect and copy a public record, in accordance with, and subject to, the Maryland Public Information Act.

e. Burden of Going Forward with the Evidence and Burden of Persuasion. The **appellant** has the burden of going forward with the production of evidence, and the burden of persuasion, at an evidentiary **hearing** before the **Hearing Authority**. This evidence or argument must be competent, material, and relevant to all matters at issue and the relief requested.

1. Evidence. When conducting an evidentiary **hearing**, the **Hearing Authority** may admit and give appropriate weight to evidence that possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence that appears to the **Hearing Authority** to be reliable in nature. The **Hearing Authority** must give effect to the rules of privilege and confidentiality recognized by law or regulation, and may exclude incompetent, unreliable, irrelevant, or unduly repetitious evidence, or direct a party to produce evidence at the **Hearing Authority's** request.
2. The **Hearing Authority** may take official notice of commonly known facts, facts within its particular realm of administrative expertise, and documents or matters of public record. Parties must be notified of matter and material so noticed



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while the record in the case is open, and must be provided an opportunity to argue that the **Hearing Authority** should not take notice of those facts.

f. **Testimony of Witnesses at Hearing.**

1. All witnesses must testify under oath. A witness under oath who intentionally falsifies material, or who willfully and falsely testifies in a **hearing**, is subject to the penalties of perjury under State law.
2. Every party has the right of reasonable cross-examination of witnesses who testify, and has the right, on request, to submit rebuttal evidence. Repetitious questions and examination on irrelevant matters must not be permitted. Cross-examination must be subject to reasonable regulation by the **Hearing Authority**, which may require the designation of specific persons to conduct cross-examination on behalf of other individuals.

g. **Right to Counsel.** In any case governed by these Procedures, the parties may represent themselves, or may be represented by legal counsel admitted to practice in the State of Maryland. Notwithstanding any other provisions in these Procedures, a corporation must be represented by an attorney. Where a party is represented by counsel, the appearance of counsel must be entered in the case, and the party or its counsel must expeditiously notify the **Commission** in writing or on the record after retaining counsel. A party or its counsel must also notify all other parties of record simultaneously with the notice of appearance of counsel to the **Commission**.

h. **Powers of the Hearing Authority.** In addition to any other power granted by these Procedures, and subject to those powers noted below that are held by only the **Commission**, the **Hearing Authority** may:

1. administer oaths and affirmations;
2. grant or deny requests for subpoenas, or issue subpoenas on its own initiative;
3. call independent witnesses or seek additional evidence to be made part of the record, as justice may require;
4. rule on motions to quash subpoenas;



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5. rule upon motions and offers of proof, and receive relevant and probative evidence; exclude incompetent, irrelevant, immaterial, or repetitious evidence; and give effect to the rules of privilege or confidentiality recognized by law or regulation;
6. regulate the course of a **hearing** and, in its discretion, allow the record in a **hearing** to remain open for a designated period of time;
7. hold conferences for simplification of the issues;
8. dispose of procedural requests or similar matters, including motions for continuance; amend a pre-hearing statement; and order **hearings** reopened, order cases consolidated, or grant rehearings;
9. call, examine, and cross-examine witnesses, and obtain and introduce into the record documentary or other evidence;
10. request the parties at any time while a matter is pending, including during a **hearing**, to state their respective positions concerning any issue in the case or theory in its support;
11. take any other action authorized by these Procedures or necessary to a fair disposition of the case;
12. accept evidence by stipulation of facts, which may be introduced at any time before the decision of the **Hearing Authority**;
13. schedule, recess, suspend, or continue **hearings** to a specific time and date, with notification to all parties;
14. on its own motion, and at the request of an affected party, order witnesses other than a party to be excluded from the **hearing** room until called to testify;
15. order that statements of witnesses who are beyond the **Commission's** jurisdiction, or who for sufficient reason are unavailable to testify, be taken by written interrogatories answered under oath, or deposition (including telephone



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depositions) made under oath. The original of any of these interrogatories, their answers, or deposition transcripts, must be filed in the case file of the proceedings. The terms "interrogatories" and "depositions," unless otherwise ordered by the **Commission**, have the same meanings and follow the same procedures as set forth in the Maryland Rules of Civil Procedure, applicable to Circuit Court proceedings, as amended from time to time;

16. (only the **Commission**) rule on the request for witness reimbursement of expenses actually incurred because of that witness's required presence at a hearing; or, if the witness is a County employee, rule on a request to extend appropriate leave to the witness; and
17. (only the **Commission**) upon motion, permit additional parties with standing to intervene or participate in the proceedings, as justice may require.

i. Hearing Conduct and Procedure.

1. Unless otherwise provided by law:
 - A. A quorum of the **Commission** must be present to conduct a hearing. A majority of the members of the **Commission** constitutes a quorum. The quorum requirements do not apply to hearings conducted by a hearing examiner.
 - B. The **Presiding Officer** (except a hearing examiner appointed by the **Commission**) must be a voting member, and is counted toward establishing a quorum.
 - C. A ruling of the **Presiding Officer** stands, including without limitation, those with respect to objections and to admission or exclusion of evidence, documents or exhibits, unless overruled by a majority vote of the members of the **Commission** present and participating.
 - D. The **Commission's** Chair or, in his/her absence, the Vice-Chair, or another public member of the **Commission** appointed by the Vice-Chair as temporary chair, or a hearing examiner designated by the **Commission**, must conduct any hearing involving the appeal, and may



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issue subpoenas and permit depositions.

- E. A member of the **Hearing Authority** is subject to disqualification for conflict of interest, and suggestions for disqualification of any member may be made on petition of any party, or by any member of the **Hearing Authority**. A ruling on any such disqualification may be made by a majority of a **Commission** quorum. Conflict of interest matters are also governed by the County Ethics Commission under County Law, including Section 19A-15(b) of the County Code. If a conflict occurs between a decision by the **Commission** and the Ethics Commission, the decision of the Ethics Commission prevails.
2. The **Presiding Officer** must preside at **hearings** and has full authority at all times to maintain orderly procedure and to restrict the **hearing** to relevant and material facts.
 3. All exhibits accepted must be marked and held in the **hearing** file. Exhibits whose admission is rejected must either be returned to the offering party, or retained in the file, with appropriate notations reflecting that the material was rejected as an exhibit.
 4. Motions, petitions, and objections made during the course of a **hearing** must be ruled on as received, or as soon thereafter as is practicable.
 5. Where the **Commission** orders an evidentiary **hearing** under Section 5. III.a., the ordinary, but not mandatory, order of procedure for the conduct of the **hearing** and the presentation of evidence is:
 - A. disposition of all outstanding preliminary motions and preliminary matters;
 - B. opening statement of parties;
 - C. presentation of factual case of the **appellant**; cross-examination of the **appellant's** witnesses;
 - D. presentation of factual case of the **responding party**;



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cross-examination of the responding party's witnesses;

- E. rebuttal evidence of the appellant; cross-examination of the appellant's witnesses;
- F. surrebuttal evidence of the responding party; cross-examination of the responding party's witnesses; and
- G. closing arguments.

j. Sanctions. The Commission may impose sanctions against parties and witnesses for failure to abide by the provisions of these Procedures, or for causing unexcused delays or obstructions to the pre-hearing and hearing process. These sanctions may include, but are not limited to suspension or continuance of scheduled hearings, dismissals of appeals, denial of admission of documents and exhibits, and admission of matters as adverse to a party.

1. In addition to any of these sanctions, the Commission may assess against any offending party the full cost of verbatim recording and transcription of any hearing that was delayed or obstructed by that party.
2. The Commission may also assess against the offending party the cost of re-advertisement, or re-notice, if this notification is either required by law or is necessary, in the discretion of the Commission, to give adequate notice to interested or affected parties.

IV. Emergency Hearings.

If the ordinary processing of any appeal may cause injury to any party due to time constraints, the Commission may, for good cause shown by any affected party, or on its own motion, grant an emergency hearing. When the Commission orders an emergency hearing, it may suspend or alter any provision of these Procedures necessary to avert that undue injury. However, in those cases, the Commission must notify all parties of the operation of this section and make every reasonable effort to provide substantive due process of law to all parties.



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V. Decisions.

- a. Content. All decisions of the **Hearing Authority** granting relief requested by **appellant**, except rulings on preliminary matters or on non-dispositive motions or objections, must be in writing. Except for preliminary matters or non-dispositive motions, or objections, each decision must be based on the record, and must contain findings of fact, conclusions of law, and an appropriate decision and order. However, any decision stipulated or consented to by the parties need only be reflected by an appropriate written order or consent agreement.
- b. Evidence Required. Where an evidentiary **hearing** is held, all decisions of the **Hearing Authority** must be based on and supported by a preponderance of the evidence of record. A claim of fraud or fraudulent action must be supported by clear and convincing evidence.
- c. Voting Requirements. Any dispositive decision rendered in conformity with the provisions of these Procedures must have the concurrence of a majority of a quorum of the voting members of the **Hearing Authority**, unless a greater number of votes are required by law.
 1. Members of the **Commission** who were absent during a **hearing** may vote on a matter, if they provide written certification that they have read the transcripts and reviewed the evidence of record.
 2. Failure to achieve the necessary affirmative votes will act as a denial of the relief requested by the **appellant**, by operation of law. No written opinion in this instance will be required. However, individual members of the **Commission** may file written reasons supporting their respective positions.
- d. Time Requirements for Decisions. All decisions of the **Hearing Authority** should be rendered within 45 calendar days after the closing of the record in the case. However, the **Commission**, on its own motion, or the **Presiding Officer**, may extend the time for decisions for additional periods, with written notification to all parties.

Notification of Decision. The **Commission** must send a decision of the **Hearing Authority** simultaneously to all parties of record and their counsel. The decision is



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deemed received by a party 3 business days after the Commission mails it.

- f. Request for Rehearing or for Reconsideration, or to Alter or Amend. A request for rehearing or reconsideration, or to alter or amend, must be filed within 21 calendar days after the **Hearing Authority** issues a final decision. After that time, a request for a rehearing or for reconsideration, or to alter or amend, may be approved only because of fraud, mistake, or irregularity. If a request is timely filed, the **Hearing Authority** may exercise revisory power and control over its decision. For these purposes, the terms "fraud, mistake, or irregularity" have the same meaning that those terms have under Maryland Rules of Procedure, Rule 2-535, as amended from time to time.
1. A request for rehearing or for reconsideration, or to alter or amend, must be made in writing, and must include the supporting reasons for the request. Copies must be served on all parties of record.
 2. Any decision on a request for rehearing or for reconsideration, or to alter or amend that is not granted within 10 business days after the request is received is denied.
 3. Any request for rehearing or for reconsideration, or to alter or amend stays the time for filing any administrative appeal for judicial review until the request is denied; or if the request is granted, until a subsequent decision is rendered.
 4. A request for rehearing or for reconsideration, or to alter or amend does not stay the operation of any decision or order, unless the Commission so orders.
- g. ~~Informal Disposition. If appropriate to the nature of the proceedings, and permitted by the governing laws, and with the Commission's approval, an informal disposition may be made of any contested case or issue by stipulation, agreed settlement, consent order, or default.~~
- h. Whenever the provisions of these Appeal Procedures conflict with County Code Sec. 21-7, the provisions of Sec. 21-7 prevail.

Sec. 6. **Severability.** If a court of final appeal holds that any part of this regulation is invalid, that ruling does not affect the validity of other parts of the regulation.



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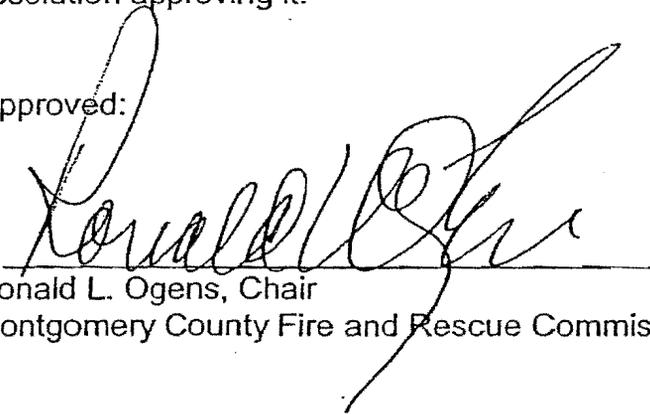
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Sec. 7. **Enforcement.** The Fire Chief is the enforcement authority for all policies and regulations of the Montgomery County Fire and Rescue Service.

Sec. 8. **Effective Date.** This regulation is effective on the date the County Council adopts a resolution approving it.

Approved:



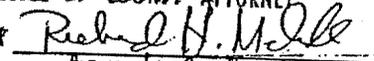
 Ronald L. Ogens, Chair
 Montgomery County Fire and Rescue Commission

7/8/05

 Date

APPROVED AS TO FORM AND LEGALITY:

OFFICE OF COUNTY ATTORNEY



 Richard H. McCall
 Associate County Attorney

DATE 6/20/05

Appeals procedure amended 6-27-05 bf wp

349 extend, or modify the impoundment of funds, consistent with the
 350 Chief's finding of whether the local fire and rescue department has
 351 complied with the County law, regulation, or policy.

352 (d) The County Attorney, with the approval of the County Executive, may
 353 take any legal action necessary to assist the Fire Chief [and the
 354 Commission] in enforcing this Chapter and all other applicable laws,
 355 regulations, and policies concerning fire and rescue services in the
 356 County.

357 * * *

358 **21-7. Appeals of certain disciplinary actions.**

359 (a) *Jurisdiction.* Except as provided in subsection (g), the [Commission]
 360 Merit System Protection Board must hear and decide each appeal filed
 361 by a volunteer firefighter or rescuer aggrieved by an adverse final action
 362 of the Chief or a local fire and rescue department involving the removal,
 363 demotion, or suspension of, or other disciplinary action applied
 364 specifically to, that individual as if the individual were a County merit
 365 system employee.

366 (b) *Filing Appeals.* Any party covered by this Section may appeal the
 367 action within 30 days after the action unless another law or regulation
 368 requires that an appeal be filed sooner. An appeal must not stay the
 369 disputed action.

370 (c) *Procedures.* The [Commission] Executive by regulation must establish
 371 procedures for hearing and deciding appeals under this Section. The
 372 regulation must specify which categories of appeals may be heard by a
 373 hearing examiner or otherwise must be decided on the basis of a written
 374 record. The [Commission] Merit System Protection Board must hear an
 375 appeal if it complies with all applicable [Commission] procedures. If

376 the [Commission] Board receives more than one appeal involving the
 377 same individual personnel action, the [Commission] Board must
 378 consolidate the appeals.

379 (d) *Subpoenas.* The chair of the [Commission] Merit System Protection
 380 Board or a hearing examiner considering the case may issue a subpoena
 381 for the attendance of a witness and the production of any document, and
 382 may administer oaths, in any proceeding. The [Commission] Board or
 383 any party to the proceeding may file a petition with any court with
 384 jurisdiction to enforce a subpoena as provided by law for the
 385 enforcement of subpoenas in a civil action. All provisions of law that
 386 compel a person under subpoena to testify apply to proceedings under
 387 this Chapter.

388 (e) *Depositions.* When relevant to any proceeding and for use as evidence,
 389 the [Commission] Merit System Protection Board or a hearing examiner
 390 considering the case may allow a party to depose a witness in the
 391 manner and on the terms designated by the [Commission] Board or
 392 hearing examiner if:

393 (1) the witness cannot be subpoenaed; or

394 (2) the witness cannot attend a hearing.

395 (f) *Appeals of [Commission] Board decisions.* [Except as provided in
 396 subsection (g), a volunteer at a local fire and rescue department may
 397 appeal a decision of the Commission concerning a specific personnel
 398 action, or the failure to take any such action, to the Merit System
 399 Protection Board as if the appellant were a County merit system
 400 employee.] Any aggrieved party may appeal the decision of the Board
 401 to any court with jurisdiction under the rules governing appeals from

402 administrative agencies, and may appeal any adverse decision of that
403 court to the Court of Special Appeals.

404 (g) *Exceptions.* This Section does not apply to, and the [Commission]
405 Board must not consider an appeal of, a personnel matter subject to an
406 employee grievance procedure[:

407 (1)] under a collective bargaining agreement[;

408 (2) under County personnel laws and regulations; or

409 (3) otherwise subject to a complaint or appeal to the Merit System
410 Protection Board].

411 **21-8. Integrated Emergency Command Structure.**

412 (a) The County Executive[, after receiving Commission approval under
413 Section 21-2(d)(4)], after receiving Commission approval under Section
414 21-2(d)(4), must adopt by regulation an Integrated Emergency
415 Command Structure (IECS) that is consistent with the National Incident
416 Management System and applies to all IECS certified providers of fire,
417 rescue and emergency medical services, on all emergency incidents.
418 The Chief regularly must review the IECS regulation and propose
419 amendments as necessary.

420 * * *

421 **21-8A. Standardized Incident Management System.**

422 (a) The County Executive must establish by regulation[, after receiving
423 Commission approval under Section 21-2(d)(4),] after receiving
424 Commission approval under Section 21-2(d)(4), a Standardized Incident
425 Management System that is:

426 * * *

Resolution No.: 16-1177
Introduced: November 3, 2009
Adopted: November 3, 2009

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Approval of Executive Regulation 14-09, Amendments to Montgomery County Personnel Regulations to Establish Procedures for the Merit System Protection Board to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers

Background

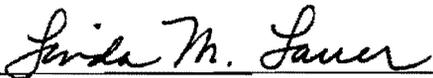
1. On September 17, 2009, the County Council received Executive Regulation 14-09 to amend Sections 1, 33, and 35 of the Personnel Regulations to establish procedures for the Merit System Protection Board to hear and decide appeals of disciplinary actions filed by volunteer firefighters and rescuers.
2. Executive Regulation 14-09 is processed under Method 1 and is not adopted until the County Council approves it.
3. The Management and Fiscal Policy Committee reviewed Executive Regulation 14-09 on October 26, 2009 and unanimously recommended approval.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

Executive Regulation 14-09 to amend Sections 1, 33, and 35 of the Personnel Regulations to establish procedures for the Merit System Protection Board to hear and decide appeals of disciplinary actions filed by volunteer firefighters and rescuers is approved.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council



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 November 3, 2009

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: November 3, 2009

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
* * *

Heading or defined term.
Existing language unchanged by 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
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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.

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

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

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.

* * *

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



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

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
Originating Department	Office of Human Resources	Effective Date	

35-1. Definitions.

* * *

* * *

(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.

* * *

(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,



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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

* * *

- (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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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;



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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 Foushee 7/13/09
Office of the County Attorney Date