IN THE

COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2004
No. 1189

KENSINGTON VOLUNTEER FIRE DEPARTMENT, INC., et al.,

Appellants

v.

MONTGOMERY COUNTY, MARYLAND,

Appellee

On Appeal from the Circuit Court for Montgomery County, Maryland
(Hon. Louise G. Scrivener, Judge)

BRIEF OF APPELLEE

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STATEMENT OF THE CASE

This case arises from a challenge to the discipline imposed on a volunteer firefighter, Keith Golden, by the Montgomery County Fire Administrator for Golden's inappropriate conduct. The challenge first received review by the Fire and Rescue Commission (FRC), which affirmed the Fire Administrator's authority to impose the discipline. (E. 11-13) From there, the case proceeded to the Merit System Protection Board through appeals by Golden and his local fire department, Kensington Volunteer Fire Department (KFVD). The merit board agreed with Golden and KVFD and reversed the Commission's decision. (E. 11-18) Neither Golden nor KVFD requested attorney's fees either at the FRC or at the merit board.

The Fire Administrator thereafter filed a petition for judicial review in the circuit court. (E. 9) After the administrative record was forwarded to the circuit court, Golden and KVFD submitted a request for attorney's fees to the merit board. (E. 2, 91) The merit board denied the request in a supplemental decision dated November 25, 2002. (App. 7-10) Inexplicably, neither Golden nor the KVFD sought to amend the record or to file a separate petition for judicial review to preserve the issue of the merit board's denial of attorney's fees.

The circuit court affirmed the merit board's decision regarding the Fire Administrator's authority to impose discipline and issued a written opinion that was entered into the record on October 20, 2003. (E. 81-85) Thirty days after the court issued its order, Golden and KVFD filed a petition for attorney's fees with the court. (E. 4-5) When the court denied the request, they filed a motion for reconsideration, which also was denied. (E.5-6, 113-114, 121) This appeal ensued in which Golden and KVFD seek to recover attorney's fees incurred during the administrative and judicial levels of review.

QUESTIONS PRESENTED

I. Did the circuit court have jurisdiction to consider the request for attorney's fees as part of its judicial review authority?

II. Does County law provide for an award of attorney's fees to a volunteer firefighter who, by definition, is not a County employee?

STATUTES, ORDINANCES, AND CONSTITUTIONAL PROVISIONS

The full text of all relevant statutes, ordinances, and constitutional provisions appears in the appendix to this brief.

STATEMENT OF ADDITIONAL FACTS

Keith Golden serves as a volunteer firefighter for the Kensington Volunteer Fire Department (KVFD). Under County law, the Montgomery County Fire Administrator oversees both the volunteer fire service and the career fire service.[1] In May 2001, the Fire Administrator imposed discipline on Golden for engaging in sexual harassment of County career firefighters serving at one of the KVFD stations. (E. 23-25) As provided by County law and regulations, Golden and KVFD sought review by the Montgomery County Fire and Rescue Commission (FRC), arguing that the Fire Administrator did not have the authority to discipline a volunteer firefighter. (E. 12) The FRC upheld the Fire Administrator's disciplinary authority, and Golden and the KVFD noted an appeal to the merit board. (E. 12-13)

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[1]Effective January 1, 2005, the volunteer and career fire services are combined under a County Fire Chief, who has the authority to administer, direct, and originate fire and rescue operations for the entire Montgomery County Fire and Rescue Service. *See* 2004 L.M.C., ch. 5 (Bill No. 36-03).

The only facts pertinent to this appeal involve the timing of the request for attorney's fees. The merit board decided the appeal from the FRC on August 19, 2002, and affirmed the Fire Administrator's action disciplining Golden for his inappropriate conduct. (E. 19) Two months later, on October 21, 2002, KVFD and the firefighter submitted to the merit board a petition for attorney's fees covering the proceedings before the FRC and the merit board. (E. 91) By this time, the Fire Administrator had filed a petition for judicial review and the administrative record already had been transmitted to the circuit court. (E. 2) In a Supplemental Decision and Order dated November 25, 2002, the merit board denied the request for attorney's fees and informed the KVFD and the firefighter of their right to appeal the decision in the manner prescribed by the Maryland Rules. (App. 8-9) Neither Golden nor KVFD appealed that decision.

At no time during the circuit court proceeding did either Golden or KVFD raise the issue of attorney's fees that they incurred at the FRC and the merit board levels. (E. 43-54) Nor did they file a petition for judicial review from the merit board's denial of their request for attorney's fees. Instead, 30 days after the circuit court issued its order affirming the merit board's decision on the disciplinary matter, KVFD and Golden filed a request for attorney's fees with the circuit court citing County law and the Maryland Rule regarding bad faith proceedings. (E. 4-5, 86-89)

ARGUMENT

Ordinarily, judicial review of an administrative decision requires the court to determine whether the decision is "in accordance with the law or whether it is arbitrary,

illegal, and capricious." *Moseman v. County Council of Prince George's County*, 99 Md. App. 258, 262, 636 A.2d 499, 501, *cert. denied*, 335 Md. 229, 643 A.2d 383 (1994) (citations omitted). The reviewing court will not substitute its judgment for that of the agency when the issue is fairly debatable and the record contains substantial evidence to support the administrative decision. *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 576-577, 650 A.2d 226, 230 (1994). The court may substitute its judgment only as to an error made on an issue of law. *Columbia Road Citizens' Association v. Montgomery County*, 98 Md. App. 695, 698, 635 A.2d 30, 32 (1994).

Decisions of agencies are entitled to the greatest weight and to a presumption of validity, viewing the decision in the light most favorable to the agency. *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 68-69, 729 A.2d 376, 381 (1999). Substantial evidence has been described as "more than a 'scintilla of evidence,' such that a reasonable person could come to more than one conclusion." *Relay Improvement Association v. Sycamore Realty Company*, 105 Md. App. 701, 714, 661 A.2d 182, 188 (1995), *aff'd*, 344 Md. 57, 684 A.2d 1331 (1996) (citations omitted). Moreover, the agency resolves any conflicting evidence, along with any inconsistent inferences from the evidence. *Wisniewski v. Department of Labor, Licensing and Regulation*, 117 Md. App. 506, 517, 700 A.2d 860, 866 (1997) (citations omitted). When reviewing administrative decisions, this Court's role is precisely the same as that of the circuit court—to apply the substantial evidence test to the agency's decision and to determine whether the agency's decision is legally correct.

Maryland Insurance Administration v. Maryland Individual Practice Association, 129 Md. App. 348, 355, 742 A.2d 22, 25-26 (1999).

The present case involves a situation in which the Fire Administrator filed a petition for judicial review of the merit board's decision. Only after the circuit court reviewed the merits of the petition and affirmed the merit board's decision did Golden and KVFD seek attorney's fees—they did not request them at the merit board level prior to the Fire Administrator's petition for judicial review, nor did they file a petition for judicial review of the supplemental decision in which the merit board denied the request for attorney's fees. Despite having failed to seek judicial review of the merit board decision, Golden and KVFD seek relief in this Court. Yet, neither County law nor the Rules governing judicial review contemplate an award of attorney's fees by the court. The circuit court, therefore, did not err in denying the motion for attorney's fees or the subsequent motion for reconsideration. Even if the court had authority to award attorney's fees, no statutory authority exists for awarding them to a volunteer firefighter and the KVFD.

I. The circuit court did not have jurisdiction to consider the request for attorney's fees as part of its judicial review authority.

Maryland follows the American Rule for payment of attorney's fees, "which generally requires that each party be responsible for their counsel fees." *Megonnell v. United States Automobile Association,* 368 Md. 633, 659, 796 A.2d 758, 774 (2002). Common law recognizes only a few limited exceptions to the American Rule:

> [C]ounsel fees may be awarded when (1) "parties to a contract have an agreement to that effect"; (2) "there is a statute which allows the imposition of such fees"; (3) "the wrongful conduct of a defendant forces a plaintiff into litigation with a third party"; and (4) "a plaintiff is forced to defend against a malicious prosecution."

Caffrey v. Department of Liquor Control, 370 Md. 272, 293, 805 A.2d 268, 280 (2002) (citations omitted). Generally, "[t]he power to award attorney's fees, being contrary to the established practice in this country, may be expressly conferred but will not be presumed from general language." *Talley v. Talley*, 317 Md. 428, 438, 564 A.2d 777, 782 (1989). Consequently, this Court considers an award of attorney's fees to be improper unless authorized by statute or agreement. *See Campbell v. Lake Hallowell Homeowners Association*, 152 Md. App. 139, 150, 831 A.2d 465, 471-472 (2003).

While County law provides for an award of attorney's fees in certain situations, the requisite circumstances do not exist in this case. Before reaching the substance of this issue, however, this Court must determine whether the circuit court had jurisdiction to consider the petition for attorney's fees as part of its judicial review authority.

The Maryland Rules do not provide for an award of attorney's fees by the circuit court on judicial review.

The County filed a petition for judicial review of the merit board's order regarding the Fire Administrator's ability to impose discipline on a volunteer firefighter under Title 7, Chapter 200 of the Maryland Rules. (E. 9) The Court of Appeals has confirmed that the Rules direct the circuit court to follow a specific statutory scheme that differs from the court's general jurisdiction:

> [W]here judicial review is provided by statute, the statutory method of review is exclusive and fetters a court in exercising its inherent powers in reviewing administrative agency decisions. . . . Under such circumstances, the statute defines the limits of a court's power to review the determinations of the agency.

State Commission on Human Relations v. Anne Arundel County, 106 Md. App. 221, 238, 664 A.2d 400, 409 (1995) (citations omitted). For cases before the circuit court on judicial review, the court has authority to affirm, reverse, or modify the agency's decision, remand the action to the agency, or dismiss the action. Md. Rule 7-209.

When the circuit court entered its Opinion and Order on October 20, 2003, it affirmed the merit board's decision as permitted by the Rule. (E. 81-89) Nothing in the Rules governing judicial review grants to the circuit court any authority to consider a new matter by motion or by any other method once the court has reviewed the agency record, considered the memoranda filed by the parties, heard oral argument, and issued its decision. The court had completed its work and did not have jurisdiction to entertain a new claim. The court

properly denied the request for attorney's fees as well as the subsequent motion for reconsideration, because it had no authority to grant the request.

The merit board's denial of attorney's fees for proceedings before the FRC and the merit board was not before the circuit court for judicial review.

The only method for obtaining judicial review of the merit board's decision regarding attorney's fees was to file a petition in the circuit court within 30 days of the decision. Md. Rule 7-203. In accordance with the County Code, the merit board sent notice of its ruling to the parties on November 25, 2002. Montg. Co. Code § 2A-10(e) (1994). By that time, the administrative record had been submitted to the circuit court for consideration of the County's petition for judicial review. (E. 2; App. 7-10) The decision was not contained in that record, because it had not been issued when the materials were forwarded to the court. The KVFD and Golden did not file a new petition for judicial review from the adverse decision, nor did they seek to file a cross-petition in the County's administrative appeal. They did not even ask to amend the record. (E. 2-6) The right to have the circuit court consider and review the merit board's decision concerning attorney's fees, therefore, expired on December 27, 2002.

This Court has acknowledged the requirement that a party file a timely petition for judicial review or lose the opportunity to have an issue considered by the circuit court. When a party filed a petition for judicial review with the circuit court and stated the issues being appealed, but then filed a second petition for judicial review 90 days later identifying a new issue, this Court concluded that the circuit court could not consider the additional issue:

> It is clear, therefore, that discretion has been removed from the circuit court with respect to untimely filed petitions for judicial review of agency decisions. Accordingly, the petition must be filed within the thirty-day filing period in order for the circuit court to have authority to hear the appeal. In this regard, Md. Rule 7-203 operates in a similar manner as Md. Rule 8-202(a), with respect to appeals to this Court.

Colao v. County Council of Prince George's County, 109 Md. App. 431, 444, 675 A.2d 148, 154-155, *cert. denied*, 343 Md. 745, 684 A.2d 836 (1996) (citations omitted).

In the present case, the circuit court lacked jurisdiction to consider the motion for attorney's fees filed 30 days after the court's decision on the petition for judicial review. The issue was not raised by the volunteer firefighter and the KVFD through a petition or cross-petition. Md. Rules 7-202 and 7-203(a). Nor did they seek to amend the record in the County's case before the circuit court when the merit board issued its decision denying the request for attorney's fees. Absent a petition for judicial review or a provision in the Rules permitting the court to award attorney's fees, the court had no authority to do so and properly denied the motion for attorney's fees and the subsequent motion for reconsideration.

II. County law does not provide for an award of attorney's fees to a volunteer firefighter who, by definition, is not a County employee.

In 1998, the County Council enacted legislation that would reorganize the fire service in Montgomery County and combine the volunteer and career firefighting services under the supervision of a Fire Administrator. The Fire Administrator was a non-uniformed department head who would have certain authority over the operations of both the career firefighters and the volunteer firefighters. Montg. Co. Code § 21-3(b). The law preserved the distinction between career firefighters as employees of the County and volunteer

firefighters, who are affiliated with the local fire and rescue departments. Montg. Co. Code § 21-1 and § 21-3. The Council considered the County government to have the overall responsibility for providing fire and rescue services, but the partnership with the local departments would enhance the delivery of these services "within a County-wide context" while preserving the "community-based perspectives of the local fire and rescue departments." Montg. Co. Code § 21-1(a).

The new law authorized the County to promulgate regulations to implement the ability of the Fire Administrator to take disciplinary action against any employee or volunteer for certain violations. Montg. Co. Code § 21-3(g). Another provision of the law permitted a volunteer to challenge the Fire Administrator's decision through certain channels, which were delineated in a regulation. Montg. Co. Code § 21-7; COMCOR § 21.02.19.

Nothing in the statute or the legislative history of the law reflects an intent to grant to a volunteer firefighter all of the benefits and rights of a County employee. Rather, the provisions created a mechanism for seeking review of the Fire Administrator's decision by the FRC, which consists of career, volunteer, and non-firefighter citizen members. Further review was then provided from the FRC to the merit board, which traditionally reviews grievances and personnel matters involving County employees. Finally, the process enabled the volunteer or local department to seek judicial review in the circuit court and to appeal to this Court. As required under the American Rule, however, no reference to payment of attorney's fees appears in the applicable sections to provide this remedy to a volunteer firefighter or the local department.

The County Code authorizes only the merit board or the County to award attorney's fees.

Even if the merits of the petition for attorney's fees were properly before this Court for review, the statutory authority delineated in the County Code does not provide for payment of attorney's fees to a volunteer firefighter. And there simply is no statutory interpretation principle that supports a construction of the law to authorize payment of a local fire department's attorney's fees. The Code only grants the merit board discretion to award attorney's fees as a remedy under certain circumstances and requires the County to pay attorney's fees in specific situations.[2] *See* Montg. Co. Code § 33-14(c)(9) and § 33-15(c). County law does not provide for the circuit court to award attorney's fees, but imposes a duty on the County to pay the fees when the facts justify doing so. More importantly, the County's obligation to pay attorney's fees is limited to appeals involving a "merit system employee" where the "chief administrative officer is a party." Montg. Co. Code § 33-15(c).

This case does not involve a merit system employee. By providing the opportunity for judicial review to "personnel of Montgomery County fire and rescue corporations," the Council recognized the distinction between merit system employees and individuals who serve the local fire and rescue departments. Montg. Co. Code § 33-15(a). Logically, the Council cannot be held to have meant to recognize that distinction in one section, but then

[2]As discussed in Argument I, the issue of whether the County Council intended to authorize the merit board to award attorney's fees to Golden was not preserved for review, because no petition for judicial review was filed from the merit board's denial of the request for fees.

to overlook it in a section only 40 words away when discussing attorney's fees. *Compare* Montg. Co. Code § 33-15(a) and § 33-15(c). In any event, the statutory authorization for a volunteer firefighter to challenge a decision of the Fire Administrator "as if" he were a County employee is limited to making the merit board available as a forum for relief from the Fire Administrator's decision—Golden and KVFD received this benefit in this instance.

This Court recently clarified the circumstances in which the merit board may award attorneys fees and emphasized the discretion of the board in deciding whether to award fees at all:

> The language of the relevant statutory provisions, their context, and their purpose lead us to the conclusion that the Board does have legislative authority to award attorney's fees for services rendered on judicial review of Board decisions, in appropriate circumstances. Section 33-14(c)(9) authorizes the Board to order the County to pay "all or part" of the employee's reasonable attorney's fees. The authority granted to the Board is not limited to the initial hearing before the Board. It applies to all hearings, which would include hearings on remand after judicial review. The County Council did not mandate that the Board award attorney's fees; it authorized the Board to do so.

Montgomery County v. Jamsa, 153 Md. App. 346, 355, 836 A.2d 745, 750 (2003). Continuing its analysis, this Court explained that the County must pay attorney's fees to its employees for proceedings in certain personnel matters:

> Section 33-15(c), on the other hand, is not directed to the Board but directs the County to pay attorney's fees ('the county shall be responsible'), determined by the County to be reasonable, when the County is the party seeking judicial review. Section 33-15 is not a limitation of the Board's authority.

Id. at 355-356, 836 A.2d at 750. "The net effect is that the Board has discretion . . . to award attorney's fees, . . . but when the County seeks judicial review, the County must pay reasonable attorney's fees." *Id*. at 356, 836 A.2d at 750.

The context for these fee-recovery provisions under Montg. Co. Code § 33-15 provides further clarification of the situation in which the County must pay the fees:

> When the chief administrative officer is the party seeking judicial review of a board order or decision in favor of a merit system employee, the county shall be responsible for the employee's legal expenses, including attorneys' fees which result from the judicial review and are determined by the county to be reasonable under the criteria set forth in subsection (c)(9) of section 33-14.

Montg. Co. Code § 33-15(c). The circumstances referenced here involve the grievance process of a merit system employee, through which the employee seeks relief through the department, then the chief administrative officer, then the merit board, and then circuit court. The discipline imposed by the Fire Administrator on a volunteer firefighter does not fall within the language of this statute, but is reviewed first by the FRC, followed by the merit board and circuit court.

Statutory construction principles show that the attorney's fees provision applies to employees and not to volunteers.

The County Code provides for payment of attorney's fees in merit board cases involving County employees. While a volunteer may appeal an FRC decision to the merit board "as if the aggrieved person were a County Merit System Employee," this does not grant a volunteer the substantive rights of merit system employees, including an award of attorney's fees, which appear in Chapter 33. Montg. Co. Code § 21-7(g).

Using established principles of statutory construction, the court first determines legislative intent by focusing on "the specific language of the statute, and if the language is clear and unambiguous, [the court] need go no further." *Farris v. State,* 351 Md. 24, 28, 716 A.2d 237, 240 (1998) (citation omitted). In doing so, the court construes the language giving words their ordinary and natural meaning in light of the full context in which they appear. *University System of Maryland v. Baltimore Sun Company*, 381 Md. 79, 93, 847 A.2d 427, 435 (2004). The legislative body is presumed to act "with full knowledge of its prior enactments" and to intend that "related statutes be blended into a harmonious body of law, even though they took effect at different times and without reference to one another." *State v. Crescent Cities Jaycees Foundation, Inc.,* 330 Md. 460, 472, 624 A.2d 955, 961 (1993) (citation omitted).

Chapter 21 of the County Code clarifies that volunteer firefighters are not County employees and that the rights and remedies provided to County employees through Chapter 33 do not extend to volunteer firefighters. By definition, a "volunteer" is "an individual who, without salary, performs fire, rescue, emergency medical or related services as provided in this Chapter." Montg. Co. Code § 21-1(c). The appeal rights granted to volunteer firefighters simply provide an avenue of relief through the merit board:

> Any employee of or volunteer at a local fire and rescue department . . . *may appeal* a decision of the Commission . . . to the Merit System Protection Board *as if the aggrieved person were a County merit system employee.*

Montg. Co. Code § 21-7(g) (emphasis added). Rather than refer to the administrative procedures that already exist in Chapter 2A, the section required the FRC to establish

procedures for the hearing and decision of volunteer firefighter issues involving the Fire Administrator by issuing a separate regulation. *See* COMCOR § 21.02.19; *see also* Montg. Co. Code § 2A-11. From the findings and conclusions issued by the FRC, a party can seek review before the merit board. The plain meaning of the language in the County Code does not make the volunteer an employee, but permits the use of the merit board process that otherwise is limited only to County employees. While the appeal rights are made available to the volunteer and the local department, the remedies provided to County employees are not part of the statute.

Although Golden and KVFD would have this Court construe "as if" to extend well beyond the right to appeal to the merit board, statutory construction principles require that the words be read in the context in which they appear. Even the cases they cite reflect this approach. In *Grace v. Horn*, the court interpreted an adoption contract that included a statement of intent to adopt the person named as a legal heir and child "with all the rights and privileges *as if born to us*." 88 Cal. App. 2d 956, 962, 200 P.2d 189, 193 (1948). Similarly, in *Watts v. Brewer*, the court considered a workers' compensation claim under a statute that provided that certain disabilities "shall be deemed to continue for the periods specified...." 243 N.C. 422, 424, 90 S.E.2d 764, 767 (1956). The interpretation of the section led the court to explain that the phrase "shall be deemed" could mean "shall be treated as if". *Id*. And in *Frost v. State*, the Maryland Court of Appeals noted the importance of considering the effect of an interpretation of statutory language. 336 Md. 125, 647 A.2d 106 (1994). There, the law allowed release of an inmate for time served, less any diminution credits, and that he

should be treated "as if" released on parole. Upon revocation of parole, the inmate wanted to retain his credits, which would have triggered his immediate release instead of completing his sentence. The Court held that the intent of the law had to be that the credits would be rescinded if the Parole Commissioner had grounds to revoke the order of mandatory release. 336 Md. at 138-139, 647 A.2d at 112-113.

In each instance, the court interpreted "as if" in relation to the context in which it appeared, whether in the course of extending all rights and privileges to an adopted child or treating an injured employee as if the impairment continued for a certain period of time. None of the cases interpreted "as if" beyond the parameters of its context. Consequently, the circuit court properly construed the provision in the present matter to refer solely to the ability to seek review by the merit board. This interpretation satisfies statutory construction principles by relying upon the plain meaning of the words in the context in which they appear.

A final distinction exists between the nature of a government employee and a non-salaried volunteer. A County employee has a vested property interest in his employment along with a variety of merit system rights established under the County Charter. *See Andre v. Montgomery County Personnel Board*, 37 Md. App. 48, 64, 375 A.2d 1149, 1157 (1977). These rights include assurances that: hiring will be conducted without regard to political affiliation; a fair pension system will exist; a uniform salary schedule will be used; and the employee will have the right to appeal certain personnel decisions to the merit board. Montg. Co. Charter §§ 401 and 404. The remedies provided to County employees serve to protect

the integrity of the merit system and to promote the goals of the merit system. A non-salaried volunteer or independent fire corporation does not obtain these rights and privileges by virtue of the cooperative efforts to provide fire and emergency medical services to the community.

The legislative history of the law reflects the Council's intent that the independent fire and rescue corporations and their personnel receive separate remedies.

In 1978, the County Council adopted Chapter 33, including the language regarding attorney's fees, which remains virtually unchanged today. Montg. Co. Code §§ 33-14(c) and 33-15(c). An amendment to the law in 1982 permitted the independent fire and rescue corporations and their personnel to appeal decisions to the merit board but did not mention that they could seek attorney's fees. Montg. Co. Code § 33-15(a). Notably, the Council added the new language to § 33-15(a), which addressed only the ability to obtain judicial review—no change was made to § 33-15(c) to extend attorney's fees to the corporations and their personnel. The more recent comprehensive revision in 1998 created the Fire Administrator to oversee the Division of Fire and Rescue Services and the Division of Volunteer Fire and Rescue Services. The new language in Chapter 21 included a provision that allowed a volunteer firefighter or the local department to challenge a decision of the Fire Administrator before the FRC and then to appeal that result to the merit board. Montg. Co. Code § 21-7(g). Again, no language provided for an award of attorney's fees incurred during those proceedings.

When the Council enacted the amendment in 1982 and the comprehensive revision in 1998, it presumably knew of the existing provisions limiting the availability of attorney's

fees in merit board cases to County employees. Even though the local fire and rescue departments and volunteer firefighters held limited rights within the same chapter, the Council did not elect to extend attorney's fees to the volunteer firefighters by revising the limiting language in § 33-15(c). The KVFD and Golden would have this Court interpret the language in Chapter 21 that permit appeals by volunteers "as if" they were employees to operate like a sponge that absorbs rights that appear anywhere in the County Code, regardless of whether there is any language memorializing such an extraordinary grant by the County Council. Yet, the legislative history reflects no intent to extend to the volunteer firefighters and the local fire departments any benefits beyond the appeal rights provided in § 33-15(a). Certainly, if the County Council had intended to enable the independent fire and rescue corporations and the volunteers to apply for attorney's fees, it would have done so by amending the language of the law. The Council made no such change to the attorney's fees language and provided only an opportunity for an appeal to the merit board.[3]

The County did not act in bad faith or with malice.

In a final attempt to obtain attorney's fees, Golden and KVFD rely upon the authority of the circuit court to order a party to pay another party's attorney's fees if it finds that "the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification. . . ." Md. Rule 1-341. Nowhere in the Rule does it provide for

[3]Indeed, one would expect the fiscal impact note to refer to the expense associated with the anticipation of additional claims for attorneys fees if § 33-14 or § 33-15(c) were amended to include appeals by volunteer firefighters, but no mention appears in the 1998 fiscal note. (App. 5)

attorney's fees based solely on a party's ultimate loss. Rather, it focuses on malicious and frivolous pursuit of a case.

This Court has interpreted the Rule as a mechanism to prevent abuses of the judicial system, but not as a means of hindering a party's presentation of innovative causes or defenses. *Blitz v. Beth Isaac Adas Israel Congregation*, 115 Md. App. 460, 487, 694 A.2d 107, 120 (1997), *reversed on other grounds*, 352 Md. 31, 720 A.2d 912 (1998). In effect, an award of fees under the Rule is considered a sanction and, as such, reflects an extraordinary remedy that the courts issue sparingly. *Id.* The court, therefore, follows a two-step process. First, it must make a specific finding that the conduct was in bad faith or without substantial justification or both. Second, the court must use its discretion to decide whether the wrongdoing merits an award of attorney's fees. *Id*. at 488, 694 A.2d at 121. And the Court of Appeals has clarified that the Rule is not intended to shift the cost of litigation based solely on fault, but only to deter the use of the judicial system for unnecessary and abusive litigation. *Zdravkovich v. Bell Atlantic-Tricon Leasing Corp*., 323 Md. 200, 212, 592 A.2d 498, 504 (1991).

The County pursued this case in good faith. Based on a relatively new law, no one could say for certain whether the Fire Administrator's authority included the discipline he sought to impose on the volunteer firefighter. The staff memorandum summarizing the Council's intent included a response to the concerns raised by the County Commission for Women and the National Organization for Women regarding the importance of ensuring that the disciplinary rules apply equally to volunteer firefighters:

> Under the bill, the Administrator holds ultimate authority to discipline career and volunteer firefighters, with a formal appeal to the Fire and Rescue Commission and from the Commission to the MSPB.

(App. 5) Based on this specified intent, the County's efforts to control Golden's inappropriate conduct toward women in the fire service can hardly be characterized as frivolous.

The Fire Administrator sought to impose meaningful discipline for Golden's unconscionable behavior. The FRC, which includes career and volunteer firefighter representatives and was charged with interpreting and administering the new law, agreed that the Fire Administrator had the authority to impose discipline on a volunteer firefighter. (E.12-13) The FRC's decision demonstrated the credibility of the County's interpretation. When the merit board disagreed with the County's view, the County had the same right as any other litigant to seek judicial review. In this case, the County had a responsibility to seek review in an effort to ensure that its women firefighters enjoy a workplace free of discriminatory conduct.

Although the circuit court also disagreed with the County's position, this does not mean that the County acted with bad faith or without cause. Nor does it logically follow that, whenever the circuit court affirms the decision of an administrative agency, the losing party was motivated by bad faith. To award attorney's fees under the Rule simply because a party did not prevail would undermine the appellate process and have a chilling effect on a party's right to pursue a remedy that he believes he is entitled to receive. Absent any evidence of

bad faith, the circuit court did not abuse its discretion when it declined to award attorney's fees under the Rule.

CONCLUSION

Neither County law nor the Maryland Rules provide for an award of attorney's fees in this case. The County acted in good faith in pursuing an interpretation of the authority of the Fire Administrator to impose discipline on a volunteer firefighter based on the law and regulations in place. The KVFD and the volunteer firefighter failed to petition for judicial review of the merit board's denial of the request for fees, and the circuit court did not have jurisdiction to award fees under the judicial review procedures. The County respectfully requests that this Court affirm the circuit court's decision denying the motion to reconsider an award of attorney's fees.

Respectfully submitted,

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Statement pursuant to Maryland Rule 8-504(a)(8): This brief was prepared with proportionally spaced type, using Times New Roman font and 13 point type size.

APPENDIX

Maryland Rules

Rule 1-341. Bad faith - Unjustified proceeding.
In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification the court may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

Rule 7-202. Method of securing review.
(a) *By petition.* A person seeking judicial review under this chapter shall file a petition for judicial review in a circuit court authorized to provide the review.

* * *

(c) *Contents of petition.* The petition shall request judicial review, identify the order or action of which review is sought, and state whether the petitioner was a party to the agency proceeding. If the petitioner was not a party, the petition shall state the basis of the petitioner's standing to seek judicial review. No other allegations are necessary. If judicial review of a decision of the Workers' Compensation Commission is sought, the petitioner shall attach to the petition a certificate that copies of the petition were served pursuant to subsection (d) (2) of this Rule.

* * *

Rule 7-203. Time for filing action.
(a) *Generally.* Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

(1) the date of the order or action of which review is sought;

(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or

(3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) *Petition by other party.* If one party files a timely petition, any other person may file a petition within ten days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

Rule 7-209. Disposition.
Unless otherwise provided by law, the court may dismiss the action for judicial review or may affirm, reverse, or modify the agency's order or action, remand the action to the agency for further proceedings, or an appropriate combination of the above.

Montgomery County Charter

§ 401. Merit System.

The Council shall prescribe by law a merit system for all officers and employees of the County government except: (a) members of the Council, the County Executive, the Chief Administrative Officer, the County Attorney; (b) the heads of the departments, principal offices and agencies, as defined by law; (c) any officer holding any other position designated by law as a non-merit position; (d) one confidential aide for each member of the Council; (e) two senior professional staff members for the Council as a whole as the Council may designate from time to time; (f) three special assistants to the County Executive as the Executive may designate from time to time; (g) special legal counsel employed pursuant to this Charter; (h) members of boards and commissions; and (i) other officers authorized by law to serve in a quasi-judicial capacity.

Any law which creates a new department, principal office, or agency, or designates a position as a non-merit position, requires the affirmative vote of six Councilmembers for enactment. Any law which repeals the designation of a position as a non-merit position requires the affirmative vote of five Councilmembers for enactment.

Officers and employees subject to a collective bargaining agreement may be excluded from provisions of law governing the merit system only to the extent that the applicability of those provisions is made subject to collective bargaining by legislation enacted under Section 510, Section 510A, or Section 511 of this Charter.

The merit system shall provide the means to recruit, select, develop, and maintain an effective, nonpartisan, and responsive work force with personnel actions based on demonstrated merit and fitness. Salaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan. The council shall establish by law a system of retirement pay.

The Council by law may exempt probationary employees, temporary employees, and term employees from some or all of the provisions of law governing the merit system, but the law shall require these employees to be recruited, selected and promoted on the basis of demonstrated merit and fitness.

§ 404. Duties of the Merit System Protection Board.

Any employee under the merit system who is removed, demoted, or suspended shall have, as a matter of right, an opportunity for a hearing before the Merit System Protection Board, which may assign the matter to a hearing examiner to conduct a hearing and provide the Board with a report and recommendations. The charges against the employee shall be stated in writing, in such form as the Board shall require. If the Board assigns the matter to a hearing examiner, any party to the proceeding shall have, as a matter of right, an opportunity to present an oral argument on the record before the Board prior to a final decision. The Board shall establish procedures consistent with law for the conduct of its hearings. The decisions of the Board in such appeals shall not be subject to review except by

a court of competent jurisdiction. The Council shall provide by law for the investigation and resolution of formal grievances filed under the merit system and any additional duties or responsibilities of the Board. The Board shall conduct on a periodic basis special studies and audits of the administration of the merit and retirement pay systems and file written reports of its findings and recommendations with the Executive and the Council. The Board shall comment on any proposed changes in the merit system law or regulations in a timely manner as provided by law. (Election of 11-4-80.)

Montgomery County Code (1994)

§ 2A-10. Decisions.

(a) Content. All recommendations and/or decisions of the hearing authority except rulings on preliminary matters or on motions or objections shall be in writing, based on evidence of record and shall contain findings of fact, conclusions of law and an appropriate decision and order; provided, however, any decision stipulated or consented to by the parties need only be reflected by an appropriate written order or consent decree.

(b) Evidence required. All recommendations and/or decisions of the hearing authority shall be based upon and supported by a preponderance of the evidence of record.

(c) Voting requirements. Any decision rendered in conformance with the provisions of this article must have the concurrence of a majority of the voting members of the decision-making authority unless a greater number of votes are required by law. Members of the hearing authority absent during a hearing may vote upon a matter upon written certification that they have read the transcripts and reviewed the evidence of record.
Failure to achieve the necessary affirmative votes shall act as a denial of the relief requested by the charging party by operation of law. No written opinion in this instance shall be required; provided, however, individual members of the hearing authority may file written reasons supporting their respective positions.

(d) Time requirements for decisions. All recommendations and/or decisions of the hearing authority shall be rendered within forty-five (45) days after the closing of the record in the case; provided, however, the hearing authority on its own motion may extend the time for recommendation and/or decision for an additional period upon written notification to all parties.

(e) Notification of recommendation and/or decision. All recommendations and/or decisions of the hearing authority shall be released and sent simultaneously to all parties of record and their counsel.

(f) Rehearing and reconsideration. Where otherwise permitted by law, any request for rehearing or reconsideration shall be filed within ten (10) days from a final decision. Thereafter a rehearing or reconsideration may be approved only in the case of fraud, mistake or irregularity. Any request for rehearing or reconsideration shall be in writing, containing supporting reasons therefor, with copies served on all parties of record. Any decision on a request for rehearing or reconsideration not granted within ten (10) days following receipt

of the request therefor in accord with subsection (c) of this section shall be deemed denied. Any request for rehearing or reconsideration shall stay the time for any administrative appeal pursuant to judicial review until such time as the request is denied or in the event such request is granted such further time or a subsequent decision is rendered. A request for reconsideration or rehearing shall not stay the operation of any order unless the hearing authority so states.

(g) Informal disposition. Where appropriate to the nature of the proceedings and the governing laws, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

§ 2A-11. Judicial review.

Any party aggrieved by a final decision in a case governed by this article, whether such decision is affirmative or negative in form, may appeal said decision to the circuit court for Montgomery County, Maryland, in accord with the provisions of the Maryland Rules of Procedure governing administrative appeals. Said court shall have the power to affirm, reverse or modify the decision or remand the case for further proceedings as justice may require. The filing of such appeal shall not stay the order of the hearing authority. Any party to the proceeding in the circuit court may appeal from such decision to the appellate courts of Maryland pursuant to applicable provisions of the Maryland Rules of Procedure.

§ 21-1. Statement of policy; definitions.

(a) Legislative intent. The County Council, under Section 101 of the Charter of Montgomery County, intends to assure adequate public safety, health and welfare through an integrated fire, rescue, and emergency medical services program that is highly competent, efficiently delivered, equitably administered and is provided by County, local fire and rescue department, and volunteer personnel. This program is operated by the Montgomery County Fire and Rescue Service and the local fire and rescue departments. The Council believes that the County government is ultimately responsible for assuring public safety by providing fire, rescue and emergency services. This program should provide maximum cost-effective performance; promote the County-wide public interest; account for service levels and resources like other public programs; fairly communicate and consider all views regarding these services; and consider past and plan for projected growth and development in the County and its public safety requirements. To achieve these objectives a combined system of public and private resources is essential. The system includes:

(1) Delivery of fire, rescue and emergency medical services through the Division of Fire and Rescue Services and the local fire and rescue departments, under the authority of the Commission as implemented by the Fire Administrator or as otherwise provided by law; and

(2) Provision of the policy and regulatory framework for the Montgomery County Fire and Rescue Service, including the local fire and rescue departments, by a Fire and Rescue Commission, authorized by and acting for the County government.

The Council supports the delivery of fire, rescue and emergency services through the Division of Fire and Rescue Services and the local fire and rescue departments operating under the policies and regulations of the Commission as implemented by the Fire Administrator. This partnership ensures that service is delivered within a County-wide context and preserves community-based perspectives of the local fire and rescue departments. The Council hereby declares its policy that all County officials, employees, volunteers, and local fire and rescue departments actively encourage a combined service delivery system provided by local and County resources which strives to offer equal opportunities and fair treatment for all personnel. The Council recognizes and respects the contributions of volunteers over many decades which have resulted not only in the protection of life and property in the County but also vital and generous private support for an essential public activity. The Council acknowledges the years of volunteer effort, risk and sacrifice; the provision of time and money towards the purchase of equipment, apparatus and facilities; and the community value of opportunities for public service and fellowship. The County vigorously supports the continuation and expansion of volunteer participation to provide fire, rescue and emergency medical services in the most cost-effective way and encourage citizen participation in community activities.

(b) Purpose. This Chapter is intended to promote the achievement of the following goals regarding the provision of fire, rescue and emergency medical services:

(1) Maximum Protection for Life and Property. Provide maximum cost-effective, equitable and responsive services to all County citizens, including adequate maximum response times, effective fire and rescue incident supervision, adequate staffing, effective distribution of personnel and apparatus and timely adaptation to changing service needs. All organizations and participants comprising the fire, rescue, and emergency medical services share the responsibility for improving their effectiveness and efficiency every year.

(2) Maximum Volunteer Participation. Maintain and expand volunteer participation in fire, rescue, and emergency medical service operations and in policy-making.

(3) Optimum Personnel Practices. Promote equity and harmony among County, local fire and rescue department, and volunteer personnel; continual improvement in the capabilities of all personnel; effective personnel administration; and job performance and personal conduct of the highest caliber by County, local fire and rescue department, and volunteer personnel.

(4) Adequate Accountability. Account for service delivery, management practices and the use of public funds.

(5) Improved Operations and Administration. Minimize costs, including administrative overhead, apparatus and other expenses; and effectively manage personnel, purchasing, maintenance, training and other programs.

(c) Definitions. As used in this Chapter, the following terms have the following meanings:

Administrator: the Fire Administrator appointed under Section 21-3.

Commission: the Fire and Rescue Commission.

Emergency medical services: emergency transportation, medical treatment, and related services. Emergency medial services also includes standards for and training and certification of care providers.

Local Fire and Rescue Department: any individual fire or rescue squad corporation authorized under Section 21-6 to provide fire or rescue services.

Tax funds: any County government revenues, including fire tax revenues.

Volunteer: an individual who, without salary, performs fire, rescue, emergency, medical, or related services as provided in this Chapter with the Montgomery County Fire and Rescue Service. Compensation or expense reimbursement for service on the Commission is not salary for purposes of this definition.

§ 21-3. Fire Administrator; Division Chiefs.

(a) The Executive must appoint, subject to confirmation by the Council, and may remove the Fire Administrator, Chief of the Division of Fire and Rescue Services, and Chief of the Division of Volunteer Fire and Rescue Services.

(b) The Fire Administrator is the non-uniformed department head of the Montgomery County Fire and Rescue Service, and has all powers of a department director. The Administrator must implement the policies of the Commission and effectively administer all fire and rescue services provided in the County. The Administrator supervises the Chief of the Division of Fire and Rescue Services, Chief of the Division of Volunteer Fire and Rescue Services, and Internal Affairs Officer.

(c) The Chief of the Division of Fire and Rescue Services is a non-merit position under Section 401 of the Charter. The Division Chief must meet IECS qualifications for chief officer. The Division Chief supervises and has day to day command of the Division, under the direction of the Fire Administrator. The Division Chief has full operational authority over fire and rescue activities of the Division, which is equivalent to the authority of the fire and rescue chief of a local fire and rescue department. The Division shares with the local fire and rescue departments the responsibility for direct fire suppression and emergency medical services activities. The Division is responsible, among other duties, for fire prevention, fire and rescue and emergency medical services training, emergency planning, and communications between emergency fire and rescue services personnel. The Division Chief must promote the integration of the activities of volunteer and career firefighters and rescuers. The Division Chief may take disciplinary action, including discharge, against any merit system employee in the Division, subject to applicable merit system regulations and collective bargaining agreements.

(d) The Chief of the Division of Volunteer Fire and Rescue Services is a non-merit position under Section 401 of the Charter. The Division Chief must meet IECS qualifications for chief officer. The Division Chief supervises all staff in the Volunteer Fire and Rescue Services Division and has day to day administrative duties relating to volunteers in the County Fire and Rescue Service, under the direction of the Fire Administrator. The Division Chief has authority over fire and rescue activities of the Division, which is equivalent to the

authority of the fire and rescue chief of a local fire and rescue department. Among other duties, the Volunteer Fire and Rescue Services Division must: (1) promote the integration of the activities of volunteer and career firefighters and rescuers; (2) promote volunteer recruitment and retention; (3) assist local fire and rescue departments in training, risk management, apparatus use and maintenance, budget preparation, and formulating department policy and recommendations to the Commission; and (4) monitor legislative and regulatory actions involving volunteer activities and inform affected groups.

(e) The Internal Affairs Officer is appointed by the Fire Administrator, after receiving the recommendation of the Commission, and must assist the Commission and the Administrator in monitoring compliance with law and County and Commission policies, regulations, and procedures and investigating matters assigned by the Administrator or the Commission.

(f) The Fire Administrator must meet regularly with the Fire Board and senior Division of Fire and Rescue Services staff to communicate policy, evaluate the effectiveness of the County's integrated fire and rescue services, and receive advice on the development of policies and delivery of services.

(g) In addition to any other authority under this Chapter, the Fire Administrator may take disciplinary action against any employee or volunteer in the County Fire and Rescue Service or a local fire and rescue department for violation of law, County policy, Commission policy, or any order of the Administrator. Disciplinary action under this subsection may include suspension or discharge of an employee and restriction of a volunteer from participation in fire and rescue activities. Each local department must initially administer the discipline of its employees and volunteers, and the Administrator must not take any action involving an employee or volunteer of a local department unless the Administrator finds (under Commission enforcement policies adopted by regulation) that the local department has not satisfactorily resolved a problem in a timely manner. Each employee or volunteer in the County Fire and Rescue Service or a local fire and rescue department must give the Administrator any information, not otherwise legally privileged, the Administrator reasonably needs to find facts under this subsection.

(h) The Administrator must provide staff and other support to the Commission, subject to appropriation.

§ 21-7. Appeals to and from Commission.

(a) Jurisdiction. The Commission must hear and decide each appeal filed by:

(1) a local fire and rescue department concerning any action of the Fire Administrator in carrying out a County law or regulation or Commission policy; and

(2) any employee of the Fire and Rescue Service or a local fire and rescue department, volunteer firefighter or rescuer, or other aggrieved person concerning any adverse action of the Administrator or a local fire and rescue department in carrying out a County law or regulation, Commission policy, or order of the Administrator. However, the Commission must not hear an appeal under this Section if the appellant has a right to appeal

the action to an employee grievance process or the Merit System Protection Board under any other law, regulation, or collective bargaining agreement.

(b) Filing Appeals. A local fire and rescue department may appeal an order or decision of the Fire Administrator to the Commission within 30 days after the order or decision is issued. A local department may also appeal the application of a County regulation or Commission policy to that department within 30 days after the regulation or policy is issued. If a department can show that an order, policy, or decision was not communicated promptly, the department may appeal the order, policy, or decision within 30 days after it knew or reasonably should have known of its issuance. Any other aggrieved party may appeal an action within 30 days after the action is taken unless another law or regulation requires that an appeal be filed sooner. Unless the Commission orders otherwise, the filing of an appeal stays the action appealed from.

(c) Procedures. The Commission by regulation must establish procedures for hearing and deciding appeals under this Section. The regulation must specify which categories of appeals may be heard by a hearing examiner or otherwise must be decided on the basis of a written record. The Commission must hear an appeal if it complies with all applicable Commission procedures. Any party may appeal the chair's decision on any procedural matter to the Commission under procedures adopted by the Commission.

(d) Subpoenas. The Fire Administrator, as chair of the Commission, may issue a subpoena for the attendance of a witness and the production of any document, and may administer oaths, in any proceeding which must be decided on the basis of a written record. The Administrator or any party to the proceeding may file a petition with any court with jurisdiction to enforce a subpoena as provided by law for the enforcement of subpoenas in a civil action. All provisions of law which compel a person under subpoena to testify apply to proceedings under this Chapter.

(e) Depositions. When relevant to any proceeding and for use as evidence, the Administrator may permit a deposition to be taken in the manner and on the terms designated by the Administrator if:

(1) a witness cannot be subpoenaed; or

(2) a witness cannot attend a hearing.

(f) Temporary Chair. If an appeal involves an action of the Fire Administrator, the Administrator must not participate as a Commission member in hearing and deciding the appeal. The vice-chair or another public member appointed by the vice-chair as temporary chair must conduct any meeting involving the appeal, and may issue subpoenas and permit depositions.

(g) Appeals of Commission decisions. Any employee of or volunteer at a local fire and rescue department or any other aggrieved person may appeal a decision of the Commission involving a specific personnel action, or the failure to take any such action, to the Merit System Protection Board as if the aggrieved person were a County merit system employee. Any aggrieved party may appeal any other Commission decision made under this

Section to any court with jurisdiction under the rules governing appeals from administrative agencies.

§ 33-14. Hearing authority of board.

(a) Hearing requirements. Hearings before the board are quasi-judicial in nature and shall be conducted in formal session in accordance with the provisions and authority contained in the county administrative procedures act. Board members shall be provided orientation and training as required to properly implement the requirements of the county administrative procedures act and conduct administrative evidentiary proceedings. With respect to hearings which go beyond one (1) session, the board shall endeavor to schedule such hearings so that a minimum amount of time elapses between sessions. When required for continuity and minimum loss of time in concluding a case, the board shall also endeavor to schedule hearings during daytime, weekday hours. Hearing shall be open to the public with reasonable notice, if requested by the employee.

(b) Board counsel. The board may request special counsel when the board and the county attorney determine that a representational conflict exists within the county attorney's office. The special counsel shall be an individual acceptable to the board. The county attorney may assign an attorney to the board as its general counsel who shall represent the board exclusively on matters concerning the merit system.

(c) Decisions. Final decisions by the board shall be in writing, setting forth necessary findings of fact and conclusions of law. A copy of such decision shall be furnished to all parties. The board shall have authority to order appropriate relief to accomplish the remedial objectives of this article, including but not limited to the following:

(1) Order retroactive promotion or reclassification with or without back pay;

(2) Order change in position status, grade, work schedule, work conditions and work benefits;

(3) Order priority consideration be given to an employee found qualified before consideration is given to other candidates;

(4) Order reinstatement with or without back pay, although the chief administrative officer may reinstate either to a position previously held or to a comparable position of equal pay, status and responsibility;

(5) Order cancellation of personnel actions found in violation of law or personnel regulation provided that such action may not without due process, adversely affect the employment rights of another employee;

(6) Grant employee participation in an employee benefit previously denied (training, educational program or assistance, preferential or limited work assignments and schedules, overtime pay or compensatory leave);

(7) Order removal from administrative or personnel records any reference or document pertaining to an unwarranted disciplinary or adverse personnel action;

(8) Order corrective measures as to any management procedure adversely affecting employee pay, status, work conditions, leave or morale;

(9) Order the county to reimburse or pay all or part of the employee's reasonable attorney's fees. The reasonableness of the attorney fees shall be determined by the following factors;

a. Time and labor required;
b. The novelty and complexity of the case;
c. The skill requisite to perform the legal service properly;
d. The preclusion of other employment by the attorney due to acceptance of the case;
e. The customary fee;
f. Whether the fee is fixed or contingent;
g. Time limitations imposed by the client or the circumstances;
h. The experience, reputation and ability of the attorneys; and
i. Awards in similar cases;

(10) Order such other and further relief as may be deemed appropriate consistent with the charter and laws of Montgomery County.

§ 33-15. Judicial review and enforcement.

(a) Any aggrieved merit system employee, or applicant, or the chief administrative officer may obtain judicial review of a merit system protection board order or decision from the circuit court for the county in the manner prescribed under chapter 1100, subtitle B of the Maryland Rules of Procedure.[4] In addition, with respect to orders or opinions relating to personnel of Montgomery County fire and rescue corporations, the independent fire and rescue corporation affected by the merit system protection board order, as well as any aggrieved fire and rescue corporation employee, may obtain judicial review of the board's order or decision as provided in this section.

(b) The court, in hearing the case, shall apply the judicial review standards as set forth in the Maryland administrative procedures act, article 41, Maryland Code Annotated, section 255.[5] The court review shall be on the basis of the record before the board. Judicial review of board decisions issued hereunder also includes appellate review by the special courts of appeals of Maryland.

(c) When the chief administrative officer is the party seeking judicial review of a board order or decision in favor of a merit system employee, the county shall be responsible for the employee's legal expenses, including attorneys' fees which result from the judicial

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[4]Editor's note—In 1993, former Chapter 1100, subtitle B, of the Maryland Rules (often referred to as the "B Rules"), became Title 7, Chapter 200, of the Maryland Rules.

[5]Editor's note—The Maryland Administrative Procedures Act is now found in State Government Article, §§ 10-201, et seq.

review and are determined by the county to be reasonable under the criteria set forth in subsection (c)(9) of section 33-14.

(d) Upon the failure of a party to invoke the judicial review provision of section (a) above or the exhaustion thereof and upon noncompliance with any final decision or order of the board, the board may certify the matter to the county attorney for enforcement. The county attorney shall promptly institute appropriate civil proceedings in the circuit court for Montgomery County to seek enforcement of the decision or order and for any other appropriate relief.

Code of Montgomery County Regulations

COMCOR § 21.02.19 Procedures for FRC Appeal Hearings

§ 21.02.19.01 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.

§ 21.02.19.02 Applicability

These Procedures apply to an appeal by a local fire and rescue department concerning any action of the Fire Administrator in carrying out a County law or regulation, or Commission policy, or any employee of the Fire and Rescue Service or a local fire and rescue department, volunteer firefighter or rescuer, or other aggrieved person, concerning any adverse action of the Administrator or a local fire and rescue department in carrying out a County law or regulation, Commission policy, or order of the Administrator. However, the Commission must not hear an apeal under these Procedures if the Appellant has the right to appeal the action through an employee grievance process or to the Merit System Protection Board, under any other law, regulation, or collective bargaining agreement.

§ 21.02.19.03 Definitions

a. 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 Administrator 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.

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.

§ 21.02.19.04 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.

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

2. The appeal document must include a description of the nature and specifics of the decision or action from which the appeal is being taken, with reference to sections of applicable laws, regulations, or policies, if known, that are alleged to have been violated or relied upon.

3. 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 Administrator or name of LFRD) that Occurred on (or was Taken on) (date)."

4. 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, 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.

5. 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 7 copies of the filed document to the Presiding Officer within 5 business days after receiving the document. Upon receipt, the Presiding Officer must distribute those copies to the Commissioners within 5 business days.

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, a response document filed by the responding party, 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.I.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.

* Editor's note - See 21.07.01.05 I.e.

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.

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.

* Editor's note - See 21.07.01.05 II.b.

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 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.

* Editor's note - See 21.07.01.05 II.a.

** Editor's note - See 21.07.01.05 II.b.

1. The Hearing Authority must provide written notice of a hearing to the appellant and responding party: by regular, first class mail; 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.

* Editor's note - See 21.07.01.05 II.b.1.

3. The written notice of a hearing must contain the following information:

A. a copy of the appeal document;

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.

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.I.e.*

* Editor's note - See 21.07.01.05 I.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

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 thereof 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:

* Editor's note - See 21.07.01.05 III.c.

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 any permitted relevant testimony or documentary evidence before it.

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

* Editor's note - See 21.07.01.05 III.c.

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

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. Where an appeal is taken from an action of the Fire Administrator, the Fire Administrator is not deemed a member of the Commission for purposes of this subsection.

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.*

* Editor's note - See 21.07.01.05 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.*

* Editor's note - See 21.07.01.05 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.

d. Subpoena Power and Depositions.

1. The Commission, through its Chair, Vice-Chair, or another public member of the Commission appointed by its Vice-Chair as temporary chair, may issue subpoenas and require depositions under Section 21-7(d) and (e) of the County Code. Accordingly, a hearing examiner designated by the Commission to conduct a hearing, or any other person, must request any desired subpoena or deposition through the Commission.

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 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. (only the Commission) 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. (only the Commission) rule on motions to quash subpoenas;

5. rule upon motions, 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, consolidated, or grant rehearing;

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, to order witnesses other than a party to be excluded from the hearing room until called to testify;

15. (only the Commission) 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 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.

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 the Chair of the Commission or 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, unless overruled by a majority vote of the members of the Commission present and participating.

D. In accordance with Section 21-7(f) of the County Code, if an appeal involves an action of the Fire Administrator, the Administrator must not participate as a Commission member in hearing or in deciding the appeal. The Commission's Vice-Chair, or another public member 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 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 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.II.a.,* the ordinary, but not mandatory, order of procedure for the conduct of the hearing and the presentation of evidence is:

* Editor's note - See 21.07.01.05 II.a.

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;
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.

a. 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.

b. Any motion to "vacate the stay," as described in Section 21-7 of the County Code, may be ruled on by the Hearing Authority upon a request from a party with standing in that case, with or without a hearing.

V. Decisions.

a. Content. All decisions of the Hearing Authority, except rulings on preliminary matters or on non-dispositive motions or objections, must be in writing. 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.

c. Voting Requirements. Any 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, may extend the time for decisions for additional periods, with written notification to all parties.

e. 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 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 Section 21-7 prevail.