

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

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

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

Background

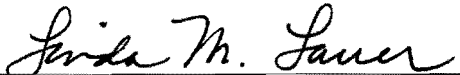
1. On September 17, 2009, the County Council received Executive Regulation 14-09 to amend Sections 1, 33, and 35 of the Personnel Regulations to establish procedures for the Merit System Protection Board to hear and decide appeals of disciplinary actions filed by volunteer firefighters and rescuers.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

Action

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

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

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject MCPR Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and	Number 14-09 Rescuers
Originating Department Office of Human Resources	Effective Date November 3, 2009

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

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

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

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

Effective date: November 3, 2009

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

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

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

Please use the key below when reading this regulation:

Boldface
* * *

Heading or defined term.

Existing language unchanged by executive regulation.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject MCPR Amendments to Establish Procedures for the MSPB to Hear and Decide Appeals of Disciplinary Actions Filed by Volunteer Firefighters and Rescuers	Number 14-09
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SECTION 1. DEFINITIONS

* * *

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

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

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

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

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SECTION 33. DISCIPLINARY ACTIONS

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

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



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35-1. Definitions.

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

* * *

35-2. Right of appeal to MSPB.

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

35-3 Appeal period.

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



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

* * *

35-8 Notification and submission of record in appeal.

* * *

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

* * *

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

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



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resignation. In all other cases, the MSPB may choose to decide the appeal on the basis of a written record without an evidentiary hearing.

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



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

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

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35-16 MSPB decisions

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(b) The MSPB must:

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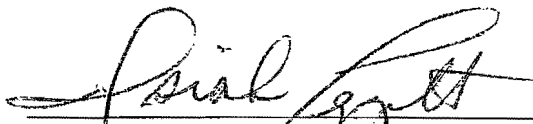
(3) send a copy of each decision to:

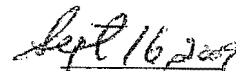
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(F) the Fire Chief and the local fire and rescue department in a case where the appellant is a volunteer firefighter or rescuer.

* * *

Approved:


Isiah Leggett, County Executive


Date

Approved as to form and legality:



7/13/09

Office of the County Attorney

Date