MILWAUKEE COUNTY CIVIL SERVICE COMMISSION

HEARING PROCEDURES

(Pursuant to WI. Stat. 63.01 to 63.12)

Approved by the Civil Service Commission on July 10, 2014; amended effective April 20, 2015.

STATUTORY REFERENCE

EFFECTIVE FEBRUARY 5, 1998

The county board ordinances and rules of the civil service commission as hereinafter set forth apply to all employes in the classified service of Milwaukee County except insofar as such ordinances and/or civil service rules have been specifically modified or made nonapplicable to members of certain bargaining units whose contracts with Milwaukee County provide for exception from or differences in the application of such ordinances and/or rules.

CIVIL SERVICE RULES FOR THE MILWAUKEE COUNTY GOVERNMENT

Under and pursuant to the provisions of chapter 259, Laws of Wisconsin 1917, creating sections 772-1—772-17, inclusive, of Wisconsin Statutes (since renumbered to be ss. 63.01—63.16, Wis. Stats., inclusive) as subsequently amended, to the Milwaukee County civil service commission, in regular meeting held on October 21, 1917, approved and adopted a classification of offices, positions, and employments in the classified service of Milwaukee County (excluding offices and positions exempted by section 772-4, now s. 63.03, Wis. Stats.), which classification, together with a salary standardization plan and regulations governing the compensation of such offices, positions, and employments were subsequently recommended to, considered and adopted by the board of supervisors of Milwaukee County by passage on November 13, 1917, of an ordinance relating to the classification and salaries thereunder, effective January 1, 1918, which ordinance has subsequently been amended and is now known as the Classification and Salary Standardization Ordinance of Milwaukee County. Pursuant to the aforesaid statutes, the following rules were spread upon the minutes of the Milwaukee County civil service commission and adopted December 5, 1917; published according to law December 20, 1917; and became effective January 1, 1918; as since amended

RULE VII. SEPARATIONS; SUSPENSIONS

Section 1. Demotion and dismissal; suspensions; procedures.

Section 2. Who shall or may file charges.

Section 3. Filing; notice; hearing.

Section 4. Causes for discharge, suspension or demotion and/or reevaluation.

Section 5. Rehearing.

Section 6. Merit system violations.

Section 1. Demotion and dismissal; suspensions; procedures.

Whenever a person possessing appointing power in the county, as to employes under their respective jurisdictions, believes that an employe in the classified service in his department has acted in such a manner as to show him to be incompetent to perform his duties or have merited demotion or discharge, he shall report in writing to the civil service commission, setting forth specifically his complaint, and may suspend the officer or employe without pay at the time such complaint is filed. Nothing in this section shall limit the power of the department head to suspend a subordinate for a reasonable period not exceeding ten (10) days. In case an employe is again suspended within six (6) months for any period whatever, the employe so suspended shall have the right of hearing by the commission on the second suspension or any subsequent suspension within said period the same as herein provided for in demotion or dismissal proceedings. All suspensions shall be filed and reported to the Commission in writing within three business days. The commission may, in its discretion, investigate any such suspension and in the case of its disapproval the suspended employe shall be immediately reinstated, and any part or all of the pay which he may have lost may be restored to him by order of the commission.

Section 2. Who shall or may file charges.

(1) It shall be the duty of the superior officer to file charges against any officer or employe subordinate to him and in the classified service if there be cause for demotion or discharge of such officer or employe.

(2) It is the duty of the director of human resources to file charges against any officer or employe in the classified service upon receipt of evidence showing cause for demotion or discharge of such officer or employe in cases where a department head or appointing authority neglects or refuses to file such charges.

(3) Charges may be filed by any citizen against an officer or employe in the classified service where in the judgment of the commission, the facts alleged under oath by such citizen and supported by affidavit of one (1) or more witnesses would if charged and established amount to cause for the discharge of such officer or employe.

(4) The commission shall forthwith notify the accused officer or employe of the filing of such charges and on request provide him with a copy of the same.

(5) An officer or employe against whom formal charges for discharge or demotion have been filed may be suspended from duty without pay pending a hearing on such charges before the commission and the commission's decision thereon.

Section 3. Filing; notice; hearing.

(1) In cases involving the filing of charges for discharge or demotion, the commission shall appoint a time and place for the hearing of said charges, the time to be within three (3) weeks after the filing of the same, unless further time be granted by the commission for cause shown, either upon the application of the complainant, the employe or his attorney before the expiration of said three (3) weeks. Notice shall be given the complainant and the employe or his attorney of the time and

place of said hearing. In cases where an employe is suspended a second time within six (6) months for any period whatever, the employe so suspended shall have the right of a hearing by the commission on the second suspension or any subsequent suspensions within the said period, the same as herein above provided for in demotion or dismissal proceedings.

(2) The complaint shall state specifically the facts alleged to constitute cause for suspension, demotion or discharge, and shall refer to the paragraph(s) in section 4 of this rule under which said charges are brought.

(3) Neither the complainant nor the accused shall have the right to be represented by counsel at said hearing, but the commission may, in its discretion, permit the accused to be so represented and may request the presence of a member of the corporation counsel's staff for the examination and cross examination of witnesses and to advise the commission on legal questions arising at the trial.

(4) At the termination of the hearing, the commission shall determine whether or not the charge is well founded and shall take such action by way of suspension, demotion, discharge or reinstatement as it may deem requisite and proper under the circumstances and as its rules may provide. Such decision shall be final and shall be certified to the appointing authority and be forthwith enforced by him.

Section 4. Causes for discharge, suspension or demotion and/or reevaluation.

(1) The following are declared to be cause for discharge, suspension or demotion and/or the approval of or the imposition of an employe reevaluation period as provided in rule VI, section 8, of the rules of the Milwaukee County personnel review board, of any officer or employe from the classified service of the County of Milwaukee, though charges may be based upon causes and complaints other than those here enumerated, namely:

(a) Theft of private or county property.

(b) Unauthorized use, misuse, destruction of or damage to any property including vehicles, said damage occurring because of neglect while on county business.

(c) Unauthorized use of county premises.

(d) Violation of rules or practices relating to security of county property or county premises.

(e) Unauthorized use, duplication or possession of county keys, or electronically controlled access cards.

(f) Distributing or posting handbills, pamphlets or other written or printed material in any work area without authorization.

(g) Posting, removing or tampering with county bulletin board material without authorization.

(h) Failure to observe parking or traffic regulations as established by ordinance, statutes or departmental rules while on county business.

(i) Violation of rules or practices relating to safety.

(j) Littering, creating or contributing to unsanitary or unsafe conditions on county premises.

(k) Refusing or failing to obey orders of supervisor whether written or oral.

(l) Refusing or failing to comply with departmental work rules, policies or procedures.
(m) Threatening, intimidating, coercing or harassing employes or supervision at any time.
(n) Making false or malicious statements, either oral or written, concerning any employe, the county or its policies.
(o) Unexcused, unauthorized, or excessive absence.
(p) Unexcused, unauthorized, or excessive tardiness.
(q) Leaving early and/or failure to be at assigned work area at the start or end of shifts, breaks and/or meal periods.
(r) Leaving place of work during working hours without authorization, wasting time or loitering.
(s) Stopping work before designated quitting time.
(t) Failure or inability to perform the duties of assigned position.
(u) Substandard or careless job performance.
(v) Restricting output or engaging in any intentional slowdown, work stoppage or strike.
(w) Engaging in any unauthorized activity which distracts or disrupts employes in the performance of their duties.
(x) Interference with normal work flow or departmental procedures.
(y) Falsification, modification or unauthorized alteration of any county record or report.
(z) Knowingly punching or marking another employe's time card, having one's time card punched or marked by another, altering time card for any unauthorized reason or inaccurately recording time worked.
(aa) Unauthorized obtaining or disclosure of confidential or privileged information.
(bb) Commission of a criminal act which meets the nondiscriminatory practices in conformance with state statutes.
(cc) Reporting to work or working while under the influence of intoxicating beverages and/or narcotics or other drugs or having unauthorized possession of same on county premises during working hours.
(dd) Indecent, criminal or inappropriate conduct on county premises or during working hours.
(ee) Abusive or improper treatment toward an inmate or patient of any county facility or to a person in custody; provided the act committed was not necessarily or lawfully done in self-defense or to protect the lives of others or to prevent the escape of a person lawfully in custody.
(ff) Offensive conduct or language toward the public or toward county officers or employes.
(gg) Sleeping, dozing or lack of attentiveness during working hours.
(hh) Possession of unauthorized weapons on county premises or during working hours.
(ii) Provoking or instigating a fight or fighting during working hours or on county premises.
(jj) Engaging in horseplay or scuffling on county premises during working hours.
(kk) Engaging in personal activities during working hours.
(ll) Gambling on county premises or during working hours.

(mm) Vending, soliciting or collecting contributions for any purpose without authorization on county premises.

(nn) Inducing or attempting to induce any officer or employe in the county service to commit an illegal act or to act in violation of any departmental or official regulation or order, or the rules of the commission.

(oo) Soliciting or receiving from any person or participating in any fee, gift or other thing of value in the course of one's work, when such fee, gift or other thing of value is given in the hope or expectation of receiving a favor or better treatment than that accorded other persons.

(pp) Threatening or attempting to use or using political influence, or giving or being in any way involved in giving any money or any other thing of value in return for appointment, promotion, transfer, leave of absence or change in appropriation or pay.

(qq) Engaging in pernicious political activity by making use of one's position to further the candidacy of any person or engaging in political work during regular working hours. Nothing in this section shall be construed to interfere with the right of any employe in the classified service to become a member of a political club, to attend political meetings, to express his/her opinion on all political subjects, and to enjoy freedom from all interference in casting his/her vote.

(rr) Removal of permanent residence to some place outside of Milwaukee County, except as specifically authorized by the commission or failure to establish permanent residence in Milwaukee County within the time limited by the commission.

(ss) Willful violation of any of the provisions of the county Civil Service Act or of the rules of the commission or ordinances of Milwaukee County.

(tt) Knowingly discriminating against anyone for employment or delivery of services, because of such individual's age, race, color, handicap, sex, creed, national origin or ancestry.

(2) When used in this section, these words or terms shall have the following meaning and import:

(a) *Property:* Anything of value.

(b) *County property:* Any property owned or leased by or in the custody or control of the county.

(c) *County premises:* Any building or structure or part thereof or any lands owned, leased or in the custody or control of the county or devoted to use by the county.

(d) *County:* Milwaukee County, a municipal body corporate, and all of its agencies, boards, commissions, institutions, departments and divisions.

(3) A copy of this section, with any amendments thereto, shall be submitted to the head of every department to be posted by him in such manner as to bring it to the attention of all employes of such department.

Section 5 Rehearing

Petitions for rehearing of persons discharged or demoted must be filed with the commission within two (2) weeks after the order of discharge has been entered. Such petition shall be granted only where it is shown

and established that evidence can be presented which the petitioner could not by the exercise of diligence have discovered and submitted at the original hearing or investigation, which evidence would have been sufficient if there presented to have changed the findings of the investigating officer or board. The petition shall state the grounds upon which it is based, verified by affidavit.

Section 6 Adjournments

Adjournment of any hearing will be granted upon written request which is received by the Commission at least two business days before the scheduled hearing date. Such written request must specify the reasons therefor and shall contain a date when the person making such request will be ready to proceed. If the Commission approves such request, it shall set another date for the hearing. If it does not agree to the adjournment, the hearing shall proceed as scheduled. Any request for adjournment not made in compliance with this section will be considered by the Commission on a case-by-case basis at the time such request is made.

CONDUCT OF HEARINGS

Section 1. Hearing Proceeding Before a Hearing Examiner

(a) The Hearing Examiner is authorized to conduct trials without the Commission being present.
(b) The Commission will convene in closed session to review the record and to protect the interest of employees. The Commission shall make a final determination and may adopt or modify, in whole or in part, or reject the proposed findings and recommendations of the Hearing Examiner.
(c) The Commission may authorize parties to be represented by counsel.

Section 2. Admissibility of Evidence

The Commission is not bound by the rules of evidence as contained within the Wisconsin Statutes. Irrelevant, immaterial, or unduly repetitious evidence will be excluded. Hearsay evidence will be admissible and given whatever weight or credence the Commission members wish such evidence to have. Summaries of records shall not be admissible as evidence unless the records from which the summaries are compiled are made available for examination by opposing parties and the Commission members. A hearing will not necessarily be delayed for purposes of allowing opposing parties to view the records upon which the summaries are compiled. If, subsequent to such review, discrepancies are found, opposing parties may petition for a rehearing pursuant to

Section 3. Examination of Witness

A witness shall be examined first by the party who calls the witness. Each party may subpoena witnesses to attend the hearing. Witnesses may be allowed to testify either by answer to questions, or in the absence of counsel, in the narrative form. Cross-examination of a witness is not limited to those matters to which a witness testified to on direct examination. Direct and cross-examination shall not be interspersed with argument or commentary by the questioner. A party shall not make statements relating to the admission of evidence while examining a witness.

Witnesses may be sequestered at the request of either party, or upon direction of the Board or the Hearing Examiner. The Commission or Hearing Examiner may adjourn the trial to take additional evidence.

Section 4. Exhibits

All exhibits shall be marked and made available to the opposing party before being shown to any witness. It is recommended that copies of all exhibits be given to the Hearing Examiner, Commission Independent Counsel and opposing parties before the witness to whom the exhibits relate is called to testify. Exhibits entered into record are to remain in the custody of the Commission's Independent Counsel or designees unless withdrawn. In the event such exhibits are withdrawn, copies of such exhibits shall be submitted to the executive secretary to be maintained in the file.

Section 5. Order of Testimony

In all cases, excepting a petition for rehearing or appeal of a grievance, the superior officer, Director of the Department of Human Resources, or citizen who filed the complaint shall proceed first with their evidence. The person charged in the complaint shall then have an opportunity to present evidence in defense of any charges. Further evidence, the nature of rebuttal, shall be allowed by the Commission upon motion of the party requesting the opportunity to present such evidence. In the case of a rehearing or appeal of a grievance, the party who petitioned or appealed for same shall proceed first. The opposing party shall reply thereafter. Any further evidence in the nature of rebuttal shall be granted at the discretion of the Hearing Examiner.

Section 6. Legal Briefs

The Commission, on its own motion, or upon the request or any party, may allow parties to submit legal briefs or memoranda in support of their respective positions. When such briefs or memoranda are requested, seven copies shall be submitted to the Independent Counsel of the Commission and one copy to each opposing party. At the time legal briefs or memoranda are requested, the Commission may set a schedule for filing of same.

Section 7. Burden of Proof

The party who brings charges or petitions for a rehearing shall have the burden of proving their allegations by the preponderance of evidence on all complaints or petitions.

A. Motions to Dismiss Based on Personal Jurisdiction or Subject Matter

Any party may move at any time to dismiss the case either on the ground the Civil Service Commission does not have jurisdiction of the person or over the subject matter of the charges brought. The Commission may raise issues on its own motion relating to its jurisdiction to hear the matter of some matter raised in petition for rehearing or other complaint. Each party shall be afforded an opportunity to make written and/or oral arguments regarding the motion.

B. Other Motions

An application to the Commission for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. An application to the Commission for an order shall be by a motion made during a hearing.

Section 8. Withdrawal of Charges

A. When Charges May be Withdrawn

Subject to approval of the Commission, the charging authority or his/her representative may withdraw a case at any time prior to a matter proceeding to hearing.

B. Reinstatement of Employe upon Withdrawal of Charges

If an employe was suspended without pay prior to the withdrawal, said employe shall be reinstated as of the date of suspension.

Section 9. Dismissal of Charges

Any dismissal order issued by the Commission shall be on the merits unless otherwise expressly stated. The Commission may request the filing of a copy of any settlement prior to dismissing a case.

Section 10. Scheduling of Hearings

A. Hearing Within 21 Days Unless Continued/Adjourned

Upon receipt by the Commission of a complaint, the Commission shall set a time and place for a hearing. The hearing shall be held within 21 days of the receipt of the complaint or request, unless the hearing is:

1) Laid over by stipulation of all parties.
2) Laid over in the interest of fairness upon the Commission's own motion.
3) Laid over upon motion of the charged party.

B. Continuations/Adjournments Made by the Commission

The Commission may make a determination to continue/adjourn the matter.

C. Notice to Parties of Hearing and Adjournments

Notice of hearing date and any adjournments thereof shall be given to the person filing the charges and the employee If a legal representative or union representative appears on behalf of the employee, notices shall be given to the representative who shall have the responsibility to convey notice to the employee. Failure of the employee's representative to convey notice to the employee shall not constitute grounds for delay of any Commission action.

D. Notice to Witnesses

Each party is responsible for advising the party's own witnesses of any continuance or adjournment.

Section 11. Amendments to Charges

Amended charges must be submitted to the Commission in writing and the opposing party should be given an opportunity to object to their submission. If the objection is sustained by the Commission, the Party requesting to amend the charges may file them as new charges. Charges may be amended to cure technical defects or to clarify or amplify allegations in the charges or to set forth additional facts or allegations related to the subject matter of the original charges. Amended charges, with the exception of technical defects, must be submitted at least 14 days prior to the scheduled hearing.