



**BEFORE THE 2014 JUDICIAL COUNCIL OF GUAM
RESOLUTION NO. JC14-009**

**RELATIVE TO AMENDING THE JUDICIAL COUNCIL HEARING OFFICER
PROCEDURES FOR THE HEARING OF APPEALS OF ADVERSE ACTIONS,
GRIEVANCES AND EQUAL EMPLOYMENT OPPORTUNITY MATTERS**

WHEREAS, at the March 20, 2014 monthly meeting of the Judicial Council, the Judicial Council acknowledged that the proposed revised Equal Employment Opportunity (“EEO”) Policy and Discrimination Charge Procedure contained a provision that the currently existing Hearing Officer Procedures for the Hearing of Appeals of Adverse Actions and Grievances (hereinafter “Hearing Officer Procedures”) as adopted by the Judicial Council on December 18, 2003, be expanded to include the hearing of appeals of EEO investigations, as set forth in the newly revised EEO Policy and Discrimination Charge Procedure (hereinafter “EEO Procedure”). Specifically, on page 6 of the EEO Procedure, appeals of EEO Investigations by the Charging Party are proposed to be heard in the same manner that appeals of adverse actions and grievances are heard; and

WHEREAS, at the March 20, 2014, Judicial Council meeting, it was agreed that the Hearing Officer Procedures would have to be changed to incorporate the appeals of EEO matters which are brought pursuant to the EEO Procedure; and

WHEREAS, at the April 17, 2014, monthly meeting of the Judicial Council, the new EEO Policy and Discrimination Charge Procedure was adopted with minor modifications by the Judicial Council; and

WHEREAS, the Hearing Officer Procedures contain two tracks: one for adverse action appeals and one for grievance appeals. An EEO Discrimination Charge appeal will follow the track for adverse action appeals, except that the time limit for an appeal of an EEO Discrimination Charge is governed by the EEO Procedure rather than the time limits applied to adverse actions. All other time limits contained in the Hearing Officer Procedures shall apply to EEO appeals; and

WHEREAS, revised proposed Hearing Officer Procedures with minor modifications were presented to the Judicial Council at the continued monthly meeting on April 24, 2014, and the Judicial Council agreed on the changes presented at the April 24, 2014, meeting.

NOW, THEREFORE BE IT RESOLVED, that the Hearing Officer Procedures for the Hearing of Appeals of Adverse Actions and Grievances, adopted by the Judicial Council of Guam on December 18, 2003, is hereby AMENDED to include the hearing of EEO Discrimination Charges, and these newly amended procedures shall hereinafter be called “Judicial Council of Guam Hearing Officer Procedures for the Hearing of Appeals of Adverse Actions, Grievances and Equal Employment Opportunity Matters,” and

Re: to Amending the Judicial Council Hearing Officer Procedures for the Hearing of Appeals of Adverse Actions, Grievances and Equal Employment Opportunity Matters

BE IT FURTHER RESOLVED that EEO Discrimination Charge appeals shall follow the track for adverse action appeals, except that the time limit for an appeal of an EEO Discrimination Charge is governed by the EEO Procedure rather than the time limits contained in the Hearing Officer Procedures for adverse actions; and

BE IT FURTHER RESOLVED that Part I(N) of the Hearing Officer Procedures shall be amended to state as follows:

Judicial Review: The decision of the Judicial Council Hearing Officer is advisory and subject to adoption, with or without modification, or rejection by the Judicial Council of Guam, and is subject to judicial review. In order to seek review of a final Judicial Council decision, the appellant must file a petition for judicial review in the Superior Court within thirty calendar days of the Judicial Council's decision; and

BE IT FURTHER RESOLVED that Part II (E)(4) of the Hearing Officer Procedures shall be amended to state as follows:

Judicial Review. The decision of the Judicial Council Hearing Officer is advisory and subject to adoption, with or without modification, or rejection by the Judicial Council of Guam, and shall be subject to judicial review. In order to seek judicial review of a final Judicial Council decision, the Appellant must file a petition for judicial review in the Superior Court within thirty calendar days of the Judicial council's decision, and

BE IT FURTHER RESOLVED that the newly revised Judicial Council of Guam Hearing Officer Procedures for the Hearing of Appeals of Adverse Actions, Grievances and Equal Employment Opportunity Matters, as amended by this Resolution, is hereby attached as Exhibit "A" and is applicable to all matters from the date of this Resolution.

DULY ADOPTED this 24th day of April, 2014 at a duly-noticed meeting of the Judicial Council of Guam.



ROBERT J. TORRES, Chairman

Dated: _____

9/25/14

ATTEST:



JOANNA S. McDONALD, Assistant Secretary

Dated: _____

9/25/14

**JUDICIAL COUNCIL OF GUAM
HEARING OFFICER PROCEDURES
FOR THE HEARING OF APPEALS OF
ADVERSE ACTIONS, GRIEVANCES AND EEO MATTERS**

(Adopted December 18, 2003; revised April 24, 2014)

JUDICIAL COUNCIL OF GUAM
HEARING OFFICER PROCEDURES FOR THE HEARING OF APPEALS
OF ADVERSE ACTIONS, GRIEVANCES AND EEO MATTERS

I. Adverse Action Appeals and EEO Appeals

A. Right to Appeal

1. Classified Employees. Any person in the classified service holding a permanent appointment and who is subject to an adverse action by management, except one who is exempted by law from the jurisdiction of the Judicial Council, is entitled to appeal an adverse action to the Judicial Council. A person who has been appointed to a permanent position and who has satisfactorily completed his or her probationary period holds a permanent appointment.
2. Contract Employees. A contract employee occupying a permanent position in the classified service is entitled to appeal an adverse action to the Judicial Council during the term of his or her contract. Non-renewal of the contract is not appealable.
3. Any employee who believes he or she is aggrieved by a decision of an Equal Employment Opportunity (“EEO”) investigation is entitled to an appeal to the Judicial Council using these procedures.

B. Contents of an Appeal

An appeal shall be in writing and shall set forth the answer to the charges and the grounds for appeal. An appeal may be amended within fifteen (15) calendar days after filing. A person who is the subject of an adverse action, or who is a Charging Party in an EEO matter who files an appeal on his own behalf or through a representative is the “Appellant.”

C. Time Limit for Filing an Appeal

1. An adverse action appeal must be filed with the Judicial Council within twenty (20) calendar days from the effective date of the adverse action.
2. An appeal of an EEO matter must be filed within five (5) days in accordance with the EEO Discrimination Charge Procedure section IV(2).

D. Judicial Council Hearing Officer

The adverse action or EEO appeal shall be heard, considered, and decided by a Hearing Officer appointed by the Judicial Council.

E. Rights in Pursuit of an Appeal

An Appellant shall:

1. Be assured freedom from restraint, interference, coercion, discrimination, or reprisal.
2. Have the right to be accompanied, represented and advised by a representative and/or legal counsel of their choice.
3. Be assured a reasonable amount of official time to prepare his or her case if he or she is on duty status.

F. Entitlement

An Appellant who files an appeal in accordance with these rules is entitled to a hearing on his or her appeal before the Judicial Council Hearing Officer. Except in the case of an emergency, or death, incapacitation, or absence from the island of the Appellant, the Appellant shall be personally present at the hearing of his or her appeal. The term "emergency" means an occurrence of a serious nature demanding immediate attention. The term "absence from the island" covers off-island emergencies, relocation, situations in which the Appellant was not notified of the hearing date before leaving the island, and situations in which the Appellant was excused by the Judicial Council Hearing Officer for off-island purposes.

G. Place and Time of Hearing

The Judicial Council Hearing Officer shall set the place, date, and time of hearing as expeditiously as possible.

H. Conduct of Hearing

1. The hearing is open to the public.
2. The hearing will be conducted so as to bring out pertinent facts, including the production of certain records.
3. Decisions on the admissibility of testimony or other evidence are made by the Judicial Council Hearing Officer.
4. Testimony is under oath or affirmation.
5. Each party shall have the right to call, examine, or cross-examine witnesses, and introduce exhibits. Either party may be called and examined by the Judicial Council Hearing Officer after examination of the

witness has been completed by both parties; except that questions may be asked during examination to clarify a response by a witness.

6. Rules of evidence shall not be applied. The only grounds for excluding any proffered evidence are that the evidence is irrelevant or unduly repetitious. If any evidence is ruled inadmissible by the presiding officer, the grounds shall be stated for the record.
7. The order of presentation in the hearing shall be as follows:
 - a. Opening statement of management (Adverse Action) or Charging Party (EEO).
 - b. Opening statement of opposing party.
 - c. Presentation by management or Charging Party of evidence in support of the charges.
 - d. Presentation by the opposing party of such evidence in defense or rebuttal.
 - e. Closing statement of management or Charging Party.
 - f. Closing statement of opposing party.
 - g. Preliminary motions and issues shall be disposed of prior to the hearing on the merits.

8. Burden of Proof

Management shall have the burden of proof by a preponderance of the evidence in both an Adverse Action appeal and in an EEO Appeal. In cases involving charges which could be a crime, if the person was charged in a criminal action, the Judicial Council Hearing Officer shall determine the matter based upon substantial evidence.

9. Witnesses

- a. Both parties are entitled to produce witnesses. The Administrator of the Courts, or his designee, shall be in attendance without subpoena. Except, as otherwise provided in Section I(F), the Appellant shall be in attendance without subpoena.
- b. The Judicial Council Hearing Officer may call additional witnesses as he or she may deem necessary and require the production of documents.
- c. The Judicial Council Hearing Officer, upon his or her own initiative, or upon the request of any party, may summon in writing any person to attend a hearing as a witness and, in a proper case, to bring with him or her any book, record or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as

the fees of witnesses before the Superior Court, except that if the witness is a government employee, no witness fee shall be given. The subpoena shall issue in the name of the Judicial Council Hearing Officer, and shall be directed to the person and served in the same manner as subpoenas to appear and testify before the court. If any person summoned to testify shall refuse or neglect to obey said subpoena, upon petition, the court may compel the attendance of such person before the Judicial Council Hearing Officer, or punish said person for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the Superior Court.

- d. An employee is considered to be on duty status during the time he is made available as a witness. Such employee is entitled to compensatory time-off if he serves during his normal non-working hours. The Judicial Council Hearing Officer shall furnish the witness, a certificate showing the time devoted to the hearing. "Employee" in this section does not include the parties to the appeal or their representatives.
- e. The Judicial Council Hearing Officer shall ensure that all witnesses are treated with courtesy and respect while giving testimony at the hearing.
- f. The Judicial Council Hearing Officer shall assure that witnesses be free from restraint, interference, coercion, discrimination, or reprisal in presenting testimony.

10. Record of Hearing

- a. The hearing shall be audio recorded. The recordings, testimonies and exhibits admitted during the hearing, together with all pleadings and papers filed by the parties, shall constitute the official record.
- b. Filming, video taping, or recording of the hearing or other proceedings by any of the parties shall be permitted only upon written request and prior approval by the Judicial Council Hearing Officer, with notice to the other parties in the case.
- c. Transcripts of the hearing may be made available upon request and at a cost of one dollar (\$1.00) per page. Additional copies may be provided for fifty cents (\$0.50) per page. These charges do not apply to the court.

I. Termination of Appeal

The Judicial Council Hearing Officer may terminate an employee's or Charging Party's appeal:

1. At the Appellant's request.
2. When an Appellant fails to furnish required information necessary to proceed with the appeal.
3. When, without reasonable justification or excuse, an Appellant fails to personally appear for the hearing.

J. Death of Appellant

When an appeal has been filed properly before the death of the appellant, the Judicial Council Hearing Officer shall process it to completion and adjudicate it. The Judicial Council Hearing Officer may include in its decision, retroactive compensation and benefits to which the deceased employee would have been entitled to at the time of death.

K. Scope of Hearing

The scope of the appeal hearing shall be limited to:

1. The issues in dispute.
2. A review of compliance with procedural requirements for effecting an adverse action or an EEO Discrimination Charge Procedure.

L. Decision

1. The Judicial Council Hearing Officer shall decide the appeal on the basis of the evidence presented.
2. Except, as provided in Section I(L)(4) below, if management proves the charges against the appellant, the Judicial Council Hearing Officer shall sustain the adverse action or EEO Investigator's report.
3. If management fails to prove the charges, the Judicial Council Hearing Officer shall dismiss the adverse action with prejudice or may remand the EEO Discrimination Charge to the Investigator or EEO Officer.
4. In the case of an adverse action appeal, if management proves the charges, but the Judicial Council Hearing Officer finds that, because of the appellant's past record, the gravity of the offense, or the facts and circumstances of the case, the adverse action be modified, it may modify the adverse action accordingly. The reasons for such modification shall be stated, in sufficient detail, in the decision of the Judicial Council Hearing Officer. Any compensation or benefits due as a result of the modification shall be restored to the appellant.

5. If the Judicial Council Hearing Officer finds that the adverse action or EEO Discrimination Charge was substantially procedurally defective, because it is not in conformity with the applicable rules and regulations for either adverse actions or the EEO Discrimination Charge Procedure, it shall dismiss the adverse action or reverse the EEO matter, with or without prejudice, as it considers fair and equitable under the facts and circumstances of the case. The Judicial Council Hearing Officer shall be satisfied that procedural requirements have been met before proceeding with the hearing on-the merits.
6. The Judicial Council Hearing Officer shall issue a written decision within thirty (30) calendar days after the hearing is completed and provide copies thereof to the parties and the Judicial Council. If the adverse action or EEO Investigator's Report is sustained, the effective date of the action shall stand as issued by the Administrator of the Courts or his designee.
7. A written decision or ruling from the Judicial Council Hearing Officer shall be considered advisory and is subject to adoption, modification or rejection, in whole or in part, by the Judicial Council. Notwithstanding any other Judicial Council Hearing Officer regulation, or policy, written decisions and rulings mentioned herein shall be issued within thirty (30) calendar days from the conclusion of the deliberation in which a decision or ruling is made, which forms the basis of the final written decision or ruling.
8. In the case of an adverse action appeal, if the adverse action is revoked by the Judicial Council Hearing Officer, all compensation and other benefits which would have accrued to the appellant from the effective date of the decision, shall be restored to the appellant.

M. Compliance

Compliance with any order specified in the decision is required by law. The Administrator of the Courts to whom an order is directed, must report, within ten (10) working days after receipt of the decision, that he has carried the order into effect, or he has taken action to have the decision judicially reviewed.

N. Judicial Review

The decision of the Judicial Council Hearing Officer is advisory and subject to adoption, with or without modification, or rejection by the Judicial Council of Guam, and is subject to judicial review. In order to seek review of a final Judicial Council decision, the Appellant must file a petition for judicial review in the Superior Court within thirty calendar days of the Judicial Council's decision.

O. Amendment and Supplemental Policies

These procedures and guidelines maybe amended by the Judicial Council as the need arises, or may be amended or supplemented by other written appeal policies of the Judicial Council.

II. Grievance Appeals

A. Right to Appeal

An employee who is entitled to file a grievance under the Judiciary's Personnel Rules and Regulations, and who has complied with the grievance procedures therein may appeal the decision of the Administrator of the Courts.

B. Time Limit for Filing an Appeal

The appeal must be filed with the Judicial Council within five (5) working days of receipt of the decision by the Administrator of the Courts.

C. Judicial Council Hearing Officer

The adverse action appeal shall be heard, considered and decided by a Hearing Officer appointed by the Judicial Council.

D. A grievance appeal shall be allowed by the Judicial Council Hearing Officer only if predicated on:

1. A violation of the Personnel Rules and Regulations;
2. The procedural rights of the employee filing the complaint as outlined have been disregarded;
3. The decision of the supervisor, Grievance Committee, or Administrator of the Courts is unjust, inequitable or not in accord with the facts.

E. Appeal and Decision

The Judicial Council Hearing Officer shall review the official grievance file and all relevant written representations.

1. The Judicial Council Hearing Officer, in his or her discretion, may afford the parties an opportunity to appear personally and present oral arguments and representations.
2. The Judicial Council Hearing Officer shall normally be expected to issue a written decision within ten (10) working days after receipt of the grievance. Copies of the decision shall be provided to the parties and the Judicial Council.

3. **Judicial Review.** The decision of the Judicial Council Hearing Officer is advisory and subject to adoption, with or without modification, or rejection by the Judicial Council of Guam, and shall be subject to judicial review. In order to seek judicial review of a final Judicial Council decision, the Appellant must file a petition for judicial review in the Superior Court within thirty calendar days of the Judicial Council's decision.