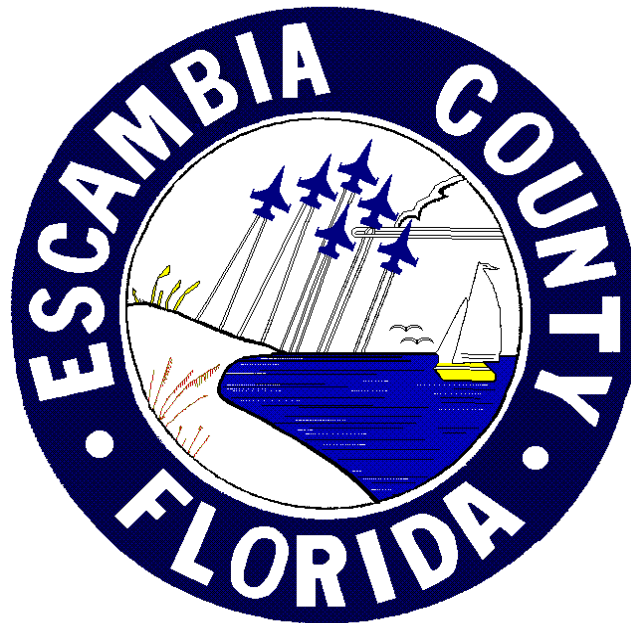


**ESCAMBIA COUNTY
MERIT SYSTEM PROTECTION BOARD
(MSPB)**



INTERIM RULES & PROCEDURES

Servicing Personnel Office

**HUMAN RESOURCES DEPARTMENT
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SECTION 1

ADOPTION OF RULES

1.1 Effective Date

These Merit System Protection Board Rules and Procedures shall become effective on the date adopted by the Merit System Protection Board subject to the approval of the Board of County Commissioners. Merit System Protection Board Rules and Procedures and amendments thereto shall remain in effect until amended by recommendation of the Merit System Protection Board and approval by the Board of County Commissioners and the participating Appointing Authorities.

1.2 Saving Clause

If any chapter, section, or other portion of these Rules and Procedures is found to be invalid by duly constituted authority, it shall not affect the validity of the balance of these Rules and Procedures.

1.3 Objectives and Scope

a. Authority

This Merit System Protection Board Ordinance is adopted pursuant to the statutory authority granted to the Board of County Commissioners and participating Appointing Authorities under Section 125.01 (1) (u), Florida Statutes, as amended.

b. Purpose

The Merit System Protection Board Rules and Procedures are adopted by the Board of County Commissioners and the participating Appointing Authorities to provide for establishing orderly procedures for carrying out the duties and responsibilities set forth in the Merit System Protection Board Ordinance. This Ordinance ensures that the employment status and retention of classified employees of Escambia County shall be governed on the basis of merit.

1.4 Positions Covered

These Rules and Procedures shall apply to all positions in the Classified Service. If mutually agreed to by the parties, those classified employees represented as a group by a certified collective bargaining agent shall be subject to the appeals provisions of the MSPB Ordinance or these Rules

and Procedures; however, classified employees may not use both MSPB procedures and collective bargaining agreement appeals procedures to resolve the same appeal.

1.5 Conflict Provision

In the event of a conflict between these Merit System Protection Board Rules and Procedures and any Human Resources policy of a participating Appointing Authority, the Merit System Protection Board Rules and Procedures shall prevail.

1.6 Interpretation

These Rules and Procedures are intended to provide merit system oversight and establish a procedure for appeals within the Merit System. Those personnel actions not specifically covered shall be governed by Human Resources policies, ordinances, resolutions, and rules of the participating Appointing Authorities.

1.7 Enforcement and Administration

The responsibility and authority for the enforcement and administration of these Rules and Procedures are vested in the Merit System Protection Board and those participating Appointing Authorities that have entered into an interlocal agreement to utilize the Merit System Protection Board.

1.8 Amendments to the Rules and Procedures

The Merit System Protection Board may recommend additions, deletions, or other amendments to these Rules and Procedures to the participating Appointing Authorities, in accordance with the terms of the County's ordinance. A majority of participating Appointing Authorities must independently approve the recommended addition, deletion, or amendment before it may take effect. Each participating Appointing Authority shall have an equal vote in determining additions, deletions, or amendments to these Rules and Procedures.

1.9 Policy Statement - Equal Employment Opportunity

It is the practice of the Merit System Protection Board to hire, train and promote employees without discrimination because of race, religion, color, political affiliation, physical or mental disability, national origin, sex or age, except where physical or mental ability, sex, disability or age is a bona fide occupational qualification. This practice applies to all phases of human resources administration, including but not limited to, recruitment, recruitment advertising, testing, hiring, training, promotion, transfer, leave

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practices, rates of pay, and employee benefit programs. All officials and employees of the MSPB and participating Appointing Authorities, as well as employment agencies, labor organizations and advertising firms, who conduct business with Escambia County, will be informed of this policy.

SECTION 2

DEFINITION OF TERMS

In these Rules, words used in the masculine gender include the feminine and neuter genders, and words used in the neuter gender include the masculine and feminine genders.

1. **Appointing Authority** - any officer, commission, board or body having the power of appointment, employment or removal from positions in any office, department, commission, board or institution; or any person or group of persons having the power by virtue of the state Constitution, state statute, or any other lawfully delegated authority to make appointments to positions of employment in Escambia County, and who has entered into an interlocal agreement with the Board of County Commissioners to utilize the Merit System Protection Board.
2. **Board of County Commissioners (BCC)** - the governing authority of Escambia County, Florida. The BCC is also a participating Appointing Authority.
3. **Classified Service** - all offices and positions of trust or employment in the service of Escambia County, except those placed in the unclassified service by the Board of County Commissioners. Employees in the service of constitutionally elected officials of Escambia County are not included in the Classified Service unless such elected official has made such designation.
4. **Demotion - Involuntary** - an involuntary change of employment from a position of one class to a position of another class leading to a reduction in grade and/or pay. It may also be a reduction in pay within an assigned pay grade.
5. **Demotion - Voluntary Grade Reduction** - a voluntary change of employment to a position in a class having a lower grade and pay than the position previously held. This action is not appealable to the Merit System Protection Board.
6. **Department Director** - an individual who is appointed to direct a department within a participating Appointing Authority.
7. **Elected Official** - an individual who is elected to direct an independent agency.
8. **Employee - Regular Part-time** - an employee appointed to a regular position in the classified service in accordance with the Rules and Procedures whose regularly established work schedule is less than forty (40) hours, but at least twenty (20) hours per week, and who has satisfactorily completed the initial probationary period in that position.
9. **Employee - Probationary** - any employee appointed to a position in the Classified Service who has not completed the initial probationary period for regular appointment.

10. **Employee – Regular Full-time** - an employee who has been appointed to a regular position in the Classified Service in accordance with the Rules and Procedures, and has satisfactorily completed the initial probationary period in that position.
11. **Executive Director** - the Executive Director of the Merit System Protection Board.
12. **Family Member** - An individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.
13. **Human Resources Director** - an official who is responsible for the day-to-day administration of the human resources operations of the participating Appointing Authorities.
14. **Involuntary Reassignment** - directed re-assignment of an employee from one position to another with no cut in pay. This action is not appealable to the Merit System Protection Board.
15. **Layoff** - Any reduction in force defined by the Rules and Procedures of the participating Appointing Authority.
16. **Merit System Protection Board (MSPB)** - a board designed to review and adjudicate appeals of involuntary demotions, suspensions without pay, terminations, reductions in force involving reduction in pay or termination, and violations of Merit System principles.
17. **Personnel File** - The official employment record of each employee, including but not limited to, the employment application, personnel action forms, documentation of formal disciplinary action, and performance appraisals maintained with the Human Resources Department for each participating Appointing Authority.
18. **Reduction in Force** - the reduction in pay or termination of an employee from his or her position which has been made necessary by lack of work, funds, or for other reasons such as contracting out the work, but not related to fault, delinquency, or misconduct on the part of the employee.
19. **Reduction in Rank** - change in job title or perceived status in the organization. This action is not appealable to the Merit System Protection Board.
20. **Santa Rosa Island Authority** - a participating Appointing Authority.
21. **Servicing Personnel Office** - The BCC Human Resources Department providing general personnel support services, e.g., recruitment, compensation, classification, personnel records and files, etc., to the MSPB.
22. **Sheriff** - a participating Appointing Authority.
23. **Supervisor of Elections** - a participating Appointing Authority.
24. **Transfer** - The movement of an employee from one position to another.
25. **Unclassified Service** - those positions that are not in the Classified Service and are appointed by participating Appointing Authorities. These are at-will positions with no right to appeal to the MSPB.

SECTION 3

APPEALS

3.1 Purpose of Appeals Procedures

The most effective accomplishment of the work of Escambia County requires prompt consideration and equitable adjudication of employee appeals. It is the desire of the participating Appointing Authorities to resolve grievances informally. Both supervisors and employees are expected to make every effort to resolve problems as they arise. However, it is recognized that there will be appeals, which can be resolved only after a formal appeal and review.

3.2 Merit System Principles

- a. Provide a systematic and orderly method for resolving appeals between employees and supervisory or management personnel.
- b. Ensure that all employees are afforded fair, equitable and expeditious review of their appeals without fear, coercion or discrimination.
- c. Ensure that all employees shall be free from retaliation for using the appeal procedure. The burden of proof lies with the employee to show retaliation.
- d. Ensure an employee's job status shall not be threatened or changed because of the initiation of the appeal process.
- e. Set forth an objective procedure governing presentation of charges, hearing rights and appeals.

3.3 Right of Appeal

- a. A classified employee may appeal, in accordance with these Merit System Rules and Procedures, any official action that involves involuntary demotion, suspension without pay, reduction in force involving reduction in pay or termination, termination, or violation of the Merit System principles, with the Merit System Protection Board serving as final administrative authority regarding these actions.
- b. If an employee believes that employment discrimination or sexual harassment occurred against him, he must address these issues through the participating Appointing Authority's Policies and Procedures.

3.4 Notice of Right of Appeal

Any written notification to a regular employee in the Classified Service of involuntary demotion, suspension without pay, reduction in force involving reduction in pay or termination, or termination shall advise the employee of the right to appeal said action. The notification will be provided by the participating Appointing Authority and will affirm the right to appeal the action to the Merit System Protection Board, pursuant to these Rules and Procedures.

3.5 Appeals Procedures

- a. As a result of a disciplinary action, an employee who has been suspended without pay, involuntarily demoted, suffered a reduction in force involving reduction in pay or termination, or terminated by a participating Appointing Authority, and who has been duly appointed to such position in accordance with these Rules and the Policies and Procedures of the Appointing Authorities, and who has attained status by serving the required probationary period, shall have the right to appeal such disciplinary action to the Merit System Protection Board. To appeal, the employee shall, within ten (10) calendar days after the receipt of the final notice of disciplinary action, file his or her appeal in writing to the MSPB. It shall be sufficient for the employee to deny the charges or reasons given for the action taken or the severity of such action, and request a hearing before the MSPB. The employee or his or her representative shall sign the appeal and shall state the address to which the copy of the notice of hearing and other pleadings or papers filed in this action should be mailed. Copy of such appeal shall forthwith be served by the employee or his or her representative upon the appointing authority or its representative who initiated the action against the employee, and the servicing Human Resources Department by hand delivery or certified mail to its address of record.
- b. The MSPB desires to resolve appeals coming before the MSPB pursuant to its Rules. The MSPB encourages voluntary mediation when both parties are willing to use mediation as an additional means to resolve their dispute. In those situations in which a matter is properly brought before the MSPB for determination, the MSPB's attorney shall provide a method for alternate dispute resolution as determined by the MSPB.
- c. Resolutions reached through voluntary mediation shall be in writing and signed by the employee, the participating Appointing Authority's representative and the party's legal counsel if legal counsel is participating. Resolutions are subject to ratification by the MSPB.

Written agreements ratified by the MSPB are public documents and shall become a part of the employee's personnel file.

- d. If a resolution is not reached through mediation, the appeal shall proceed to a hearing before the MSPB in accordance with the MSPB Rules and Procedures. At the hearing, the participating Appointing Authority taking the adverse action against the employee shall have the burden of proof to establish the charges by the preponderance of the evidence.

3.6 Appeals of Merit System Violations

- a. Any classified employee who has been duly appointed to such position in accordance with these Rules and the Policies and Procedures of the participating Appointing Authorities, and who has attained status by serving the required probationary period, shall have the right to allege a violation of the Merit System principles to the Merit System Protection Board as defined in Section 4.3 of these Rules. The employee shall file a written allegation in the office of the MSPB within fifteen (15) working days of the event or of first becoming knowledgeable of the event. A copy shall be served upon the Appointing Authority or its authorized representative. The allegation shall state, in separate counts, each specific violation of the Merit System principles alleged including the date, time, and place of such violation and shall also state how the violation affects the employee. The MSPB attorney shall review the complaint and determine which counts properly allege violations of the Merit System principles. The MSPB shall set a hearing upon those counts in the complaint properly alleged and shall notify the employee and the respective Appointing Authority of the date and time of such hearing. The burden of proof lies with the employee to show a violation of the Merit System Principles at such hearing by a preponderance of the evidence.
- b. In cases where the MSPB has determined that there has been a violation of the merit system principles, the Board may recommend corrective action and/or disciplinary action to the respective Appointing Authority for disposition.

3.7 Amendments to Charges and Specifications, New Charges, etc.

- a. In disciplinary actions in which an appeal has been filed, no amendments to the charges and specifications filed or the action taken or recommended against an employee shall be made more than ten (10) calendar days after the effective date of the suspension or dismissal, unless the Merit System Protection Board, upon a showing of good cause, permits the filing of the amendment or unless

the employee against whom the action was taken so stipulates in writing. Such amendments, when timely made, shall be filed in the office of the MSPB and a copy shall be served upon the employee by hand delivery or certified mail to his or her address of record. Any amendment not filed in a timely manner shall be deemed denied, and it shall not be necessary for the employee to file any answer or other pleading to such amended charges and specifications. However, the participating Appointing Authority, upon due notice in writing to the employee and the MSPB, may elect to rescind the action taken, reinstate the employee, pay all back salary lost by the employee as a result of the original action taken, and initiate a new or different action based upon the new, amended, or additional charges and specifications against the employee.

- b. If an appeal has not been filed by an employee who has been suspended or dismissed, any amendment to charges and specifications of the action taken or recommended against the employee shall be filed in the MSPB's office. The amendments shall be served upon the employee in the same manner required for service of the original notice of disciplinary action. The employee shall have ten (10) calendar days after the receipt of the amendments to appeal the amendments.

3.8 Date of Hearing, Notice, and Subpoenas

- a. When the action of participating Appointing Authority is appealed by the employee against whom it is taken, the MSPB shall set a date, time, and place for the hearing, normally within thirty (30) days.
- b. Notice of the hearing may be served upon the participating Appointing Authority by any means deemed necessary. Notice to the employee shall be by hand delivery or certified mail to the address of record in the office of the MSPB.
- c. Subpoenas for hearings before the MSPB shall be served at least seven (7) days, including Saturday and Sunday, prior to the date of the hearing unless good cause is shown and granted by the MSPB attorney.

3.9 Nature of Hearing, Procedure, Evidence, etc.

- a. The MSPB hearings will be conducted as informally as is compatible with justice. Either the participating Appointing Authority or the employee, whoever has the burden of proof, will present their case first, and if it so desired, may make an opening statement before the presentation of the case. After the participating Appointing Authority

or the employee has completed their presentation, the other party will present their case, which may be prefaced by an opening statement. The members of the MSPB may direct questions to any party or witness at any time during the proceedings. Each side will be given the opportunity at the appropriate time to cross-examine the witnesses. Both sides will be given the opportunity to make closing statements.

- b. The MSPB will not be bound by strict rules of evidence. Testimony and evidence will be restricted to the charges with specifications or reasons given for the action taken and any evidence that is unconnected with the charges or reasons will not be allowed. Either party may invoke the rule of excluding witnesses from the hearing room until such time as they are called upon to testify.
- c. A file comprising the employee's personnel record within the classified service and all papers, correspondence, and documents relative to the appeal will be introduced into evidence as MSPB Exhibit No. 1. Both sides will be given the opportunity to object to the consideration by the MSPB of any portion thereof.
- d. The employee appealing the action of a participating Appointing Authority may be called as an adverse witness by the participating Appointing Authority, and refusal by the employee to answer any relevant question propounded by the participating Appointing Authority or any member of the MSPB may be considered as evidence in support of the charges and specifications or the reasons given for the action taken against the employee.

3.10 Certificate of Service

When, under these Rules, service by delivery or mail is authorized, it shall be prima facie evidence of such service if the party making such service shall certify the manner of service and the date of service upon the original to be filed in the MSPB's office.

3.11 Computation of Time

When a period of time measured in days, weeks, months, years, or other measurements of time except hours is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted; and, if the last day falls on Saturday or Sunday, the party having such privilege or duty shall have through the following Monday to exercise the privilege or to discharge the duty. When the last day prescribed for such action falls on a public and legal holiday as set forth in County policy, the party having the privilege or duty shall

have through the next business day to exercise the privilege or to discharge the duty.