

I MINA'TRENTA NA LIHESLATURAN GUÅHAN  
2010 (SECOND) Regular Session

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MW

Bill No. 322-30 (cov)

Introduced by:

Adolpho B. Palacios, Sr. 

**AN ACT TO CONSIDER AND ACT ON THE AMENDED "RULES OF  
PROCEDURE FOR ADVERSE ACTION APPEALS" AS SUBMITTED BY  
THE CIVIL SERVICE COMMISSION IN REFERENCE TO DOCUMENT  
NO. 30GL-10-1401/CSC 2009-102.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **SECTION 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3 finds that the Civil Service Commission having complied with the Title 4 Guam  
4 Code Annotated, Chapter 4, §4409 and Title 5 Guam Code Annotated §9301 has  
5 now submitted the Amended Rules of Procedure for Adverse Action Appeals to *I*  
6 *Liheslaturan Guåhan* for consideration and actions in accordance with Title 5  
7 Guam Code Annotated, Chapter 9, §9303.

8 With the submission of the amended Rules of Procedure for Adverse  
9 Action Appeals, it is therefore the intent of the *I Liheslaturan Guåhan* to consider  
10 and to act on the proposed amended Rules of Procedure for Adverse Action  
11 Appeals.

12 **SECTION 2.** The proposed amended Rules of Procedures for Adverse  
13 Action Appeals which has been submitted to *I Liheslaturan Guåhan* on  
14 November 30, 2009, Doc. No. 30GL-10-1401, by the Executive Director of the

1 Civil Service Commission of Guam and attached as APPENDIX I to this Act are  
2 hereby approved/disapproved.

**CIVIL SERVICE COMMISSION  
GOVERNMENT OF GUAM  
TERRITORY OF GUAM**

**PROPOSED AMENDED**

**RULES OF PROCEDURE FOR ADVERSE ACTION APPEALS**

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**RULE 1        JURISDICTION**

The Civil Service Commission (hereafter "the CSC") is empowered to create these Rules pursuant to 4 G.C.A. §§ (4403(b)), 4406, and 4409.

These rules are effective INSERT NEW DATE.

**RULE 2        PURPOSE**

The purpose of these Rules is to create a fair process with which to adjudicate Adverse Action Appeals (hereafter referred to as an "action").

**RULE 2.1     UNREPRESENTED PARTY**

The CSC shall adjust the application of these Rules for any party who is not represented by a lawyer or a lay representative when it is clear there is a genuine misunderstanding of a rule(s) which, if applied, would operate unfairly.

**RULE 3        CITATION**

These Rules may be cited as CSC AA R. #, and then the number (ex. "CSC AA R. 3"); and may also be referred to as the AA Rules of the Civil Service Commission.

**RULE 4        CITATION TO LAWS AS RULES**

Many of these Rules paraphrase existing laws. For example, Rule 5.2 states that an appeal from an adverse action must be taken within twenty (20) days from the effective date of the action. 4 G.C.A. § 4406 establishes the twenty (20) day period by

law.

**RULE 4.1 CITATION TO RELATED LAW**

The reason certain laws are paraphrased as Rules is that Employees against whom adverse actions are taken are generally given a copy of these Rules by Management or have these Rules available. The CSC believes it important to inform Employees of laws critical to their appeal by including some of these laws in these Rules. When a Rule is related to a law, a citation to the law shall be included.

**RULE 5 RIGHT TO APPEAL**

A person may appeal an adverse action to the CSC, if the person meets all of the following criteria:

- A. Is a permanent, classified Employee, and
- B. Has successfully completed his (hereafter his also means her) probationary period, and
- C. Is subjected to an Adverse Action, and
- D. Is entitled under his department's or agency's Personnel Rules to appeal to the CSC.

See: 4 G.C.A. § 4403(b) and 4406.

**RULE 5.1 ADVERSE ACTION**

An adverse action is a termination from employment, or a suspension from employment or a demotion in employment.

See: 4 G.C.A. § 4403(b)

**RULE 5.2 TIME FOR FILING APPEAL**

An appeal from an adverse action must be filed in writing with the CSC, during normal working hours, within twenty (20) days of the employee's receipt of the Final Notice of Adverse Action from Management.

If the Employee willfully evades service of the Final Notice of Adverse Action, the twenty (20) day period referred to above begins to run on the day the Employee first willfully evades service.

The term "service" is defined in Rule 6.

"Filed" means given to the CSC and received by the CSC. A document may be filed by facsimile, registered mail or by personal delivery. If a document is filed by facsimile, the facsimile document with the original signature(s) must be received by the CSC by the next business day.

See: 4 G.C.A. § 4406.

#### **5.2.1 FILING PAST THE TWENTY (20) DAY PERIOD**

The CSC may not excuse the filing of a Notice of Appeal beyond the twenty (20) day period if the Employee proves a compelling reason for his failure to timely file.

*See: Guam Dept. of Ed. v. Narcisso and CSC, Superior Court of Guam Special Proceedings Case No. SP0245-08 (Sept. 2009)*

#### **5.2.2 COMPUTATION OF TIME**

Whenever these Rules or orders of the CSC provide for a time period, calendar days shall be used. Weekends and government of Guam holidays are to be included in the computation, unless otherwise specified. For purposes of filing a Notice of Appeal, if the last day falls on a weekend or holiday, the document shall be accepted via facsimile to the Commission on or by the twentieth (20<sup>th</sup>) day.

The first day of a time period commences with the day after a party receives a document or order which contains a time period.

**RULE 5.3 CONTENTS OF APPEAL**

The Notice of Appeal shall be in the following format:

**CIVIL SERVICE COMMISSION  
GOVERNMENT OF GUAM**

**(Name of Employee)** \_\_\_\_\_

**ADVERSE ACTION #** \_\_\_\_\_

**EMPLOYEE**

vs.

**(Name of Department/Agency)** \_\_\_\_\_

**NOTICE OF APPEAL**

**MANAGEMENT**

**RULE 5.3.1 CONTENTS**

The Notice of Appeal shall be a brief, plain statement, either typed or hand-written, stating why the Employee believes the adverse action should not have been taken against him. Employee or designated person with power of attorney must sign the notice of appeal.

The parties to an adverse action appeal are to be identified as the **EMPLOYEE** and as **MANAGEMENT**. The Employee and Management to an action are collectively referred to as the "parties".

**RULE 5.4 RIGHTS OF EMPLOYEE WHO FILES AN APPEAL**

The Employee shall:

- a. have a reasonable time which may not exceed twenty (20) work days to prepare his case, if on duty;
- b. have the right to be represented by an attorney, another person who

is not an attorney, or represent himself; and

- c. not suffer from Management any restraint, coercion, discrimination or reprisal for filing an appeal of an adverse action, either during the appeal process or after it has been adjudicated;
- d. read, understand, and indicate such by signing the "Disclosure and Release of Information" form provided by the CSC upon filing of his appeal.

## **RULE 6     SERVICE OF DOCUMENTS**

All documents filed with the CSC, except for the Final Notice of Adverse Action and the Notice of Appeal, shall be served by the parties on each other or to the other's representative or lawyer. The exception to this is when the CSC Board Chairman requests the prevailing party to provide a draft Decision and Judgment. Service means giving a copy of a document to a party, a party's representative or lawyer on record with the Commission.

### **RULE 6.1    HOW SERVICE IS PERFORMED**

Service may be made by the parties and Commission as follows:

- a. Personal delivery, with a copy of the document acknowledged in writing to have been received; or
- b. By facsimile to a representative's or attorney's place of business with a confirmed receipt; or
- c. Regular mail with supporting affidavit as to the date of mailing; or certified mail with a signed return receipt; or
- d. By any method of service established by the Superior Court of Guam's Rules of Civil Procedure.

## **RULE 7     CONFERENCES**

### **RULE 7.1    STATUS CALL CONFERENCE**

Upon receipt of a Notice of Appeal, the CSC shall immediately set the matter for a Status Call Conference. The Status Call Conference shall be conducted by the Executive Director or his designee.

At the status call, the parties shall ensure that an Entry of Appearance is provided. At the Status Call conference, the parties or their representatives shall be prepared to discuss:

- a. The legal issues of the action;
- b. Pre-hearing motions;
- c. Witnesses and documentary evidence;
- d. The possibility of settlement; and
- e. The date of the hearing on the merits.

**RULE 7.2    PRE-HEARING CONFERENCE**

Four (4) weeks or at a designated time set by the Executive Director or his designee, before the hearing on the merits, the parties shall meet with the Executive Director or his designee at a pre-hearing conference to finalize witness lists and exhibits, and to discuss stipulations or other matters that may expedite the hearing on the merits.

**RULE 8    DISCOVERY**

The Executive Director or his designee shall control the nature and scope of discovery between the parties, including, but not limited to, the following:

- A. Issuing orders compelling discovery;
- B. Issuing orders limiting the scope and nature of discovery;

- C. Issuing orders establishing dates for completion of discovery; and
- D. Issuing protective orders regarding discovery.

**RULE 8.1 REVIEW OF ORDERS**

Any order regarding discovery that is issued by the Executive Director or his designee is subject to review by the Civil Service Board of Commissioners, if a party requests such a review by filing an appropriate motion with the CSC within two (2) days (holidays and weekends excluded) of receipt of the order.

See: 4 G.C.A. § 4406

**RULE 9 PRE-HEARING MOTIONS AND BURDEN OF PROOF**

The moving party bears the burden of proof on motions by a preponderance of the evidence. The parties shall file any motion regarding procedural issues or questions of law prior to the hearing on the merits.

All pre-hearing motions must be in writing and must be filed and then served on all other parties at the time designated by the Executive Director or his designee. No late filings shall be accepted.

**RULE 9.1 ARGUMENTS ON MOTIONS**

The CSC may or may not hear oral arguments on written motions. The CSC may rule on a motion without hearing arguments.

**RULE 9.1.1 ISSUES RAISED BY THE COMMISSION**

Any Commissioner may, at any time, raise issues not raised by motion of the parties. Upon a majority vote of the CSC, such issues must be addressed by the parties and decided

by the CSC.

**RULE 9.2    MOTION FILING SCHEDULE**

Unless otherwise predetermined by an order established at the Status Call by the Executive Director or his designee, the moving party must file and serve a motion four (4) weeks before the hearing on the motion.

A motion may be supported by affidavits, but no live testimony shall be taken at a motion hearing unless the Commission approves a request beforehand for live testimony to assist in a determination of the motion.

Unless otherwise predetermined by an Order established at the Status Call by the Executive Director or his designee, the opposition brief shall be filed seven (7) days after the motion is filed or three (3) weeks before the hearing on the motion.

No reply briefs shall be filed or accepted by the Commission unless with the written approval of the Executive Director or his designee.

**RULE 9.3    FAILURE TO FILE**

Failure of either party to file their motion on time will result in the matter proceeding to a hearing on the merits.

**RULE 9.4    MOTIONS TO POSTPONE HEARINGS**

A motion to continue a date of hearing shall set forth the factual bases for the motion.

Continuances based on illness, emergencies, or stipulation of the parties, may be granted without hearing by the Executive Director or his designee, if said decision may be

made seven (7) days before the hearing sought to be postponed.

**RULE 9.4.1 CONTINUANCES OTHER THAN IN RULE 9.4**

The Commission's Executive Director or his designee, is empowered to grant continuances of the date of hearing, so long as the continuance is applied for more than seven (7) days before the date sought to be continued.

**RULE 9.4.2 STAYS**

The Commission's Executive Director or his designee is empowered to grant "stays" of actions when a motion to stay proceedings is brought by an Employee on the basis that the Employee has been or may be charged with a criminal offense which arises from the same factual transaction which is the basis of the adverse action.

**RULE 9.5 MOTIONS TO DISMISS**

Motions to dismiss an adverse action appeal may be made on the bases of lack of jurisdiction, untimely filing of the appeal, untimely filing of the adverse action, procedural defects in the proceeding or other significant reasons. The legal and factual bases of such motions must be sufficiently set forth in the motion and supporting affidavits.

A motion to dismiss may also be made upon stipulation of the parties. A stipulated motion to dismiss, however, must be approved by the CSC.

An Employee may dismiss his appeal with prejudice by filing a written motion to dismiss which must be signed by the Employee and his representative or attorney.

The Parties may settle an action, but any settlement must be read into the record and approved by the CSC before the action is dismissed with prejudice.

See: *Limtiaco v. Guam Fire Dept.*, 2007 Guam 7.

**RULE 9.6 MOTION TO ALLOW HEARING IN THE ABSENCE OF THE EMPLOYEE**

The CSC may dismiss an appeal if the Employee is not present for the hearing on the merits or motion hearing, unless the Employee has a reasonable excuse.

A motion to permit an Employee to be absent from the hearing on the merits or motion hearing shall set forth the factual basis for the motion. The CSC may require affidavits in support of the motion.

**RULE 9.7 PRESENCE OF MANAGEMENT REQUIRED**

The appointing authority or his deputy shall be present at all adverse action hearings. The Commission may excuse the presence of the appointing authority or deputy for reasonable cause.

The Commission may dismiss the adverse action for the failure of the appointing authority or his deputy to appear.

**MANAGEMENT** is defined to be the appointing authority or his deputy with settlement authority. An appointing authority who wishes to have his deputy appear on his behalf shall file such authorization at a Status Call or prior to a hearing, which also shall indicate that the deputy has settlement authority.

**RULE 10 SUBMISSION OF DOCUMENTS FOR INTRODUCTION INTO EVIDENCE**

**RULE 10.1 TIME FOR SUBMISSION OF DOCUMENTS**

No later than twenty-eight (28) days before a hearing on the merits or a motion

hearing, or at a time designated by the Executive Director or his designee, each party shall submit to the CSC all documents it wishes the CSC to consider.

With the exception of the notices of proposed and final adverse action, all documents submitted by the parties to the CSC must be edited beforehand to conceal Social Security Numbers, residential addresses, home or residential or private cellular telephone numbers, and personal mailing addresses. Failure to comply with this provision will result in the documents being returned and not considered by the CSC for purposes of the scheduled hearing.

**RULE 10.1.1 REQUIRED DOCUMENTS FROM MANAGEMENT**

Management shall submit to the CSC the Notice of Proposed Adverse Action and the Notice of Final Adverse Action.

**RULE 10.1.2 REQUIRED DOCUMENTS FROM EMPLOYEE**

Employee shall submit to the CSC the Notice of Appeal of Adverse Action.

**RULE 10.2 DOCUMENTS TO BE BOUND**

The documents shall be two-hole punched on the top center and bound with two-pronged fasteners and clasps. Documents may be indexed and tabbed.

**RULE 10.2.1 IDENTIFICATION OF MANAGEMENT'S DOCUMENTS**

Management shall identify its documents using consecutive numbers preceded by "M" (M1, M2, M3, etc.) for every page inclusive of exhibits.

**RULE 10.2.2 IDENTIFICATION OF EMPLOYEE'S DOCUMENTS**

Employee shall identify his documents using consecutive numbers preceded by "E"

(E1, E2, E3, etc.) for every page inclusive of exhibits.

**RULE 10.2.3 NUMBER OF COPIES**

Each party shall submit eleven (11) copies of their bound documents to the CSC.

**RULE 10.3 OBJECTION TO INCLUSION OF DOCUMENTS**

The opposing party may object to the inclusion of a document for a hearing on the merits or motion hearing prior to it being sent to the CSC Commissioners by filing a written objection to that document, along with the reason and other documents supporting the exclusion, within one (1) day after receipt by the CSC.

The objected document will be excluded from the packet and its submission will be decided during the hearing on the merits or motion hearing if such document is introduced or referred to.

**RULE 11 HEARING ON THE MERITS --- BURDEN OF PROOF**

The burden of proof on the merits is on Management to prove its allegations by clear and convincing evidence. If, however, Management's allegations would constitute criminal charges, then Management bears the burden of proof to prove the allegations by substantial evidence.

The Commission may dismiss the adverse action in favor of Employee for the failure of Management to comply with a Commission's order regarding discovery.

See: 4 G.C.A. §§ 4407(a) and 4407(c)

**RULE 11.1 PLACE AND TIME OF HEARING**

The Commission shall set the place, date and time of hearing as expeditiously as possible.

**RULE 11.2 CONDUCT OF HEARING**

The hearing is open to the public.

**RULE 11.2.1 MANNER OF HEARING**

The hearing will be conducted so as to bring out pertinent facts, including the production of certain records.

**RULE 11.2.2 ADMISSIBILITY OF EVIDENCE**

Decisions on the admissibility of testimony or other evidence are made by the presiding officer of the CSC after consulting with the Administrative Counsel. When a Commissioner objects to a decision of the presiding officer, the objection shall be sustained by not less than four (4) concurring votes.

The CSC may designate the Administrative Counsel as Hearing Counsel pursuant to Rule 14 et seq. herein.

**RULE 11.2.3 OATH**

Testimony is under oath or affirmation.

**RULE 11.2.4 RIGHT TO CALL WITNESSES**

Each party shall have the right to call, examine, or cross-examine witnesses, and introduce exhibits.

The CSC may subpoena to testify any person upon a majority vote.

Any Commissioner may direct relevant questions to a witness after examination of the witness has been completed by both parties; except that questions may be asked during examination by a Party to clarify a response by a witness.

**RULE 11.2.5            RULES OF EVIDENCE**

The Rules of Evidence, Title 6 G.C.A., shall not apply. The only grounds for excluding any proffered evidence are that the evidence is irrelevant or unduly repetitious or is filed untimely.

**RULE 11.2.6            ORDER OF PRESENTATION**

The order of presentation at the hearing shall be as follows:

- a. Opening statement of Management;
- b. Opening statement of Employee;
- c. Presentation by Management of evidence in support of the charges;
- d. Presentation by the Employee of such evidence in defense or rebuttal;
- e. Closing statement of Management;
- f. Closing statement of Employee.

**RULE 11.3    WITNESSES**

Both parties are entitled to produce witnesses. The party who calls for the witness is responsible for whatever witness fee the witness is entitled to.

Except as otherwise provided in Rule 9.7, the department or agency head or his deputy shall be in attendance without subpoena.

Except as otherwise provided in Rule 9.6, the Employee shall be in attendance without subpoena.

**RULE 11.3.1            ADDITIONAL WITNESSES AND DOCUMENTS**

The CSC may call additional witnesses, as it may deem necessary, and require the production of documents.

**RULE 11.3.2            SUBPOENAS**

The Chairperson of the Civil Service Commission or the Executive Director, upon their own initiative, or upon the request of any member of the CSC Board, or upon the request of any party before the CSC, may summons in writing any person to attend a meeting of the CSC as a witness and, in a proper case, to bring with him any book, record, computer print-out, paper or thing which may be deemed material evidence in the case.

Subpoenas shall be served by the party who requested the issuance of the subpoena as per Rule 6 and Rule 6.1.

**RULE 11.3.2.1        SUBPOENA FEES**

The fees for such attendance shall be the same as the fees of the witnesses before the Superior Court, except that if the witness is a government employee no witness fee shall be given. Upon motion, the fee may be waived by the CSC.

The subpoena shall issue in the name of the Civil Service Commission, and shall be directed to the person and served in the same manner as subpoenas to appear and testify before the Superior Court of Guam. The party requesting the subpoena is responsible for whatever witness fee the witness may be entitled to.

**RULE 11.3.2.2      ENFORCEMENT OF SUBPOENA**

If any person summoned to testify shall refuse or neglect to obey said subpoena, upon petition, the Superior Court of Guam may compel the attendance of such person before the CSC, 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.

See: 4 G.C.A. § 4404.

**RULE 11.3.3      DUTY STATUS**

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 a time he is not normally scheduled to work. The CSC shall furnish the head of the department or agency in which the witness is employed, if so requested in writing, a certification showing the time devoted to the hearing. "Employee" in this section does not include the parties to the appeal or their representatives.

**RULE 11.3.4      TREATMENT OF WITNESSES**

The CSC shall ensure that all witnesses are treated with courtesy and respect while giving testimony at the hearing.

The Government of Guam shall assure witnesses freedom from restraint, interference, coercion, discrimination, or reprisal in presenting testimony.

See: 9 G.C.A. § 5545.

**RULE 11.4      RECORD OF HEARING**

All hearings shall be audio tape or digitally recorded by the CSC and maintained thereafter in accordance with the CSC's records management policy. The CSC's recordings and the exhibits admitted during the hearing, together with all pleading and documents filed by the parties, shall constitute the official record of a hearing.

**RULE 11.4.1      OTHER RECORDINGS**

Filming, still photography, video taping or audio recording of a hearing or other proceeding before the CSC by any person is permitted by the CSC only upon written motion or request. The CSC may delegate such approval to the Executive Director.

**RULE 11.4.2      COPIES OF RECORDINGS**

Copies of the audio tape or digital recording of hearings will be made available to any person at cost.

**RULE 11.5.      OPENING AND CLOSING**

Each party shall be limited to an opening statement and closing argument not to exceed 15 minutes in length. The CSC presiding officer may grant additional time not to exceed 5 minutes upon the request of the party.

**RULE 11.5.1      LIMITATION IN THE SCOPE OF HEARINGS ON THE MERITS**

The scope of the hearing on the merits shall be limited to:

- a. the issue in dispute; and
- b. a review of compliance with procedural requirements for effecting an adverse action;

**RULE 11.6 DELIBERATIONS**

The deliberation of the CSC regarding the merits of actions and motions shall be made in public. (See *GMHA v. CSC v. Manzon*; Superior Court of Guam Case No. SP0052-00 (DATE))

**RULE 11.6.1 ACCESS TO EVIDENCE**

The Commissioners shall have available to them during their deliberation all items received into evidence in the action.

**RULE 11.7 DECISION**

The CSC shall decide the appeal on the basis of the evidence presented.

See: 4 G.C.A. 4406

**RULE 11.7.1 SUSTAIN ADVERSE ACTION**

Except as provided in Rule 11.7.3 below, if Management proves the charges against the Employee, the CSC shall sustain the adverse action.

**RULE 11.7.2 REVOKE ADVERSE ACTION**

If Management fails to prove the charges, the CSC shall revoke the adverse action.

**RULE 11.7.3 MODIFICATION OF ADVERSE ACTION**

If Management proves the charges, but the CSC finds, that because of the Employee's past record or the gravity of the offense, or the facts and circumstances of the case, that the adverse action should be modified, it may modify the adverse action accordingly. The reasons for such modification shall be stated in the decision of the CSC.

Any compensation or benefits due as a result of the modification shall be restored to the Employee. The CSC may not modify an adverse action to the Employee's detriment.

In the event the CSC modifies the adverse action taken by Management, the CSC shall make a separate determination as to whether the Employee has prevailed for purposes of awarding attorney fees to the Employee.

See: 4 G.C.A. § 4406.

**RULE 11.7.4            PROCEDURAL DEFECT**

If the CSC finds that the adverse action was procedurally defective because it violated personnel rules or law, it may void or revoke the adverse action as it considers fair and equitable under the facts and circumstances of the action.

See: 4 G.C.A. §§ 4403(d) and 4406

**RULE 11.7.5            JUDGMENT**

A judgment is the final administrative adjudication of the Commission on an action. a case presented before the Commission. A judgment shall be in writing and the caption shall state it is a "judgment".

The vote taken by the Commission to decide an adverse action does not constitute a judgment.

An Order of the Commission is not a judgment, but of a decision made during a case presented before it.

A judgment is entered, that is, it becomes final and effective, on the date a majority of the Commissioners sign the judgment at a Commission meeting attended by a sufficient number of Commissioners to constitute a quorum. Notice that a proposed judgment is

before the Commission for signing shall be served on the parties to the action and shall be publicly advertised as required by the Open Government Law of Guam.

A quorum of the Commission shall be four (4) members.

The judgment shall recite the numerical vote of the Commission in deciding an adverse action. The signing of the judgment by the Commissioners does not reflect how they actually voted in deciding the adverse action. The signing of the judgment simply affirms that the judgment accurately reflects the decision that was made.

See: 4 G.C.A. § 4402.

#### **RULE 11.7.6 COMPLIANCE WITH JUDGMENT**

Within thirty (30) days of the entry of any judgment that requires a department or agency to take affirmative action(s), the director or agency head shall report to the Commission what steps he or she has taken to implement the terms of the judgment.

#### **RULE 11.7.7 RECONSIDERATION OR AMENDMENT (Time to seek Judicial Review)**

A party may move the Commission to reconsider or amend its judgment by filing a motion with the Commission within ten (10) days of entry of the judgment.

The filing of a motion to reconsider or amend does not affect the time limit imposed by law to file a Petition for Judicial Review with the Superior Court of Guam.

If a motion to amend or reconsider is not decided within thirty (30) days of the entry of a judgment, the motion is denied.

#### **RULE 11.7.8 JUDICIAL REVIEW**

Judicial review of the judgment of the CSC may be had by filing appropriate pleadings with the Superior Court of Guam within thirty (30) days after judgment is entered. See *Superales v. CSC and GIAA*; Superior Court of Guam Case No. SP261-00 (DATE).

**RULE 12    TERMINATION OF APPEAL**

In addition to adjudication on the merits, the CSC may terminate an Employee's appeal:

- a.     At the Employee's request;
- b.     When the Employee fails to furnish information necessary to adjudicate the appeal.

**RULE 12.1    DEATH OF EMPLOYEE**

If an Employee dies after he has filed an appeal of an adverse action taken against him, the appeal shall automatically be stayed for a period up to six (6) months in order for the Estate of the Employee to apply to the CSC to continue with the appeal.

If the Estate of the Employee does not so apply within six (6) months, then the appeal shall be dismissed upon a motion by Management.

If the Estate of the Employee does so apply, then the appeal shall be adjudicated.

In the event the Employee prevails, the Estate of the Employee shall receive the compensation, but not the benefits, the Employee would have recovered up to the date of his death.

**RULE 13    REPRESENTATION OF EMPLOYEES BY PERSONS WHO ARE NOT ATTORNEYS**

The laws of Guam permit persons who are not attorneys to represent Employees and

Management before the CSC as follows:

- a. 7 GCA § 9215(c)(16) permits a person who is not an attorney to represent an employee before the CSC in actions related to government service.
- b. 7 GCA § 9215(c)(12) permits a government employee to represent a government agency in "**administrative hearings**" as part of such person's official duties.

**RULE 13.1 RULES RELATIVE TO REPRESENTATIVES**

A non-lawyer or attorney not licensed to practice on Guam who represents an Employee before the CSC or who represents a government agency before the CSC, shall be called a "**Lay Representative.**"

All Representatives shall enter his appearance in an action by filing with the CSC an entry of appearance which shall include the written approval of his client and shall also contain the address and telephone number of the Representative.

**RULE 13.2 ENTRY OF APPEARANCE**

By entering his appearance before the CSC, the Representative becomes subject to the Orders of the CSC and to reasonable discipline and to contempt proceedings by the CSC.

Reasonable discipline may include, but is not limited to, the following:

- a. Disqualification from appearing before the CSC, so long as the disqualification does not prejudice the client's interest.

By agreeing to be a Representative, the Representative assumes an ethical and agency relationship with the Employee that he represents. Lay Representatives may not be

compensated for their services but may seek reimbursement for reasonable, actual costs incurred and substantiated with receipts in preparing for and appearing at hearings and status calls and conferences before the CSC related to the action such as, but not limited to, photocopying costs.

**RULE 13.3 WITHDRAWAL AS LAY REPRESENTATIVE**

No Lay Representative or attorney/law firm may withdraw from representing an Employee except upon motion, cause shown, and an Order of the CSC.

**RULE 13.4 LAY REPRESENTATIVE REQUIRED READING**

Every Lay Representative and attorney shall agree in writing that he has read, and is familiar with, 4 G.C.A., Chapter 4, these Rules, and the Personnel Rules applicable to the government agency that took adverse action against the Employee.

**RULE 14 HEARING COUNSEL**

The CSC, by a majority vote, may designate its Administrative Counsel to act as Hearing Counsel. When so designated, the CSC shall assign the Hearing Counsel to conduct evidentiary hearings on specific issues. The issues shall be within the jurisdiction of the CSC.

**RULE 14.1 HEARING PROCEDURE**

Hearing Counsel shall use these Rules in conducting hearings.

Hearing Counsel shall administer oaths to witnesses.

**RULE 14.2 WRITTEN FINDINGS**

Hearing Counsel shall make written proposed findings of fact and conclusions of law which shall be served on the Parties. The findings shall then be submitted to the CSC who may accept, reject or modify the findings or may conduct its own hearing on the issue(s).

**RULE 14.3 PARTIES' INPUT**

The Parties shall be informed of the date on which the CSC shall deliberate the adoption of the findings and may file written objections or other written comments regarding the findings for the CSC's consideration.