

**MARICOPA COUNTY
MERIT SYSTEMS COMMISSION**



**EMPLOYEE MERIT
SYSTEM**

APPELLANT'S GUIDE

www.maricopa.gov/human_resources/merit

Employee Merit System Appellant's Guide

Merit System Authority

In 1969, the Arizona State Legislature enacted A.R.S. §11-351 through §11-356 enabling the Maricopa County Board of Supervisors to appoint an employee merit system. Subsequently, the Board of Supervisors adopted a resolution on January 1, 1970, creating the employee merit system and the first meeting of the Commission was held on January 5, 1970.

The purpose of the Employee Merit System (EMS) is to provide a uniform and equitable system of personnel administration for employees in the Maricopa County classified service that is based on merit principles and free from political patronage. All actions affecting the employment of personnel in the classified service shall be made according to merit as demonstrated by the qualifications and work performance of the applicant or employee.

Merit System Rules

The Employee Merit System (EMS) Rules govern the personnel administration of classified employees. Copies of the Employee Merit System Rules are available on the internet at: http://www.maricopa.gov/human_resources/merit.asp.

Merit Commission Authority

The Maricopa County Merit Systems Commission administers two separate and distinct Merit Systems – the Employee Merit System (EMS) and the Law Enforcement Officers Merit System (LEOMS).¹ Commission members appointed by the Board serve on the two separate and distinct merit systems – EMS and LEOMS.

Pursuant to statutory provisions, Board of Supervisors Resolution, and Merit Rules, the Commission performs such duties as are necessary to carry out the provisions of the Employee Merit System resolution and rules, is charged with representing the public interest in the improvement of personnel administration in the county service, causes the Human Resources Director to prepare such policies and procedures as may be necessary or appropriate to administering the Merit System rules, and serves as an independent personnel board for the County under A.R.S. § 38-532(H). The Commission is comprised of five members appointed by each member of the Board of Supervisors. A Commission Chairperson is elected at the beginning of each calendar year.

¹ For information on the Law Enforcement Officers Merit System (LEOMS), see the LEOMS Appellant's Guide which can be found online at: http://www.maricopa.gov/human_resources/merit.asp.

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Appeals

What actions may be appealed? Employees in the classified service who have attained regular status may appeal a dismissal, involuntary demotion or suspension. An employee who has been subject to a reduction-in-force (RIF) may file an appeal only on the grounds that the calculation of the employee's retention points was inaccurate and resulted in that employee being selected for separation before another.

Where do I file an appeal? The appeal must be in writing and filed with the Human Resources Director within ten (10) calendar days following the date of personal delivery or certified mailing of the final decision of the appointing authority (i.e. department director or designee). An appeal must state the facts upon which it is based and the action requested of the Employee Merit System Commission, hereafter referred to as the Commission.

When will the hearing be held? Within twenty (20) calendar days from the filing of an appeal, the Commission will set a hearing date. The initial hearing date may be extended by mutual consent of the Appellant, Respondent and Hearing Officer. Written notice of the time, date, place of the hearing and the name of the Hearing Officer will normally be provided by the Merit Systems Commission Coordinator at least seven (7) calendar days before the date of the hearing.

What are the duties of the Hearing Officer? Appeals are generally assigned to a Hearing Officer who is authorized to act on behalf of the Commission for the purpose of conducting a fact finding hearing, ruling on motions and making recommended Findings of Fact and Conclusions of Law, subject to the appropriate EMS Resolutions, Rules and Arizona Revised Statutes. The Hearing Officer is empowered to grant or refuse extensions of time to conduct the hearing and to provide limited advice to the parties involved regarding the appeal if the advice does not conflict with the Hearing Officer's role as a neutral party. It is considered inappropriate for either party to consult with the Hearing Officer privately, due to the nature of the relationship; therefore, the Merit Systems Commission Coordinator and the opposing party should be copied on all communications to the Hearing Officer. A request to change the Hearing Officer assignment must be submitted in writing to the Commission Chairperson in care of the Merit Systems Commission Coordinator. On the first request of a party to change the Hearing Officer, the Commission will grant the request. The Commission may grant all other requests only on a showing that a fair and impartial hearing cannot be obtained due to the prejudice of the assigned Hearing Officer. Therefore, all subsequent requests to change a Hearing Officer assignment must include clearly articulated reasons in a written request.

What happens at the hearing? Parties may represent themselves or be represented by legal counsel of their choosing (and funded by themselves), or lay representatives. Technical rules of evidence do not apply to the proceedings, except that irrelevant, immaterial or unduly repetitious evidence or evidence protected by the rules of privilege recognized by law may be excluded. The burden of proof shall be on the department which took the action being appealed. The party with the burden of proof is required to present its case first. If the party with the burden of proof is unable to prove the allegations, at the end of its evidence, motions to dismiss the appeal may be entertained by the Hearing Officer. All testimony at the hearing is recorded by a court reporter. Transcript copies may be purchased at the approved copy charge rate.

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What if I cannot attend the hearing? Any party who needs to request a change in the date, time, or place of the hearing, should first contact the other party, and then either submit a stipulation (written agreement) or a motion to the Hearing Officer (see Appendix A for sample). The Merit Systems Commission Coordinator and the opposing party should be copied on all communications to the Hearing Officer. The Hearing Officer has the authority to grant or deny requests for continuances and to set a hearing date if the parties are unable to arrange a mutually agreeable time. If agreement cannot be reached, each party will be expected to attend on the established date. Even when both parties agree, Hearing Officer approval is necessary for all continuances. As a general rule, requests for continuances should be made within five (5) business days of the date of the hearing notice. Typically, requests for continuances made within five (5) business days of the scheduled hearing will not be granted barring emergent circumstances.

Who is responsible for notifying witnesses regarding a change of hearing date? Any party who has subpoenaed witnesses has the responsibility of notifying those witnesses of the continuance.

What happens if I do not attend the hearing or I am late? In the event that a party is over thirty (30) minutes late in arriving to the appeal hearing or does not appear for a scheduled hearing, testimony may be taken on the record verifying or denying the allegations in the letter of discipline. If such testimony is taken, the Hearing Officer, from that testimony, shall prepare his/her Findings of Fact, Conclusions of Law and Recommendations for submission to the Commission.

Can I request the attendance of witnesses or the production of documents at the hearing? An Appellant may request a subpoena to require the attendance of witnesses or a subpoena duces tecum for the production of documents at the hearing. To do so, the Appellant submits a completed subpoena form for each witness (see Appendix B for sample), or a completed subpoena duces tecum form for the documents requested (see Appendix C for a sample). Each subpoena must include the name, complete address and phone number of the individual. Requests to issue subpoenas should be received by the Merit Systems Commission Coordinator no later than ten (10) business days prior to the scheduled hearing. The Merit Systems Commission Coordinator cannot guarantee timely service for subpoenas received less than ten (10) business days prior to the scheduled hearing. For subpoenas received less than ten (10) business days prior to the scheduled hearing, please contact the Merit Systems Commission Coordinator to discuss other available options for service. When valid subpoena forms are received, the Merit Systems Commission Coordinator requests that the Clerk of the Board of Supervisors issue the subpoenas. When prepared, the subpoenas are delivered by a Deputy Sheriff from the Maricopa County Sheriff's Office. Persons not responding to Board issued subpoenas are subject to the same penalties imposed on those who do not respond to subpoenas issued by a Court of Law (A.R.S. § 11-218). If a non-County witness is subpoenaed upon the request of either party, any fees or mileage shall be paid by the party requesting the witness. Subpoenaed County employees shall be paid their base rate of pay. Fees and mileage may be paid to a non-County employee witness subpoenaed by the Hearing Officer or the Commission upon presentation of a claim. Mileage is paid at the current County reimbursement rate. Non-County employee witnesses subpoenaed are entitled to the same fee as that allowed witnesses in civil cases in courts of record.

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Can I request a deposition of a witness? If a witness does not reside within the County or within 100 miles of the place where the hearing is to be held, is out of state, or is too infirm to attend the hearing, parties can, at their own expense, have a deposition taken and used at the time of the hearing if the witness cannot attend to testify.

What happens after the hearing is concluded? Both the Appellant and the Respondent may file proposed Findings of Fact in writing with the Hearing Officer. After the hearing is completed and within 35 calendar days of the case being submitted for decision, the Hearing Officer prepares and files with the Commission proposed Findings of Fact, Conclusions of Law, and Recommendations. Copies will be sent to both the Appellant and Respondent. Both parties have fourteen (14) calendar days from the receipt of the Hearing Officer's Recommendations to file with the Commission any written objections (not post-hearing evidence). Each party must serve a copy of the written objections upon the other interested parties.

What if I want to withdraw my appeal? An Appellant may submit a written request to withdraw an appeal at any time prior to the decision by the Commission.

What happens after the Hearing Officer's Recommendation is issued? The parties are notified by letter of the meeting date where the Commission will consider matters relating to the appeal. The Commission will review the Hearing Officer's Recommendation and any written objections filed by Appellant and Respondent. Three members constitute a quorum for the transaction of business and a majority of the quorum may take legal action in all areas of the Commission's duties and powers. The Commission may adopt the Hearing Officer's Recommendation in its entirety, or modify it or may itself decide the case upon the record, including the transcript with or without taking additional evidence. The Commission will vote to determine whether the action of the Appointing Authority was arbitrary and taken without reasonable cause based on the evidence presented. The Commission may either dismiss or sustain the appeal and issue a Final Order. The Appellant will receive a copy of the Final Order via certified mail.

What happens after the Commission issues the Final Order? The findings and decisions of the Commission are final and subject only to administrative review by the Superior Court as provided in A.R.S. § 12-901 et seq. The parties have thirty-five (35) calendar days from the date of the decision of the Commission to either file for an administrative review or take such measures as are necessary to comply with the decision of the Commission.

Can I be punished for filing an appeal? No Appointing Authority shall take disciplinary or punitive action against an employee or an employee witness, nor impede or interfere with the exercise of the employee's right of review, appeal or of any other right under the Employee Merit System Resolution and Rules.

What are the common terms used in the appeal process? The following terms, while not prepared by an attorney, may be useful to the lay person. The Merit Systems Commission Coordinator or the Hearing Officer may be consulted for further assistance.

Appeal – A written request to set aside an involuntary demotion, suspension, dismissal or RIF, usually resulting in a hearing.

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Appellant – The employee filing an appeal.

Burden of Proof – A term referring to the party with the responsibility of presenting evidence to prove its position.

Commission – The Employee Merit System Commission.

Deposition – A formal interview of a witness who is not available at a hearing due to illness or distance. These are normally done in front of a Court Reporter and under oath.

Hearing – A quasi-judicial proceeding resulting from an appeal and leading to a Hearing Officer's written recommendation to the Commission.

Hearing Officer – One of a group of persons designated by the Commission to act as its representative in appeal hearings. The Hearing Officer rules on motions, takes testimony, accepts evidence and makes a report to the Commission which includes Findings of Fact, Conclusions of Law and Recommendations.

Motion – A request made to the Hearing Officer for a ruling or order on a specific issue related directly to the appeal. Some examples would be: Motions by the respondent to dismiss the appeal, motion by either party to preclude certain evidence.

Respondent – The Appointing Authority of the County agency or agencies or their designee.

Rule for Exclusion of Witnesses – The requirement that all other witnesses be excluded from the hearing room while another witness is testifying. This does not include the appellant or one designated representative of the respondent.

Stipulation – An agreement that has been reached by both parties.

Subpoena – A written legal order directing a person to appear at a hearing to testify.

Subpoena Duces Tecum – A written legal order directing a person to provide documents.

Transcript – A verbatim report of the proceedings of the hearing as prepared by and available from the Court Reporter.

Employee Merit System Appellant's Guide

Human Resources Department
Merit Systems Commission Coordinator
Employment Services Division
301 W. Jefferson, Suite 200
Phoenix, Arizona 85003-2143
Phone: (602) 506-3792
Fax: (602) 506-7940
E-mail: MCMerit@mail.maricopa.gov

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APPENDIX A

SAMPLE MOTION

Appellant's Name: _____
 Address: _____
 City, State, Zip Code: _____
 Telephone: _____
 Email Address: _____

**THE BOARD OF SUPERVISORS OF MARICOPA
 STATE OF ARIZONA
 MARICOPA COUNTY EMPLOYEE MERIT SYSTEM COMMISSION**

In the matter of:

_____ ,)	Appeal Number: _____
APPELLANT,)	
v.)	TITLE: _____
_____ ,)	
RESPONDENT.)	

Explain what you want the Hearing Officer to order and why. The Hearing Officer may grant, deny, or change your request (or "motion"). If this motion is a stipulation [an agreement or joint request] presented by both parties, include specific information on the agreement or joint request.

Today's Date:		Your Signature:	

Original of the foregoing was transmitted by email and/or US mail this _____ day of _____, 20__ to:

		MC Coordinator/HR
		301 W. Jefferson, Ste 200
		Phoenix, AZ 85003
Hearing Officer	Attorney for Respondent	MCMerit@mail.maricopa.gov MC Coordinator

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APPENDIX B

SAMPLE SUBPOENA FORM

Appellant's Name: _____
Address: _____
City, State, Zip Code: _____
Telephone: _____
Email Address: _____

**THE BOARD OF SUPERVISORS OF MARICOPA
STATE OF ARIZONA
MARICOPA COUNTY EMPLOYEE MERIT SYSTEM COMMISSION**

In the matter of:

	_____,)	Appeal Number: _____
	APPELLANT,)	
v.)	SUBPOENA
)	
	_____,)	
	RESPONDENT.)	

Subpoena from the County of Maricopa, State of Arizona to:

Name: _____
Title: _____
Department (if applicable): _____
Street Address, Suite: _____
City, Arizona, Zip Code: _____
Telephone: _____

You are order to appear at the time and place specified below at the Board of Supervisors of Maricopa County Employee Merit System Commission appeal hearing as a witness in the above-entitled action, and to attend the appeal hearing from day to day until discharged. Your appearance is required on:

Date: _____
Time: _____
Hearing Officer: _____
Location: _____ of the Administration Building
301 West Jefferson Street, Suite _____
Phoenix, Arizona 85003
Telephone: (602) 506-3792

Filed with the Clerk of the Board of Supervisors of Maricopa County:

Dated: _____

BOARD OF SUPERVISORS
MARICOPA COUNTY, ARIZONA

BOARD OF SUPERVISORS
MARICOPA COUNTY, ARIZONA

Fran McCarroll, Clerk of the Board

Chairman, Board of Supervisors

This subpoena issued pursuant to A.R.S. § 11-218. The Board of Supervisors may enforce this subpoena for that purpose. The Board has all of the powers conferred by law upon courts of record.

SERVICE INFORMATION *(To be filled by person serving subpoena)* (Check one)

- The above subpoena was served on _____
this _____ day of _____, 20____, at _____ am/pm, State of Arizona.
- The above subpoena for _____ is returned unserved
for the following reason _____.

Signature of Person Serving Subpoena:

Return to: Merit Systems Commission Coordinator, 301 W. Jefferson, Suite 200, Phoenix, Arizona, 85003

YOUR DUTIES IN RESPONDING TO THIS SUBPOENA

ATTENDANCE AT A HEARING: If this subpoena commands you to appear at a hearing, you must appear at the place, date and time designated in the subpoena unless you file a timely motion with the assigned hearing officer and the hearing officer quashes or modifies the subpoena. Unless the hearing officer orders otherwise, you are required to travel to attend and give testimony at a hearing.

YOUR RIGHT TO OBJECT TO THIS SUBPOENA

Generally, if you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The superior court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached.

PROCEDURE FOR OBJECTING TO A SUBPOENA FOR ATTENDANCE AT A HEARING:

- You must file a motion to quash or modify the subpoena with the Hearing Officer assigned by the Merit Systems Commission to obtain an order excusing you from complying with this subpoena.
- The motion must be filed before the time specified for compliance.
- You must send a copy of any motion to quash or modify the subpoena to the party or attorney who served the subpoena.

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APPENDIX C

SAMPLE SUBPOENA DUCES TECUM FORM

Appellant's Name: _____
Address: _____
City, State, Zip Code: _____
Telephone: _____
Email Address: _____

**THE BOARD OF SUPERVISORS OF MARICOPA
STATE OF ARIZONA
MARICOPA COUNTY EMPLOYEE MERIT SYSTEM COMMISSION**

In the matter of:

_____ ,)	Appeal Number: _____
APPELLANT,)	
v.)	SUBPOENA DUCES TECUM
_____ ,)	
RESPONDENT.)	

Subpoena for production of documentary evidence or tangible items from the County of Maricopa, State of Arizona to:

Name: _____
Title: _____
Department (if applicable): _____
Street Address, Suite: _____
City, Arizona, Zip Code: _____

YOU ARE ORDERED to produce or permit copying, testing, or sampling of the below designated documents, electronically stored information, or tangible items:

ADDITIONAL DOCUMENTS LISTED ON ATTACHED PAGE(S)

YOU ARE ORDERED to produce the above designated documents, electronically stored information or tangible items, at the place, date, and time specified below:

TO BRING WITH YOU to the Appeal Hearing listed below, **OR**

Date: _____

Time: _____

Hearing Officer: _____

Location: _____ of the Administration Building

301 West Jefferson Street, Suite _____

Phoenix, Arizona 85003

Telephone: (602) 506-3792

YOUR APPEARANCE IS NOT REQUIRED if the items ordered to be produced are delivered to the requesting party prior to the scheduled hearing, which is currently scheduled for _____ AND you are not otherwise ordered to appear.

Filed with the Clerk of the Board of Supervisors of Maricopa County:

Dated: _____

BOARD OF SUPERVISORS
MARICOPA COUNTY, ARIZONA

BOARD OF SUPERVISORS
MARICOPA COUNTY, ARIZONA

Fran McCarroll, Clerk of the Board

Chairman, Board of Supervisors

This subpoena is issued pursuant to A.R.S. §11-218. The Board of Supervisors may enforce this subpoena for that purpose. The Board has all of the powers conferred by law upon courts of record.

SERVICE INFORMATION (To be filled by person serving subpoena) (Check one)

The above subpoena was served on _____
this _____ day of _____, 20____, at _____ am/pm, State of Arizona.

The above subpoena for _____ is returned unserved
for the following reason _____.

Signature of Person Serving Subpoena:

Return to: Merit Systems Commission Coordinator, 301 W. Jefferson, Suite 200, Phoenix, Arizona, 85003

YOUR DUTIES IN RESPONDING TO THIS SUBPOENA

PRODUCTION OF DOCUMENTARY EVIDENCE OR OTHER TANGIBLE ITEMS:

If this subpoena commands you to produce designated documents, electronically stored information, or tangible things, you must make the items available at the place, date and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you provide a good faith written objection to the party or attorney who served the subpoena.

You should note that a command to produce certain designated materials may be combined with a command to appear at a hearing. You do not, however, need to appear in person at the place of production unless the subpoena also states that you must appear for and give testimony at the hearing.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in the subpoena.

YOUR RIGHT TO OBJECT TO THIS SUBPOENA

Generally, if you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you.

PROCEDURE FOR OBJECTING TO A SUBPOENA FOR ATTENDANCE AT A HEARING:

- You must file a motion to quash or modify the subpoena duces tecum with the Hearing Officer assigned by the Merit Systems Commission to obtain an order excusing you from complying with this subpoena.
- The motion must be filed before the time specified for compliance.
- You must send a copy of any motion to quash or modify the subpoena duces tecum to the party or attorney who served the subpoena.

PROCEDURE FOR OBJECTING TO SUBPOENA FOR PRODUCTION OF DOCUMENTARY EVIDENCE, RECORD, OR TANGIBLE ITEMS:

If you wish to object to a subpoena duces tecum commanding you to produce documents, electronically stored information or tangible items, you may send a good faith written objection to the party or attorney serving the subpoena that objects to:

- (1) producing, inspecting, copying, testing or sampling any or all of the materials designated in the subpoena; or
- (2) producing electronically stored information in the form or forms requested.

You must send your written objection to the party or attorney who served the subpoena before the time specified for compliance or at least five (5) days before the hearing date and time listed, whichever is earlier. If you object because you claim the information requested is privileged or protected you must express the objection clearly, and support each objection with a description of the nature of the document, communication or item not produced so that the demanding party can contest the claim.

If you object to the subpoena in writing, you do not need to comply with the subpoena until the Hearing Officer orders you to do so.

If the subpoena also commands your attendance at a hearing, sending a written objection to the party or attorney who served the subpoena does not suspend or modify your obligation to attend and give testimony at the date, time and place specified in the subpoena. If you wish to object to the portion of this subpoena requiring your attendance at a hearing, you must file a motion to quash or modify the subpoena to the party or attorney who served the subpoena.