

**THE RULES AND REGULATIONS OF THE  
PERSONNEL BOARD OF JEFFERSON COUNTY**



**THE MERIT SYSTEM**

**REVISED JANUARY 14, 2009**

**For the period beginning October 19, 2007, and ending January 11, 2008, the Personnel Board of Jefferson County invited public comment regarding revisions to the Rules and Regulations dated April 4, 2005. Modifications were made pursuant to a public hearing held on December 2, 2008, and adopted by the Board at its regularly scheduled meeting on January 13, 2009. These Rules and Regulations became effective on January 14, 2009.**

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## **Preamble**

Act No. 248, H. 580, of the Alabama Legislature of 1945, establishes the Personnel Board of Jefferson County and governs its operation. Section 12 of the Act charges the Personnel Board with the responsibility to promulgate such rules and regulations as necessary to carry out the provisions of the Act including rules and regulations governing examination, appointments, suspensions, dismissals, certification of eligibles, reduction-in-force, sick leave, leave of absence, resignation, reinstatements, promotions, demotions, transfers, salary adjustments and “any and all other rules and regulations necessary for administering a scientific and economical” personnel system. The Rules and Regulations that follow comport with and execute the mandates of the Act and, unless found to be contrary to the Act, have the force and effect of law. The application of any Rule contained in this document or any paragraph therein may be read in conjunction with language in a related Rule or any paragraph therein; consequently, these Rules and Regulations must be read in their entirety.

# **RULE 1: GENERAL PROVISIONS**

## **1.1 AUTHORITY**

These Rules and Regulations are promulgated pursuant to the authority of Section 12 of 1945 Ala. Acts 248, as amended. These Rules and Regulations shall govern the civil service of Jefferson County, classified employees of the Personnel Board of Jefferson County, all cities in Jefferson County with 5,000 or more residents, the Jefferson County Health Department, the Board of Registrars, and police officers in cities with 2,500 or more residents.

## **1.2 SCOPE**

Unless provided elsewhere in these Rules or the Act, these Rules apply only to the Classified Service of the jurisdictions covered by the Act and to the employees of the Personnel Board of Jefferson County. The Classified Service is defined as all persons employed by the jurisdictions referenced in Rule 1.1 above. Employees occupying these positions shall be deemed to be in the Classified Service unless they fall within one of the following exemptions: all persons employed by a city or county board of education; all persons employed by a library board; persons engaged in teaching or in supervising teaching in the public schools; officials elected by popular vote; the judge of any court; a county attorney; the Director of Personnel created by sections 11 and 12 of the Act; the County Health Officer (except as provided under Section 2 of the Act); a private secretary of a member of the governing body and of each official elected by popular vote, except judges; interns, resident physicians, resident dentists, student technicians, and student nurses undergoing training in a county health department or in a hospital maintained by public funds; common laborers (as defined by the Board); part-time members of boards; attorneys, physicians, surgeons, and dentists who, with permission of the Appointing Authority of a governing body, engage in outside similar employment; and the Chief Deputy of an elected official in charge of a branch office as required by law in a separate courthouse within the county (Such courthouse site to be physically separate and a branch of the main courthouse. The exemption shall include, to wit: the Deputy Tax Assessor, the Deputy Tax Collector, the Deputy Treasurer, the Deputy Probate Judge, and the Deputy Sheriff in charge of such branch department).

## **1.3 DEFINITIONS**

Act. Act No. 248 of the 1945 Legislature of the State of Alabama, as amended (commonly referred to as the “Enabling Act”).

Applicant. An individual who has submitted to the Director a complete application for employment or Promotion in the Classified Service.

Appointing Authority. Any person, officer, board, council, commission or other governmental body whose lawful jurisdiction or powers are confined wholly or primarily within the territorial limits of Jefferson County and who or which possesses final power to appoint persons to services, jobs, offices or positions, the compensation of which is paid in whole or in part from the public funds of Jefferson County or from the public funds of a municipality in

Jefferson County subject to this Act. Except as otherwise provided by law, the Board will consider the mayor to have final decision making authority on behalf of a municipality.

Board. The Personnel Board created by the Act.

Business Day. Any weekday on which the Board is open to the public.

Certificate of Eligibles. A certificate issued by the Director to an Appointing Authority, containing the names of those individuals, in random order, eligible to be appointed or promoted to a particular position in the Classified Service.

Certification. The process of submitting a Certificate of Eligibles to an Appointing Authority for the purpose of filling a particular position in the Classified Service.

Class or Class of Positions. A position or group of positions sufficiently similar in respect to duties, responsibilities and authority such that: the same descriptive title may be used to identify all positions allocated to the Class; the requirements as to education, experience, capacity, knowledge, proficiency, ability and other qualifications are **substantially similar**; the same tests of fitness may be used to choose qualified Applicants; and the same schedule of compensation can be made to apply with equity.

Classification. The process of assigning a position to the appropriate Class.

Classified Employee. A person appointed (*i.e.*, hired) by an Appointing Authority for employment in the Classified Service.

Classified Service. Classified Service shall have that definition as set forth in Rule 1.2. The phrase "Merit System" as used in these Rules shall be synonymous with the "Classified Service."

Class Specifications. A formal statement descriptive of a position containing: a) the title and Class; b) a description of the duties and/or responsibilities thereof; and c) **the qualifications as to education, experience, licensure, certification, and other attributes necessary for establishing appropriate levels of compensation.**

Common/unskilled laborer. A person who performs routine, usually repetitive, manual duties requiring physical exertion, for which there is no defined Class in the Classified Service.

Compensatory Time. Leave provided to an employee in lieu of monetary compensation.

County. Jefferson County, Alabama.

**Demotion. Any change from one Class to another Class for which the final Pay Step in the Pay Grade is lower.**

Director. The Director of Personnel created by Sections 11 and 12 of the Act.

Eligible Candidate. An individual whose name appears on an Eligibility List.

Eligibility List. A record containing the names of all persons who have successfully completed the examination process, listed and ranked in order of their final scores from the highest to the lowest, and who are considered qualified for appointment or Promotion to positions in the Class for which the list exists.

Full-time. Any position in which a Classified Employee is regularly scheduled to work at least forty (40) hours per week **or some other minimum number of hours established by resolution as constituting Full-time in a jurisdiction.**

Good Standing. Not subject to any ongoing discipline, or suspension, or investigation into alleged misconduct.

Pay Grade. A means of denoting relative rates of pay assigned to Classes in the Merit System.

Pay Step. The specific pay rate within a Pay Grade as set forth in the Pay Plan.

Position. A group of specific duties, tasks, and responsibilities performed by an employee assigned to a Merit System Class and budgeted within a jurisdiction and department.

**Probationary Period. The uninterrupted twelve (12)-month period of paid service following any General Appointment, a non-promotional appointment from an Eligibility List to a Class at the same Grade as the Class currently held, or a Promotion, in the Classified Service.**

**Promotion. A change from one Class to another Class for which the final Pay Step in the Pay Grade is higher.**

Public Hearing. A meeting of the Board, open to the public, during which any citizen, taxpayer or party at interest may appear and be heard subject to such rules and regulations as may be fixed by the Board.

Public Notice. A written notice placed upon a bulletin board maintained at or near the entrance to the offices of the Board in a place accessible to the public during business hours **and/or a notice made available to the public through other appropriate print or electronic media.**

**Rank. The relative positioning of a candidate on an Eligibility List determined by the candidate's final score on an examination or assessment, including any applicable seniority points.**

**Register. Synonymous with Eligibility List, as defined herein.**

**Regular Employee. A Full-time Classified Employee who has completed twelve (12) months of uninterrupted Full-time service following an initial General Appointment (See Rule 11.3a) in the Classified Service.**

**Transfer: Movement of a Regular Employee from a currently held Class to the same Class in another jurisdiction or Appointing Authority.**

## **1.4 PRESERVATION OF RECORDS**

Minutes of Board meetings, active employment lists, and financial records shall be retained for a reasonable length of time, consistent with state and/or federal law. Applications and examination papers shall be retained for the duration of the associated Eligibility Lists.

## **1.5 PERSONNEL RECORDS**

a. To ensure the security and confidentiality of personnel records, each Appointing Authority shall protect information in personnel records from unauthorized access, use, modification, destruction, or disclosure. Personnel records must be stored in a reasonably secure manner.

b. All persons whose official duties require access to, and use of, personnel records shall be responsible and accountable for safeguarding those records and for ensuring that the records are secured whenever they are not in use or under the direct control of the Appointing Authority or the Director.

c. Personnel records shall contain only information concerning an individual that is relevant and necessary to accomplish the goals of these Rules or as otherwise required by state or federal law. To the extent any medical information is acquired from an applicant or employee, such information shall be maintained in a separate file.

## **1.6 PUBLIC RECORDS**

Any person seeking review of any public record of the Board shall request such review in writing. The Board shall permit review of such records, subject to reasonable restrictions as to the time, place and manner of such review, taking into account confidentiality, convenience, and related factors. The Board shall charge any reviewing party the reasonable costs associated with such review.

## **1.7 PUBLIC REPORTING**

Once each year, the Board shall generate a report containing at least the following information for each job Class as to which an Eligibility List closed in the prior calendar year: (1) total number of applicants by race and gender; (2) number of applicants who failed the minimum qualifications, by race and gender; (3) number of applicants who failed any Board selection procedure, by race and gender; (4) number of unique applicants certified to all jurisdictions in total, by race and gender; (5) number of applicants certified to each jurisdiction, by race and gender; and, (6) number of applicants selected (hired and promoted) by each jurisdiction, by race and gender. Copies of this annual report are available to the public on request.

## **1.8 PROCEDURES FOR ADMISSION INTO THE CLASSIFIED SERVICE OF NEWLY ACQUIRED EMPLOYEES**

a. Interim Period. If any municipality or Appointing Authority hereafter becomes subject to the provisions of the Act (“New Appointing Authority”) and these Rules, a period of sixty (60) days (“Interim Period”) shall be allowed the New Appointing Authority in which to prepare for application of these Rules. During the Interim Period, the employees of such Appointing Authority shall continue in all respects to be subject to the previous applicable laws, rules, and policies of the New Appointing Authority.

b. Granting of Regular Status. At the time such New Appointing Authority becomes subject to the provisions of the Act and these Rules, the Board, in its sole discretion, may extend or grant Regular Status to any or all employees of such New Appointing Authority.

c. Admission to Classified Service. If all or a portion of the unclassified service of any New Appointing Authority subject to the Act or these Rules becomes a part of the Classified Service, the Board, in its sole discretion, may extend Regular status to any or all such employees, taking into consideration the type of work performed, length of service, and related individual factors.

d. Future Appointments. All future appointments to Classified positions within the New Appointing Authorities shall be in accordance with the Act and these Rules.

## **1.9 CONFLICTS WITH COLLECTIVE BARGAINING AGREEMENTS**

To the extent any provision in these Rules is inconsistent with the terms of a valid and enforceable collective bargaining agreement between any Appointing Authority and its employees, the terms of such collective bargaining agreement shall control, provided such contractual provision is not inconsistent with the Act or any other state or federal law.

## **RULE 2: RULE MAKING**

### **2.1 AUTHORITY**

The Board, by Public Hearing, may from time to time adopt new Rules, or amend or repeal existing Rules. No change to these Rules shall become effective unless approved by a two-thirds (2/3) majority of the Board (*i.e.*, two (2) members). Once duly adopted by the Board, the Rules and Regulations shall have the force and effect of law.

### **2.2 NOTICE**

Prior to the adoption, amendment, or repeal of any of these Rules, the Board or the Director shall give at least twenty (20) calendar days Public Notice of the Board's intended action. The Public Notice shall include a brief description of the subjects and issues involved and shall specify a comment period ending not less than ten (10) calendar days prior to the Public Hearing, in which interested persons may present their views in writing on the proposed rule changes. The Board shall consider fully all such written comments respecting the proposed rule changes. It shall be the responsibility of each employee association to provide the name and address of the association's representative to the Board for proper mailing.

### **2.3 ADVISORY OPINIONS**

On the petition of an Appointing Authority affected by a Rule, the Board may issue an advisory opinion with respect to the validity of the Rule, its applicability to a specified set of facts, or as to its meaning and scope. The petition seeking a declaratory ruling under this section shall be in writing and shall state with particularity facts sufficient to show that the Appointing Authority is substantially affected by the Rule. Any advisory opinion made by the Board pursuant to this Rule shall not constitute a final order of the Board.

### **2.4 PETITION FOR PROMULGATION, AMENDMENT, OR REPEAL OF RULES**

Any interested person may file a petition with the Board to promulgate, amend, or repeal a Rule. To be considered by the Board, the request must be in writing, and contain the following:

- a. The specific reasons for the request;
- b. The substance or nature of the request, the proposed text of the new rule and the statutory authority under which the requested action may be taken, if any; and
- c. If the petition is to amend an existing rule, the petition must indicate any existing text to be deleted and include any new text to be added.

Within thirty (30) calendar days of receipt of a request complying with this Rule 2.4, the Board shall, in writing, either deny the petition or initiate rulemaking proceedings in accordance with this Rule.

## **RULE 3: CITIZENS SUPERVISORY COMMISSION**

### **3.1 MEMBERSHIP**

The membership of the Citizens Supervisory Commission (hereinafter the “CSC”) shall consist of the following members:

- a. The Probate Judge of Jefferson County, who shall serve as chairperson of the CSC.
- b. The presidents, or other chief executive officers by whatever name called, of institutions of higher learning in Jefferson County not operated for profit and offering two or more years of instruction in a general level curriculum. These presently include the following:
  1. The President of the University of Alabama at Birmingham;
  2. The President of Birmingham-Southern College;
  3. The President of Miles College;
  4. The President of Lawson State Community College;
  5. The President of Jefferson State Junior College;
  6. The President of Samford University.
- c. A representative of the municipal employees as provided for in Act No. 684, 1977 Ala. Acts (Election and terms of office for employment members shall be in accordance with Section 5 of the Act as amended);
- d. A representative of the county employees as provided for in Act No. 684, 1977 Ala. Acts;
- e. The president of the trades council, group, society, or association in Jefferson County with which is affiliated more than one-half of the unions or other organizations of the workers in the organized trades and crafts in the county as provided for in Act No. 684, 1977 Ala. Acts;
- f. The president of the largest chamber of commerce situated within Jefferson County as provided for in Act No. 684, 1977 Ala. Acts;
- g. The president of the Jefferson County Medical Society as provided for in Act No. 684, 1977 Ala. Acts;
- h. The president of any council of parent-teacher associations of the entire Jefferson County school system as provided for in Act No. 684, 1977 Ala. Acts;
- i. The president of the National Association for the Advancement of Colored People (NAACP) branches situated in Jefferson County;
- j. The president of the Birmingham Urban League, Inc.;
- k. The president of the Bessemer Association of Women and Youth Clubs;

1. The president of the Interdenominational Ministers' Alliance of Greater Birmingham.

### **3.2 DUTIES OF CITIZENS SUPERVISORY COMMISSION**

a. Meetings. The CSC shall meet no less frequently than twice each year. One semi-annual meeting shall be held at noon on the third Tuesday in May and the other at noon on the third Tuesday in November.

b. Duties. At each semi-annual meeting, the CSC:

1. May make such recommendations to the Board as it shall deem in the interest of sound administration of the Act and the Merit System;

2. At the semi-annual meeting in November, shall receive the annual report of the Board;

3. Shall fill any existing vacancy on the Board and elect a successor to any member of the Board whose term shall expire before the next semi-annual meeting of the CSC; and

4. Shall review changes to these Rules implemented since the CSC's last semi-annual meeting and may repeal any such Rule(s). The CSC, however, shall not have the power to amend any existing Rule or to create any new Rule. The term "Rule" shall not include orders, actions or decisions made by the Board in the administration of the Act or these Rules.

## **RULE 4: THE PERSONNEL BOARD**

### **4.1 MEMBERSHIP**

The Board shall consist of three (3) members appointed by the CSC. Such appointments shall be for staggered terms of six (6) years. No member of the Board, at the time of appointment or for three (3) years prior to appointment, shall have held public office or political party office, or have been a candidate for public office. Vacancies during unexpired terms shall be filled for the remainder of the term.

### **4.2 ALTERNATE METHOD OF SELECTING BOARD**

If the CSC fails for any reason whatsoever to elect the Board, or fill any vacancy thereon, the vacancy shall be filled by the Jefferson County Legislative Delegation in accordance with the Act.

### **4.3 DUTIES AND POWERS OF THE BOARD**

In addition to any duties and powers specifically set forth elsewhere in the Act or these Rules, the Board shall:

- a. Meet in regular session at least monthly and at other times as necessary to transact the business of the Board;
- b. Promulgate such policies, rules, and regulations necessary to carry out the provisions of the Act and to administer the Merit System;
- c. Appoint the Director;
- d. Review, approve, disapprove, or modify administrative actions;
- e. Hear and render decisions relative to disciplinary and related matters as set forth in the Act and these Rules;
- f. Conduct hearings investigating the operation and implementation of the Act or the operation of the Merit System contemplated by the Act;
- g. Prepare and submit an annual budget, and any necessary amendments thereto, to the Jefferson County Commission, setting forth the funding levels the Board believes necessary to fulfill its mission under state and federal law. The budget shall be for the County Commission's informational purposes only;
- h. Develop workforce training and development programs; and
- i. Transact such other business within the purview of the Board, consistent with the Act and these Rules.

Unless a member of the Board has been recused for good cause, the Board shall not take any action unless all three (3) Board members are present. Except where these Rules require unanimous approval, the approval of two members shall constitute the decision of the Board.

#### **4.4 EXPENSES OF THE BOARD**

a. Salaries and Expenses. The salaries and expenses of the Board and the Director, and all other expenses necessary for implementation of the Act shall be paid from the general fund of the County.

b. Allocation of Expenses. At the close of each fiscal year, the County shall calculate the total amount expended by the Board and shall allocate that sum between itself and the other Appointing Authorities on the basis of the number of Classified Employees on the payroll for each Appointing Authority on the last day of the fiscal year. The sum so arrived at by the County as the proper contribution of each Appointing Authority shall be certified to the Director of Personnel, and when approved by him in writing, shall constitute a liability of the respective Appointing Authorities and shall be paid immediately to the County.

#### **4.5 REVIEW OF ACTIONS OF THE DIRECTOR**

a. Generally. Any interested party who is aggrieved by an act of the Director may request that the Board review such action by filing a written request for review with the Board and serving a copy of such written request upon the Director. At its next regularly scheduled meeting following receipt of a written request for review, the Board shall either:

1. Conduct the required review and render its decision based on the written request as made and the Director's written reply thereto;

2. Order that the individual requesting review of the Director's act and the Director submit additional written materials by a date certain, and then proceed to conduct the required review and render its decision at the next Board meeting following receipt of the additional written material requested; or

3. Order the individual requesting review, or his or her representative, to appear before the Board for oral presentation of the reasons why the Director's actions should be reviewed by the Board.

b. Restriction. This Rule may not be invoked by a Classified Employee in lieu of, as an alternative to, or in addition to, any other Rule that provides a specific avenue of relief or redress.

#### **4.6 LEGAL SERVICES FOR THE BOARD**

Whenever it shall become necessary for the Board to employ legal counsel to enforce the Act or these Rules, to defend itself in any legal proceeding, or for any other proper purpose related to the implementation of the Act, the Board may retain the county attorney, the city attorney of any city subject to the provisions of the Act, or independent counsel.

## **RULE 5: DIRECTOR OF PERSONNEL**

### **5.1 APPOINTMENT**

The Board shall appoint a Director, who shall serve at the will of the Board. The Director shall be experienced in the field of human resources administration and shall administer a scientific and economical personnel system in accordance with the Act and these Rules, and shall carry out the policies established by the Board.

### **5.2 DUTIES AND POWERS OF THE DIRECTOR**

In addition to any of the duties and powers specifically set forth in section 12 of the Act and elsewhere in these Rules, the Director shall:

- a. Serve as secretary and chief executive officer to the Board;
- b. Appoint or remove such subordinates as may be necessary to administer the Merit System;
- c. Prepare for approval by the Board, such directives, rules and regulations as needed to carry out the provisions of the Act;
- d. Examine the effectiveness of the Merit System and compliance with the Act and these Rules, by conducting such necessary investigations and inquiries and reporting such findings along with recommendations to the Board for improvements. In connection with such investigations or inquiries, the Director shall have the power to administer oaths, issue subpoenas to require the attendance of witnesses and the production of records, documents, and papers pertaining to the subject under consideration;
- e. Study the organization, operation, and personnel requirements of the Appointing Authorities and make recommendations for improvements to the Board or the Appointing Authorities;
- f. Maintain an official list of all positions and incumbents in the Classified Service, and maintain personnel records for all Classified Employees;
- g. Establish and administer, subject to approval by the Board, plans for the Classification and compensation of positions;
- h. In cooperation with the Appointing Authorities, promote and assist in the establishment of programs for employee pension, welfare, working conditions, safety, health, and career development;
- i. Appoint a Deputy Director; and
- j. Perform any other act not inconsistent with the Act and necessary for the administration of the Merit System.

## **RULE 6: EXEMPT EXECUTIVE SERVICE**

### **6.1 EXEMPT EXECUTIVE SERVICE POSITIONS<sup>1</sup>**

a. The Board has the discretion to place positions under the Exempt Executive Service when an Appointing Authority in a Class 1 municipality requests such designation. A position may be considered for placement in the Exempt Executive Service when the position is created or designated for primary policy determinations, such as department heads and their chief deputies.

b. The Appointing Authority shall forward its recommendations to the Director (title, job code, and minimum qualifications), and the Director shall review the recommendation and prepare for Board approval a proposed position description, job code, title and minimum qualification requirements.

### **6.2 EXEMPT EXECUTIVE SERVICE EMPLOYEES**

a. Employees appointed to the Exempt Executive Service serve at the pleasure of the Appointing Authority and have no rights of appeal to the Board, and no property interest in the exempt job.

b. Employees in the Exempt Executive Service shall be members of a pension system available for Classified Employees in the Appointing Authority they serve unless the person elects in writing to forfeit such participation.

c. A Classified Employee cannot be placed into an Exempt Executive Service position unless:

1. The Classified Employee voluntarily elects such status by indicating his acceptance in writing. This document will be placed in the employee's official personnel file with the Board;

2. The Appointing Authority indicates approval of the assignment in writing. This document will be placed in the Classified Employee's official personnel file with the Board; and

3. The Board indicates its approval and such approval is reflected in the minutes of an official Board meeting.

d. A Classified Employee appointed to the Exempt Executive Service shall have the option to return to a position in the same Class he or she held prior to transfer into the Exempt Executive Service, provided such individual:

1. Voluntarily elects to return to the Classified Service;

2. Has not had a break in service exceeding one (1) pay period; and

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<sup>1</sup> Current legislative authority limits this Rule's application to Class 1 municipalities. Presently, the only Class I municipality in Jefferson County is the City of Birmingham.

3. Is in Good Standing.

## **RULE 7: CLASSIFICATION PLAN**

### **7.1 COMPOSITION OF THE CLASSIFICATION PLAN**

The Classification Plan shall:

- a. Group together all positions approximately equal in terms of difficulty, responsibility, and general qualifications, and which can be equitably compensated within the same Pay Grade under similar working conditions.
- b. Identify and describe the work to be performed by the various positions in each respective Class.
- c. Contain written specifications for each Class consisting of:
  1. A descriptive title consistent with other titles in the Classification Plan;
  2. A brief overall description of the kind and level of work;
  3. Examples of typical duties performed in positions in the Class; and
  4. The experience, education, license requirements, knowledge, skills and abilities used in determining the Pay Grade assigned to the Class.

The question of whether or not an employee has been assigned to the proper Class and Pay Grade shall be a matter subject to the decision of the Board.

### **7.2 RESTRICTION**

No person shall be appointed to or employed in a position under a title not included in the Classification Plan. Working titles used in the course of departmental routine to indicate authority, status in the organization, or administrative rank may be continued in use for those purposes.

### **7.3 USES OF THE CLASSIFICATION PLAN**

The Classification Plan is to be used as a guide to:

- a. Recruit and examine candidates for employment;
- b. Determine lines of Promotion;
- c. Develop employee training programs;
- d. Determine, in conjunction with wage surveys and job evaluation, salaries to be paid for various types of work;
- e. Determine personnel service items in departmental budgets; and
- f. Provide uniform job terminology understandable by all officials, employees, and the general public.

#### **7.4 ADOPTION OF THE CLASSIFICATION PLAN**

The Director shall submit a proposed Classification Plan to the Board for final approval no later than thirty (30) calendar days following its completion. Upon receipt of the proposed Classification Plan, the Board shall hold a Public Hearing upon no less than twenty (20) calendar days notice to all Appointing Authorities, Department Heads, Classified Employees, and the public, in order to provide an opportunity for comment. No later than thirty (30) calendar days after the close of the Public Hearing, the Board shall adopt, modify, or return the proposed Classification Plan to the Director for further revisions consistent with the Board's recommendations. The Classification Plan shall become effective thirty (30) calendar days after adoption by the Board. Upon final approval by the Board, the Director shall certify the Classification Plan and forward a copy to each Appointing Authority.

#### **7.5 MAINTENANCE OF THE CLASSIFICATION PLAN**

The Director shall maintain the Classification Plan so that it reflects the duties performed by each Classified Employee and the Class to which each position is allocated. It shall be the duty of the Director to:

- a. Recommend the establishment of new Classes and the deletion or revision of existing Classes.
- b. Review the duties and responsibilities of each new position established and, with approval of the Board, allocate the position to the appropriate Class. It shall be the responsibility of the Appointing Authority to submit to the Director, in writing, a comprehensive job description describing in detail the duties of each new position established.
- c. Make periodic studies of positions in order to determine changes in duties and responsibilities, and on the basis of findings, recommend reallocation or reclassification of positions. Classification studies may be made at the request of the employee, Appointing Authority, or on the initiative of the Director. Changes in duty assignments must be more than temporary in nature, and the incumbent must be performing the duties for a sufficient duration to warrant investigation.
- d. Direct the grading and classifying of all positions in the Classified Service at least once every five (5) years.
- e. Notify Appointing Authorities, Classified Employees, and any other person affected by an allocation or reallocation of a position. Any employee whose position is allocated or reallocated, or such employee's supervisor, may within 10 Calendar Days of such action provide written comments and information to the Director for his consideration.

#### **7.6 DISTRIBUTION OF THE CLASSIFICATION PLAN**

- a. Upon completion of the Classification Plan, the Director shall submit a copy of the Classification Plan to each Appointing Authority and a list allocating each position in the Appointing Authority into the appropriate Class.
- b. The Appointing Authority shall be responsible for notifying Classified Employees as to the allocation of their respective positions.

c. A copy of the Class Specification and individual allocation shall be made available to the employee or his representative on request.

## 7.7 REALLOCATION OF POSITIONS

The reclassification of any position from one Class to another Class as a result of an amendment to the Classification Plan, the five-year classification and compensation survey, an individual job audit, or otherwise, shall be implemented in accordance with the procedures set forth in this Rule 7.7.

a. First, in all cases, the Appointing Authority shall have the option of changing, refining, or limiting the duties performed by the position in question to coincide with those of the current Class. If the Appointing Authority selects this option, the position, Class, grade, incumbent, and merit date will go forward unchanged, and it is not necessary for the incumbent to take any examination to remain employed in the position.

b. If the Appointing Authority does not elect to change, refine, or limit the duties performed by the position in question to coincide with those of the current Class, then the Board will reclassify the position to the new Class. The incumbent's status in the new Class will be determined as follows:

1. Eligibility Requirements. In all cases, in order for the incumbent to be appointed to the new Class, it is necessary for the incumbent to meet all eligibility requirements for the new Class, including (i) any minimum qualifications established for selection purposes; (ii) any applicable promotional eligibility requirements, such as permanent status in a particular Class, and/or time in Class or grade; and (iii) any special eligibility requirements established by the Board's 1981 Consent Decree. Any incumbent who does not meet the eligibility requirements for Promotion to the new Class shall be treated in accordance with paragraph (b)(4) below.

2. If the change in Class does not result in an increase in grade, then it is sufficient for the incumbent employee to meet the basic eligibility requirements as set forth in (1), above. If the employee meets those conditions, then he or she will remain in the position in the new Class. The employee will carry his or her seniority date, grade, and step forward into the new Class, and no probationary period shall be necessary. If no minimum qualifications have been established, then the employee may hold the new Class in provisional or **temporary** status until those minimum qualifications have been established. If minimum qualifications have been or are later established and the incumbent does not meet the qualifications, then the employee will be treated in accordance with paragraph (b)(4), below.

3. If the change in Class does result in an increase in grade, then it is necessary for the incumbent Classified Employee to be examined for the new Class, and to meet all other eligibility requirements for the new Class.

**(i) If an active Eligibility List for the new Class exists, the incumbent's name appears on the Eligibility List, and the incumbent meets all other eligibility requirements, a Certificate of Eligibles shall be certified to the Appointing Authority in accordance with the Enabling Act, these Rules, and other provisions**

governing certification, to which the name of the incumbent employee has been added, if not otherwise included. If the incumbent employee is selected from the list, the employee's new merit date will be the date of appointment to the new Class. The employee's new rate of pay will be determined by reference to Rule 8.2(d). The employee will serve a one year Probationary Period in the new Class, commencing with the date of the employee's appointment from the Eligibility List.

(ii) If no Eligibility List for the New Class exists, or if an Eligibility List exists but the incumbent employee is not on the list, the incumbent employee must sit for competitive examination into the reclassified position, including satisfying any minimum qualifications established as part of the examination and selection process. The incumbent employee may remain in the reclassified position in temporary or provisional status, as appropriate, until the next examination is given, and during that time shall be compensated as any other temporary or provisional employee would be compensated under ordinary circumstances. When the next examination is given for the new Class, the incumbent employee must take the examination. If the incumbent employee meets all the eligibility requirements, successfully completes the testing process for the Class, and attains a score sufficient to have his or her name added to the Eligibility List for the Class, he or she shall be treated in accordance with paragraph (i) above. The employee's new merit date will be the date of appointment to the new Class. The employee's new rate of pay will be determined by reference to Rule 8.2(d). The employee will serve a one year Probationary Period in the new Class, commencing with the date of the employee's appointment from the Eligibility List.

If the employee fails to apply during the announcement period following his or her temporary, provisional, or emergency appointment to the Class, fails to sit for the examination, or fails to achieve a score sufficient to be included on the Eligibility List, he or she shall not be eligible for regular appointment to the Class or for continuation in a temporary, emergency, or provisional appointment.

4. In the case of an incumbent employee who for any reason fails to qualify for appointment to the reclassified position, the incumbent may not remain in the reclassified position. In this circumstance, an Appointing Authority may:

i. Revert to the initial option of changing, refining, or limiting the duties performed by the position in question to coincide with those of the initial Class, and not reclassify the position;

ii. Reassign the incumbent to any vacant position of the same or lower grade for which the incumbent satisfies the minimum qualifications established for selection purposes;

iii. In consultation with the Board, take any other actions in accordance with the Act and these Rules and Regulations.

## **7.8 CREATION OF NEW JOB CLASSES**

The Board shall not create any new job Class or position **without conferring with** the affected Appointing Authority that the job Class or position is needed. Prior to approving the new Class or position, the Board shall determine that the new Class or position is necessary.

## **RULE 8: PAY PLAN**

### **8.1 PREPARATION OF THE PAY PLAN**

The Director shall, after consultation with the Appointing Authorities and appropriate employee representatives, prepare a Pay Plan setting forth the Pay Grade assigned to each Class (the "Pay Plan"). In establishing the Pay Plan, the Director shall consider the following factors:

- a. Varying degrees of difficulty and responsibility among several Classes;
- b. Prevailing rates of pay and fringe benefits for similar employment in private establishments and other public jurisdictions in the area;
- c. Recruiting experience for the several Classes; and
- d. Financial conditions of the Appointing Authorities.

### **8.2 ADMINISTRATION OF THE PAY PLAN**

Each Classified Employee shall be paid at one of the Pay Grades set forth in the Pay Plan for the position in which he or she serves, in accordance with these Rules and the special provisions for administering the Pay Plan.

a. Minimum Rate. New appointments to the Classified Service shall be made at one of the beginning steps (step 1, 2, 3, or 4) of the Pay Grade for the position to which the appointment is made. A new appointment at step two (2), three (3), or four (4) of the Pay Grade shall be based on outstanding education and/or experience qualifications of the Eligible Candidate.

b. Authorized Step Increase. An Appointing Authority may not make an initial appointment above step four (4) of the Pay Grade unless requested in writing and approved by the Board. Following recommendation by the Director, the Board may authorize an initial appointment above step four (4) of the Pay Grade when:

1. There is a lack of available candidates for recruitment at step four (4) of the Pay Grade;
2. A former, satisfactory employee is reemployed in the classification formerly held; or
3. An Appointing Authority recommends appointment above step four (4) of the Pay Grade, based on outstanding education and/or experience qualifications of the candidate, or the position to be filled is that of a Department Head, Deputy Department Head, or a high-level professional or administrative position.

c. Salary Advancement. Annual salary advancement within established Pay Grades shall be based on meritorious performance on the job and shall be in accordance with the special provisions for administering the Pay Plan. An efficiency review reflecting satisfactory performance shall be required for advancement. At the discretion of the Appointing Authority, a Classified Employee with continued satisfactory service shall be eligible for future one-step



provide an opportunity for comment. The Board shall adopt, modify, or return the proposed Pay Plan to the Director for further revisions consistent with the Board's recommendations. The Pay Plan shall become effective thirty (30) calendar days after adoption by the Board. Upon final approval by the Board, the Director shall certify the Pay Plan, and forward a copy to each Appointing Authority.

#### **8.4 INTERIM AMENDMENTS TO THE PAY PLAN**

The Pay Plan may be amended in the interim in the following manner:

a. Adjustment of Entire Schedule by an Appointing Authority. An Appointing Authority may adjust the salary schedule in the Pay Plan by applying the same percentage increase or decrease to the entire schedule. However, the Appointing Authority must obtain the advance approval of the Board if:

1. An Appointing Authority desires to increase the entire schedule within twelve (12) months after the adoption of a new salary schedule; or

2. An Appointing Authority desires to increase the entire schedule within twelve (12) months immediately preceding any primary or general election in which members of the governing body are to be elected.

b. Adjustment of Less Than Entire Schedule. An Appointing Authority may change the rate of pay of one Class or a number of Classes in the Pay Plan as set forth in this subsection. The Appointing Authority shall pass an order or resolution setting forth the Class or Classes to be affected and the rates of pay proposed to be assigned to each Class, and shall within ten (10) calendar days of passage file a certified copy of such order or resolution with the Board. The resolution or order shall become valid and operative according to its terms unless the Board disapproves of such resolution or order within thirty calendar days after the date of filing with the Board. If the Board disapproves the resolution or order, it shall be invalid and of no legal effect.

c. By the Board. The Board may, upon written recommendation of the Director, any Appointing Authority, Department Head, or employee representative, amend the Pay Plan, taking into account changes in responsibilities, availability of labor supply, prevailing rates of pay, or other pertinent factors.

## **RULE 9: RECRUITMENT AND EXAMINATIONS**

### **9.1 RECRUITMENT**

Individuals shall be recruited for employment in the Classified Service from a geographic area as wide as is possible, in order to ensure the best-qualified candidates. Employment in the Classified Service shall not be limited to residents of the County.

### **9.2 ANNOUNCEMENTS**

a. Announcements. When it becomes known to the Director that there is a need to recruit individuals for employment into a particular Class, the Director shall post a Public Notice announcing the recruitment.

b. Content. Each announcement shall set forth:

1. The method of recruitment (see Rule 9.6);
2. The opening and closing dates for the filing of applications;
3. The minimum qualifications for employment in the Class; and
4. If known at the time of the announcement, the types of tests to be administered, the competencies to be assessed, and the relative weights thereof.

c. Announcement Period. The minimum period of time between opening and closing dates for filing of applications shall be ten (10) Business Days. The maximum period of time shall be at the discretion of the Director, taking into consideration the number of positions to be filled, the availability of applicants, and the geographical area of recruitment.

### **9.3 ACCEPTANCE OF APPLICATIONS**

An individual may apply for a position by completing and filing the application forms prescribed by the Director. Completed applications will be accepted only during the time period specified in the announcement. The Director may, under circumstances he or she deems reasonably necessary, extend the application acceptance period beyond the closing date specified in the announcement. Any extension of the application acceptance period must be publicly noticed through the same method or methods as were used for the initial announcement.

### **9.4 PREEMPLOYMENT BACKGROUND SCREENING**

An Appointing Authority may conduct permissible preemployment background screening of all Eligible Candidates certified by the Director, provided such screening is consistent with all applicable state and federal laws, regulations, and guidelines.

## 9.5 DISQUALIFICATION

Upon the Director's own initiative, or upon the written request of an Appointing Authority supported by appropriate documentation, the Director may declare an Applicant ineligible for recruitment and/or examination, for any one or more of the following reasons:

- a. Failure to meet the minimum qualifications for the Class for which the Applicant has submitted an application;
- b. An unsatisfactory employment record that demonstrates unsuitability for employment in the Classified Service or in the particular Class in question (including, but not limited to, any separation from the Classified Service other than in Good Standing);
- c. Any false statement, deception, fraud, or material omission in the Applicant's application, examination, or medical history;
- d. Current use of illegal drugs or abuse of alcohol, if the Applicant or Eligible Candidate is not currently participating in a supervised rehabilitation program;
- e. Conviction of a felony under state or federal law;
- f. Conviction of any crime involving infamous or disgraceful conduct;
- g. An unsatisfactory driving record as evidenced by a pattern, frequency and/or severity of traffic violations, where driving is an essential function of the job applied for;
- h. Failure to respond to any official notice from the Director or an Appointing Authority;
- i. If the Applicant exceeds the maximum age prescribed for the Class where age is a bona fide occupational qualification;
- j. If the Applicant was, at the time he or she submitted the application, employed by an Appointing Authority in the Class for which the examination is to be given;
- k. Failure to attend or complete all components of the prescribed selection procedure, including any candidate orientation session(s);
- l. Commission of any act prohibited by Rule 9.14; or
- m. Any other good cause consistent with the intent and spirit of the Act.

The Director shall provide timely written or electronic notification to any applicant disqualified from examination. An Applicant who is disqualified from examination may appeal in accordance with Rule 9.12(a).

## 9.6 METHODS OF RECRUITMENT

- a. The Director, in his sole discretion, may utilize the following types of recruitment:
  1. Open Competitive. In open competitive recruitment, competition is open to all applicants who meet the announced minimum qualifications for the examination.

2. Promotional. In promotional recruitment, competition is limited to current Classified Employees with Regular Status in lower related Classes, as specified by the Director, who meet the announced minimum qualifications for the examination. A promotional examination may, but need not, be limited to less than all Appointing Authorities or less than all departments within an Appointing Authority.

3. Open-Promotional. In Open-Promotional recruitment, competition is open to all applicants within and without the Classified Service who meet the announced minimum qualifications for the examination. Applicants within the promotional sequence are treated as promotional candidates under Rule 9.8(b), and Applicants outside the promotional sequence and outside the Classified Service are treated as open competitive candidates.

b. The Director shall in each case determine whether Open Competitive, Promotional, or Open-Promotional recruitment will serve the best interests of the Classified Service. Vacancies in the Classified Service shall be filled as far as practicable by Promotion. In determining the method of recruitment, the Director may consider the following:

1. The number of expected vacancies for the Class;
2. The availability of qualified applicants in lower related Classes;
3. The availability of qualified applicants in the external labor market;
4. The costs and administrative burdens associated with the administration of selection procedures; and
5. Any other factors the Director considers relevant.

## **9.7 CONTENTS OF EXAMINATIONS**

All appointments to the Classified Service, either at the entrance level or the promotional level, shall be made upon the basis of merit, efficiency and relative fitness of Applicants and shall be determined as far as practical and possible by competitive examinations. All announcements and examinations shall be prepared and weighed under the supervision of the Director. Competitive examinations shall relate to those matters that fairly test the relative capacity and fitness of those examined to discharge the duties of the Class. No question in any test, form or application or any other proceedings, however, shall be framed to elicit the political or religious beliefs of Applicants, or designed to unlawfully discriminate on the basis of any protected status.

## **9.8 RATING EXAMINATIONS**

a. In General. Sound measurement techniques shall be used in rating test results and in determining the relative ranking of candidates. In all examinations, the minimum rating standards for all tests, parts and/or sections shall be established under the supervision of the Director. Applicants may be required to attain at least a minimum score on each test component in order to receive a passing score or to be rated on the remaining parts of the selection procedure. Each Applicant's final score, before application of any seniority points, shall be computed on a 100-point scale, where 70 is the minimum passing score. Each Applicant's final

score shall be determined by combining the earned rating on each part of the examination in accordance with the weights established for the examination.

b. Additional Promotional Examination Provisions – Seniority Credit. Where promotional or open-promotional recruitment is utilized, a promotional Applicant who attains an overall score of seventy (70) or more on the examination shall have added to his or her score one (1) point for each year of service as a Full-time Regular Employee, up to and including twenty (20) years. Suspensions and unauthorized absences shall not be counted in computing seniority credit.

## **9.9 TIED RATINGS**

Two or more Eligible Candidates who have the same final score shall occupy the same rank on the Eligibility List.

## **9.10 NOTIFICATION OF EXAMINATION RESULTS**

Each person who participates in an examination shall be advised of his or her score. The notification may be provided by suitable electronic means, or by U.S. Mail, as may be prescribed by the Director.

## **9.11 IDENTIFICATION OF TEST PAPERS**

Every Applicant sitting for an examination shall use a pre-assigned confidential code assigned by the Director for use in identifying his or her examination. Any examination not bearing such identification may be rejected and the Applicant so notified.

## **9.12 REVIEW**

a. Disqualification from Examination or Eligibility List. Any person declared ineligible to take an examination under Rule 9.5, or disqualified from an Eligibility List under Rule 10.2, may appeal that decision by filing a written appeal with the Director, which fully states the basis for the appeal, within ten (10) Business Days from the date the notice of disqualification was issued. The Director shall review the appeal and may, upon a finding of error, permit the individual to be examined or reinstate the candidate to the Eligibility List.

b. Examination Scores. An Applicant may request that the Director review his or her examination score for accuracy by filing with the Director a written request within ten (10) Business Days from the date the test scores were issued. The Director's review shall be limited to the accuracy of the scoring procedure and shall not be appealable to the Board.

c. Examination Procedures. An Applicant adversely affected by a material failure of standardization in the examination procedures may file with the Director a written request to appeal within ten (10) Business Days from the date the test scores were issued.

d. Content of Examinations. In no case shall the format, content, or subject matter of an examination be subject to appeal.

e. Appeal to the Board. Any decision of the Director pursuant to subsections (a) and (c) above (except when the disqualification is based on Rule 9.5 (a)), may be appealed to the Board by filing a written appeal within ten (10) Business Days of the Director's decision. If the Board

fails to overrule the Director's decision within ten (10) Business Days from the date the appeal is filed, the appeal shall be deemed to have been denied. Pending a final decision by the Board, the Director may permit the complaining party to participate in the selection procedures or to remain upon the Eligibility Lists at issue. Any decision by the Board in accordance with this Rule 9.12(e) shall be final and not appealable.

### **9.13 CHANGES TO ELIGIBILITY LISTS PENDING APPEAL**

Whenever a review of ratings results in a change in rank on the Eligibility List, all persons so affected shall be notified by suitable electronic means, or by U.S. Mail, as may be prescribed by the Director. The Director may certify candidates from an Eligibility List during the relevant appeal period if an appeal is filed pursuant to this Rule, so long as no appeal is prejudiced by issuing the Certificate of Eligibles; provided, however, the Director shall endeavor to delay, to the extent practicable, issuing any Certificate of Eligibles until each appeal is resolved.

### **9.14 FRAUD**

a. If an Applicant during an examination is found to be using, without permission, any extraneous information such as another Applicant's test materials, memoranda, crib notes, pamphlets, books, cellular telephones, personal data assistants, pagers, or other electronic devices of any kind, the Applicant's test materials shall be taken and the Director shall have them graded with a zero and shall note on the test materials the reason for such score.

b. No person shall:

1. Willfully make a false mark, grade, estimate or report on an examination, self-report questionnaire, or minimum qualifications form with respect to the standing of an Applicant; or

2. Willfully make any false representation concerning an Applicant; or furnish to anyone special or secret information for the purpose of improving or injuring the prospects or chances of the appointment, employment or Promotion of any person examined or to be examined.

c. Any person found to have violated this Rule 9.14 shall be barred from participating in any future competitive examinations unless permitted by unanimous consent of the Board.

### **9.15 CANCELLATION OF EXAMINATION**

The Director may cancel, postpone, reschedule, or reannounce any examination for any good and sufficient reason deemed in the best interest of the Classified Service. All such incidents shall be reported to the Board and shall appear in the minutes with the reason for such action.

**9.16 RESCHEDULING AND MAKEUP EXAMINATIONS**

Unless required by state or federal law, the Director shall not allow an Applicant to take an examination at a time or date other than the time or date set for all other Applicants.

## **RULE 10: ELIGIBILITY LISTS AND CERTIFICATION**

### **10.1 ELIGIBILITY LISTS**

The Director shall establish and maintain Eligibility Lists as set forth in this Rule as he or she deems necessary to meet the needs of the Classified Service. All Eligibility Lists shall have a duration of at least one year, except where the Director determines that the list fails to provide a sufficient number of Eligible Candidates to meet a specific employment need.

### **10.2 REMOVAL OF NAMES FROM ELIGIBILITY LISTS**

Upon the Director's own initiative, or upon the written request of an Appointing Authority supported by appropriate documentation, the Director may remove the name of an Eligible Candidate from an Eligibility List:

- a. If the Eligible Candidate is employed or appointed by any Appointing Authority in the Class for which the Eligibility List exists, except in the case of an emergency, temporary, or part-time appointment;
- b. Upon expiration or termination of the Eligibility List;
- c. For any reason that would constitute cause for disqualification under Rule 9.5;
- d. If the Eligible Candidate declines three (3) or more offers to interview, opportunities to interview; and/or offers of employment from the same Appointing Authority for the Class for which the Eligibility List exists, the Eligible Candidate shall be removed from the Eligibility List for that class for that Appointing Authority; or
- e. For any other good cause consistent with the intent and spirit of the Act.

The Director shall provide timely written or electronic notification to any Eligible Candidate disqualified from an Eligibility List. An Eligible Candidate who is disqualified from an Eligibility List may appeal in accordance with Rule 9.12(a).

### **10.3 REINSTATEMENT TO ELIGIBILITY LIST**

Any former Regular Employee separated from the Classified Service in Good Standing may, within two (2) years from the date of separation, apply to the Director to have his or her name placed on the Eligibility List for the Class the employee held at the time of separation. In order to qualify for reinstatement under this Rule 10.3, the applicant must meet any established minimum qualifications for the Class existing at the time of the application for reinstatement. Such request shall be made in writing to the Director, who shall submit his or her recommendation to the Board for review and final approval. Upon review and approval by the Board, the name of the former employee shall be placed at the bottom of the appropriate Eligibility List for the duration of such list. Any person subsequently appointed after being reinstated to an Eligibility List under this Rule 10.3 shall serve a Probationary Period of one (1) year. Nothing in this Rule 10.3 shall be construed to interfere with any reinstatement rights

under state or federal law, and to the extent this Rule is inconsistent with such state or federal laws, the provisions regarding reinstatement in such laws shall control.

#### 10.4 CERTIFICATION

a. Based on the receipt of an authorized requisition from an Appointing Authority, the Director shall select for Certification the names of Eligible Candidates from the appropriate Eligibility Lists in the following priority:

1. If a Layoff List exists for the Class to be filled, which contains the name of at least one former Regular Employee from the Appointing Authority submitting the requisition, then the highest ranking name on that Layoff List shall be certified, and none other. If a Layoff List exists for the Class to be filled, which contains the names of former Regular Employees from other Appointing Authorities, the Director shall certify up to 10 names from that list, in order of seniority in Class. If fewer than ten names are thus certified, then the Director shall certify the difference in accordance with paragraphs (2), (3), and (4), below.

2. If a promotional list exists:

A. Eligible Candidates presently employed by the Appointing Authority in which the vacancy exists, in rank order, then

B. Eligible Candidates presently employed by other Appointing Authorities, in rank order.

3. If an open-promotional list exists, Eligible Candidates from the open-promotional list, in rank order; and

4. If an open-competitive list exists, Eligible Candidates from the open-competitive list, in rank order.

b. Rule of Ten Ranks. In general, all positions shall be filled by the rule of ten (10) ranks, with one additional rank for each vacancy past the first vacancy (for example, if there are two vacancies, the Board shall certify 11 ranks). In accordance with Rule 9.9, a “rank” shall include the name or names of all applicants from an Eligibility List having the same final score.

c. Optional: Rule of Five Eligible Candidates. If the requested Certificate is for the entry-level position of Police Officer, Deputy Sheriff, or Firefighter, the Appointing Authority may request the Certification of the names of five (5) Eligible Candidates for each vacancy in lieu of 10 ranks. An Appointing Authority desiring to invoke this option must so state in writing in the initial request for Certification.

d. The names of Eligible Candidates certified to an Appointing Authority from promotional, open-promotional, or open competitive Eligibility Lists shall be provided to the Appointing Authority in random order.

e. Where the Appointing Authority requesting the Certificate has distinct organizational departments, in no case will an Eligible Candidate be certified to a department for which he or she has rejected an offer of employment in the same Class.

f. Upon request of an Appointing Authority, the Director shall add to a Certificate of Eligibles any candidate who is certified by the Alabama Department of Rehabilitation Services or by the United States Department of Veteran Affairs Vocational Rehabilitation and Employment Service as being significantly disabled and eligible for rehabilitation services, who either

1. Meets the minimum qualifications for the Class and has achieved at least the minimum qualifying score on any examinations administered by the Director for the Class, or

2. Has demonstrated, during a period of temporary appointment approved by the Director, the ability to successfully perform the essential duties of the position to which appointed.

Such Eligible Candidate shall be added without regard to his or her relative ranking on the Eligibility List. The Director shall not flag, segregate, or otherwise identify eligible candidates whose names have been added to Certificates of Eligibles pursuant to this Rule 10.4(f).

## **10.5 WAIVER OF CERTIFICATION RIGHTS**

a. Before being certified, an Eligible Candidate may waive, in writing, Certification rights for a period not to exceed six (6) months. Such written request shall set forth in detail the reasons for such request. All such requests must be approved by the Director, taking into consideration the needs of the Classified Service and interests of the Eligible Candidate. During the period for which waiver is granted, such Eligible Candidates will not be certified or considered for appointment.

b. Under no circumstances other than those cited above, or those cited in Rules 9.5, 10.2, and 10.4, shall any Eligible Candidate be bypassed for Certification.

## **10.6 SUPPLEMENTAL CERTIFICATIONS**

Should Eligible Candidates be eliminated from a Certificate of Eligibles, through offers of employment or interviews that are declined, through disqualification, or otherwise, such that the Certificate of Eligibles contains fewer than 10 names, the Appointing Authority may request a supplemental Certification. A request for supplemental Certification shall be made in writing to the Director. Upon receipt of a request for supplemental Certification, the Director shall verify that fewer than 10 Eligible Candidates remain on the Certificate, and if the appropriate Eligibility List contains additional names, shall certify a new number of Eligible Candidates sufficient to provide the Appointing Authority with no less than ten (10) Eligible Candidates.

## **10.7 INTERFERENCE WITH CERTIFICATION RIGHTS**

After an Eligible Candidate has been certified to an Appointing Authority, the Appointing Authority shall not take any action which is intended to or may have the effect of encouraging an Eligible Candidate to withdraw his or her name from consideration. If the

Director finds that Eligible Candidates have been eliminated from the Certificate in a manner that contravenes this Rule 10.7, any subsequent request for supplemental certification shall be denied, and the appointment, if any, may be set aside.

# **RULE 11: APPOINTMENTS, PROMOTIONS, DEMOTIONS, TRANSFERS, AND ASSIGNMENTS**

## **11.1 REQUISITION FOR VACANT POSITION**

Any Appointing Authority desiring to fill a vacant position shall submit a written or electronic request to the Director. The request shall provide, at a minimum, a statement of the duties that the position performs and any additional information known about the position.

## **11.2 APPOINTMENTS FROM CERTIFICATES OF ELIGIBLES**

a. The Director shall review a requisition under Rule 11.1 and prepare a Certificate of Eligibles within a reasonable period of time.

b. The Appointing Authority may make an appointment from the Certificate of Eligibles, or, in accordance with Rule 9.5, 10.2, and/or 10.6, request that the Director disqualify from the Eligibility List, and/or remove from the Certificate, one or more Eligible Candidates.

c. The Appointing Authority has ten (10) Business Days from issuance of the Certificate of Eligibles to make an appointment or provide the Director with written notification that the requisition has been withdrawn and the reasons for the withdrawal. Within ten (10) Business Days after an appointment is made, the Appointing Authority shall provide the Director a written statement of reasons for the selection. If no appointment is made within thirty (30) days of the date of the Certificate of Eligibles, then the Certificate of Eligibles shall expire, unless extended upon written request of the Appointing Authority, approved by the Director.

## **11.3 TYPES OF APPOINTMENTS**

Unless explicitly provided for in these Rules, all appointments to the Classified Service shall be one of the following types:

a. General Appointments. In general, except as provided in subsections (b) through (h) of this Rule, all appointments to positions that require or are expected to require continuous employment for an indefinite period shall be made through the announcement and competitive processes set forth in the Act and these Rules.

b. Provisional Appointments. In the absence of an appropriate Eligibility List, the Board may authorize, by unanimous approval (*i.e.*, all three (3) members), the filling of a vacancy by provisional appointment. Any such candidate for provisional appointment must meet all education, experience and related requirements set forth by the Director. Provisional appointments shall be for a period of not more than four (4) months, and no provisional appointment shall be continued for more than ten (10) Business Days after the establishment of any Eligibility List for the class. Any provisional appointee who fails to achieve a score on the competitive examination placing him or her in certifiable range on the Eligibility List shall be removed from the provisional appointment after the appropriate Eligibility List is established. The provisional appointment of any individual shall not confer on the appointee any rights of status, appeal or related rights set forth under these Rules.

c. Seasonal Appointments. Seasonal appointments may be granted for work seasonal in nature. No such appointment shall extend beyond four (4) months or the work season in question. All candidates to be considered for seasonal appointments shall meet the requirements set by the Director. The seasonal appointment of any individual shall not confer on the appointee any rights of status, appeal or related rights set forth under these Rules.

d. Students or Interns. Student appointments have the purpose of affording students of public administration and other professional areas an opportunity to gain actual work experience in the public service. Such appointments are viewed as intermittent employment for a definite period of time, not to exceed 1040 hours of work in any calendar year. Candidates for appointment as students or interns shall meet the requirements set by the Director. The appointment of any individual as a student or intern shall not confer on the appointee any rights of status, appeal or related rights set forth under these Rules.

e. Temporary Appointments. Temporary appointments may be granted in extenuating circumstances, not to exceed six (6) months in duration. Candidates for temporary appointments shall meet the requirements recommended by the Director and approved by the Board. The temporary appointment of any individual shall not confer on the appointee any rights of status, appeal or related rights set forth under these Rules.

f. Emergency Appointments. Upon receipt of request from an Appointing Authority citing emergency condition(s), the Director may authorize an emergency appointment not to exceed thirty (30) days. The manner of appointment and rate of compensation shall be set by the Director. An emergency as used herein means an unforeseen condition which is likely to cause loss of life, loss or damage to property, the stoppage of service or serious inconvenience to the public. Candidates for emergency appointments shall meet the requirements recommended by the Director and approved by the Board. The emergency appointment of any individual shall not confer on the appointee any rights of status, appeal or related rights set forth under these Rules.

g. Federally Funded Positions. Positions created in the Classified Service through any federally financed public employment program convey no rights of tenure or permanency. Employment made available pursuant to such statutes shall terminate at cessation of such federal funding. If an Appointing Authority accepts and utilizes federal funds for the creation of public employment opportunities, Classified Employees occupying such positions, when budgeted on a full time basis for twelve (12) months, shall be entitled to earn and use sick and vacation leave upon the satisfactory completion of twelve (12) months of continuing employment. Should the applicable federal regulations controlling the use of such funds prescribe unusual or exceptional prerequisites for employment in said program, the Director, subject to approval of the Board, may prescribe the manner in which the position shall be filled and related conditions of employment.

h. Wartime Appointments. During a time of war or other hostilities, whether or not formally declared as such by Congress, the Director, with the Board's approval, may authorize temporary appointments to positions for which there are no appropriate Eligibility Lists. Such appointments shall not confer any status or seniority in the Classified Service or any rights under these Rules to persons so appointed. Such appointments shall not continue for a period longer than the duration of the war or emergency period plus six (6) months. A Classified Employee appointed to a higher classification pursuant to this rule shall not obtain any rights or claims to the higher classification but shall retain all rights previously accrued, so seniority shall accrue as

if the wartime appointment had not occurred. Candidates for wartime appointments shall meet the requirements set by the Director.

#### **11.4 USE OF INDEPENDENT CONTRACTORS**

a. Prohibition on Use of Independent Contractors. No Appointing Authority shall retain the services of an Independent Contractor except as provided in this Rule 11.4.

b. Request. Prior to retaining the services of an Independent Contractor, an Appointing Authority shall submit a written request to the Director, along with a copy of any proposed contract(s) or general description of the services to be provided by the Independent Contractor, along with a detailed description as to why the services of the Independent Contractor are necessary. Upon receipt of the request, the Director shall forward the request to the Board for its approval. The Board may grant such request with or without conditions, restrictions, or limitations. The Board shall consider the following factors in reaching its decision on any request made by an Appointing Authority:

1. Whether qualified persons are available for appointment under the Act or these Rules for performance of the type of work to be performed by the Independent Contractor at issue;

2. Whether the type of work at issue is such as may reasonably be expected to be continuous for an indefinite time, or whether it is periodic or sporadic in nature;

3. Whether the work performed, or to be performed, is customarily and generally given to Independent Contractors; and

4. Whether the Appointing Authority at issue has the physical facilities to perform the work for which the Independent Contractor is to be retained.

c. Exception. For purposes of this Rule 11.4, the term “Independent Contractor” shall not include any person, firm, or entity retained by an Appointing Authority for the construction of viaducts, bridges, street improvements, sewers, canals, public buildings, or public utilities.

#### **11.5 DOCUMENTATION OF APPOINTMENTS**

All documentation related to appointments, including but not limited to Personnel Action Forms, shall be received prior to the effective date of the proposed personnel action.

#### **11.6 PROBATIONARY STATUS OF APPOINTMENTS**

a. General Rule. Any employment in a Position in the Classified Service shall be subject to the completion of a satisfactory Probationary Period:

1. Upon initial General Appointment, and
2. Following a non-promotional appointment from an Eligibility List to a Class at the same Pay Grade as the Class currently held, and
3. Following a Promotion

b. Following Initial Appointment. A Classified Employee in his or her Probationary Period following an initial appointment may be dismissed, demoted, or suspended without the right to appeal.

c. Following Non-Promotional Appointment. A Classified Employee who accepts a non-promotional appointment within his or her Appointing Authority as described in 11.6 (a)(2) above may, during the 12- month Probationary Period following such non-promotional appointment, be returned to the last Class held, if still vacant, and does not have the right of appeal under Rule 12.2.

d. Following Promotion.

1. A Regular Employee who accepts a Promotion within his or her Appointing Authority may, during the 12- month Probationary Period following such Promotion, be subject to demotion or elect to return to the position from which he or she was promoted, if still vacant. If the position is filled, the Appointing Authority may, with the approval of the Director, place the employee into any lower Position for which the employee qualifies. Employees demoted or electing demotion during the 12-months following promotion do not have the right of appeal under Rule 12.2.
2. During the 12-month Probationary Period following a Promotion in another Appointing Authority, a Regular Employee may return to the position from which he or she was promoted if (1) the position is still vacant, (2) the employee has completed a 12-month probationary period in the class to which he or she is returning, and (3) both Appointing Authorities agree. An employee returning to his or her previous position under this Rule 11.6(d)(2) does not have the right of appeal under Rule 12.2.

## 11.7 DEMOTIONS

An employee may be demoted for any of the following reasons:

- a. When an employee is demoted for cause as defined in Rule 12.2;
- b. When an employee voluntarily requests or accepts the demotion;
- c. When an employee would otherwise be laid off pursuant to Rule 11.12; or,
- d. When an employee's Position is reclassified such that he or she does not qualify to hold the reclassified Position pursuant to Rule 7.7

An employee who has completed the Probationary Period for the Class from which he or she is demoted may appeal a demotion for cause as defined in Rule 12.2. Demotion during the 12- month Probationary Period following a Promotion is not subject to appeal.

Except in the case of a Demotion resulting from either c or d above, an employee may not demote to a Class in which he or she did not complete a Probationary Period, unless hired from an Eligibility List.

## **11.8 INTERGOVERNMENTAL CAREER TRANSFERS**

Any person holding permanent status in the State of Alabama Merit System, or holding similar status in the civil service of the federal government, may be appointed without examination to a position in the same or a similar Class in the Classified Service, provided that any such appointment shall be recommended by the Director and approved by the Board. Individuals making career transfers to jurisdictions under the supervision of the Board shall be afforded all seniority accrued with the government prior to the transfer. The Appointing Authority may elect to recognize vacation and sick leave accrued with the government prior to the transfer. Employees transferred under this Rule enter the Classified Service as Regular Employees.

## **11.9 REASSIGNMENT**

An Appointing Authority may at any time assign a Classified Employee under his or her jurisdiction from one position to another in the same Class regardless of the shift, location, hours of work, or other consideration as long as the work-week basis remains the same. Such reassignments shall be made with the retention of all rights of seniority, vacation, sick leave, and overtime as the employee may have accrued.

## **11.10 TRANSFERS**

- a. General Rule. The Director may authorize a Transfer where a Regular Classified Employee in Good Standing seeks Transfer from a Class currently held in one Appointing Authority to the same Class in another Appointing Authority, provided both Appointing Authorities consent to the Transfer. The employee must have completed the 12-month Probationary Period in the Class within which the Transfer is sought.
- b. Disposition of Leave Upon Transfer. The Appointing Authority who receives the transferee may elect to recognize vacation, sick leave, or both, accrued with the prior Appointing Authority. The transferee shall retain all accrued seniority within the Classified Service.
- c. Procedure. The Appointing Authority that desires the prospective transferee must submit to the Director a written request to affect the transfer. All transfers must be consistent with this Rule and the objectives and purposes of the Act.
- d. Except as provided in this Rule, individuals who are currently employed in any jurisdiction within the Classified Service may not be appointed to a position with another Appointing Authority unless the existing employment is ended.

## **11.11 ASSIGNMENT OF DUTIES OUT OF CLASS**

- a. Unless otherwise provided in these Rules, no Classified Employee may be assigned duties of a different Class for a period in excess of thirty (30) calendar days or 240 working

hours in any twelve (12)-month period, except with the approval of the Director. **Due to the unique scheduling arrangements of firefighting personnel, no firefighter in the Classified Service may be assigned duties of a higher Class for more than four hundred thirty two (432) hours in a twelve (12) month period, without approval of the Director.** If a Classified Employee reasonably believes that an Appointing Authority has required him or her to perform duties of a different Class in excess of the limits allowed in this Rule 11.11, the Classified Employee shall, within thirty (30) Calendar Days, notify the Director in writing. The Director shall undertake such review as deemed necessary and shall report his or her findings to the Board, which shall take such actions as deemed appropriate and notify the employee of its decision. **Designation of an individual as “Acting” shall not circumvent this Rule 11.11.**

## **11.12 REDUCTION IN FORCE**

An Appointing Authority may reduce staff because of a lack of work, lack of funds, or whenever it is advisable to do so in the interest of economy. If it becomes necessary to reduce staff, the following procedure shall govern the reduction in force:

a. Scope. Reductions in force shall be implemented on a departmental basis. The Appointing Authority shall be responsible for defining its departments. The Appointing Authority shall notify the Director in writing of: (1) each department within the Appointing Authority that will be affected by the reduction in force, (2) each Class within each department to be affected by the reduction in force, and (3) the number of positions to be eliminated in each Class. Such notice shall include the organizational structure of the Appointing Authority and the reason for the reduction in force.

b. Procedure.

1. Before initiating any reduction in force under this Rule 11.12, the Appointing Authority shall release any employees in the Class(es) in the department to be affected by the reduction in force that are not Regular Employees, regardless of the type of appointment in which the employee serves at the time of the reduction in force.

2. Next, with respect to Regular Employees, the Appointing Authority shall first discontinue any probationary, provisional, seasonal, student/intern, temporary, emergency, or wartime appointments in the Class(es) in the department to be affected by the reduction in force. A Regular Employee who, at the time of the reduction in force, was appointed in a seasonal, temporary, emergency, or wartime appointment shall be returned to employment in the Class in which he or she last held a Full-Time General Appointment, if any. Any Regular Employee returned to such prior Class shall be subject to the reduction in force in the same fashion as all other employees in that Class. Regular Employees serving in probationary and provisional appointments at the time of the reduction in force shall be treated in accordance with paragraph (c).

3. All other Regular Employees shall be laid off in reverse order of seniority in the Class. If there are two (2) or more Regular Employees who have equal seniority in Class, the employee with the lowest score on the efficiency ratings for the Class in question shall be laid off first. However, if the efficiency ratings are equal, or if any of

the employees with equal seniority do not have a current (i.e., within the last 18 months) efficiency rating in the Class, then seniority in the department shall control.

c. Bumping Rights. When a Regular Employee is laid off, he or she shall have the option of working in any lower Class in the department for which the employee is deemed qualified by the Director, provided that such a move does not displace an employee with more departmental seniority than the employee moving into the lower Class. Any Regular Employee in the lower Class who is so displaced shall have the same rights described in this subsection.

d. Reassignment of Duties. The duties formerly performed by an employee affected under this Rule 11.12 may be assigned to any other employee in the department who is qualified to perform such duties, regardless of the specific Class held by such employee.

e. Notice. Any Regular Employee affected by a reduction in force shall be provided a minimum of fifteen (15) calendar days written notice. Such notice shall provide the Regular Employee with seniority calculations for both (1) the Regular Employee's seniority in Class, and (2) the Regular Employee's seniority in department. The Regular Employee may appeal the seniority calculations to the Director within five (5) calendar days of receipt of the notice required under this subsection. The Director will review the seniority calculations at issue and will advise the Regular Employee within five (5) calendar days of his determination. The Director's determination with respect to seniority calculations shall be final.

f. Layoff Lists. Any Regular Employee laid off pursuant to Rule 11.12 shall, for a period of two years, be placed upon the layoff list for:

1. The Class held at the time the employee was laid-off, and

2. Any Class formerly held in the Merit System at a lower Pay Grade than the Class from which the employee was laid-off and for which the Regular Employee remains qualified, as determined by the Personnel Director.

In constructing a layoff list for a particular Class, the Director shall place the names of those individuals who were laid off from that Class at the top of the list in order of Class seniority; all other names on the layoff list shall follow in order of departmental seniority.

g. Appeal Rights. Except as provided in Rule 11.12(e), Regular Employees shall not have the right to appeal any aspect of a reduction in force. Allegations of illegality, discrimination, or other wrongdoing or misapplication of this Rule 11.12 shall not create a right of appeal under this or any other Rule.

## **RULE 12: DISCIPLINARY ACTIONS AND APPEALS**

### **12.1 DISCIPLINARY POLICY**

The tenure of every Classified Employee shall be conditioned upon his or her satisfactory conduct and efficient performance of assigned duties and responsibilities. A Regular Employee who, for cause, is dismissed, demoted (except as governed by Rule 11.7 (b), (c), or (d)), or suspended (other than a suspension governed by Rule 12.14) shall have the right of appeal as set forth in this Rule 12.

### **12.2 DEFINITION OF “FOR CAUSE”**

The following reasons shall constitute “for cause:”

- a. Absent without leave;
- b. Commission of a criminal offense;
- c. Conduct unbecoming a Classified Employee;
- d. Conviction of any criminal offense involving moral turpitude;
- e. Disorderly or immoral conduct;
- f. Abuse of leave policies;
- g. Incompetence or inefficiency;
- h. Insubordination;
- i. Reporting to or engaging in work while under the influence of alcohol or a controlled substance;
- j. Neglect of duty;
- k. Negligence or willful damage to public property or waste of public supplies or equipment;
- l. Violation of any rule or regulation of the Appointing Authority, or failure to comply with instructions made and given by a superior officer or supervisor;
- m. Violation of any of the provisions of the Act or of these Rules;
- n. Refusal of a Classified Employee to cooperate in any internal investigation conducted by the Board, the Director, or an Appointing Authority;
- o. Inability to perform the essential functions of the job with or without reasonable accommodation; or
- p. Any other legitimate and nondiscriminatory reason that constitutes good cause for disciplinary action, is reasonably specific, is consistent with the Act and these Rules, and is not motivated by any non-work-related preference or animus for or against any person.

### 12.3 NOTICE AND SERVICE

a. Notice. Notice of dismissal, suspension for more than five (5) scheduled working days, or demotion of a Regular Employee shall be in writing and shall set forth:

1. The factual basis for the action to be taken;
2. The date termination, suspension, or demotion is to become effective; and
3. Any other information deemed appropriate.

b. Service on Employee. The Appointing Authority shall serve the notice on the employee with a copy to the Director. Service may be in person or by U.S. Mail, or both. Provided, if service is by U.S. Mail, deposit of the notification in the U.S. Mail no later than the effective date of the action shall constitute service. Any form of mail receipt or a sworn affidavit of the server shall constitute *prima facie* evidence of timely mail deposit.

c. Service on the Director. The Appointing Authority shall serve a copy of the written notice on the Director within three (3) Business Days of the effective date of the action. Provided, if service is by U. S. Mail, it should be mailed to the Director at the same time as to the employee. Deposit of the copy in the U. S. Mail within three (3) Business Days of the effective date of the action addressed to the Director at the Board offices shall constitute service. Any form of mail receipt or a sworn affidavit of the server shall constitute *prima facie* evidence of timely mail deposit.

d. Failure to Serve. A failure to satisfy the service requirements herein may be grounds for dismissal of the charge, upon appeal by the employee. Provided, the Board may waive such failure upon a showing of good faith effort or other good cause as the Board may determine.

### 12.4 APPEAL PROCEDURE

An employee desiring to appeal shall within ten (10) calendar days after notice thereof, file with the Director, in duplicate, a written answer to the charges and request a hearing.

a. Content. Appeals may be in any written format, including letter form, but they must contain the following information:

1. The name, address, and telephone number of the person filing the appeal, and the name and address of the Appointing Authority that took the action being appealed;
2. A description of the action the Appointing Authority took and its effective date;
3. A concise statement of the reasons why the employee believes the action by the Appointing Authority is wrong; and
4. The signature of the employee or his or her representative.

b. Service. Within five (5) Business Days of receipt of the appeal, the Director shall mail a copy of the appeal to each party to the proceeding other than the employee.

## 12.5 HEARING

a. Scheduling of Hearing. Except in extraordinary circumstances as determined by the Board, the Board shall order a Public Hearing of the appeal to be held before a Hearing Officer no later than thirty (30) calendar days after the notice of appeal has been served, unless agreed to earlier or later by the parties. A request by either party to continue a hearing must be received by the Board and the appointed Hearing Officer at least seventy-two (72) hours prior to the time set for the hearing. Requests for continuance shall not be interposed for delay and will be granted only for good cause.

b. Conduct of Hearing by Hearing Officer. The hearing shall be before a Hearing Officer appointed by the Board. The Hearing Officer shall take testimony and other evidence offered in support and denial of such charges. Within five (5) Business Days of the close of the hearing, the Hearing Officer shall submit a Report and Recommendation to the Board, which shall contain findings of fact and conclusions therefrom upon all material issues presented at the hearing.

c. Scope of Hearing. The hearing shall be for the purpose of determining whether the employee, by reason of his or her act or acts as charged and his or her record of service, merits retention in the Classified Service or should be removed therefrom, or otherwise disciplined.

d. Rules of Evidence. The Hearing Officer shall not be bound to follow technical rules of evidence.

e. Representation. Any party at interest may be represented at the hearing by one representative or attorney of his or her own choosing.

## 12.6 DECISION BY THE BOARD

A Hearing Officer's Report and Recommendation shall be deemed received by the Three-Member Board at the first regular or special meeting of the Board, if timely received. If a Hearing Officer's Report and Recommendation is received by the Board five (5) Business days or less prior to a regular or special meeting, it shall be deemed received at the Board's next regular or special meeting. The Board shall consider the Hearing Officer's Report and Recommendation, and modify, alter, set aside or affirm said report and certify its findings to the Appointing Authority who shall forthwith put the same into effect. If the Board fails to act within forty-five (45) calendar days after receipt of the Hearing Officer's Report and Recommendation, the Report and Recommendation shall become the order of the Board.

While the Board encourages the parties to resolve their dispute, it cautions the parties that: (a) any resolution must be consistent with the Rules and Regulations of the Personnel Board and the Enabling Act; and (b) the parties to a disciplinary appeal may not bind the Personnel Board to take or refrain from any action without the express consent of the Board. Any party who has a question regarding the extent to which a proposed resolution complies with the Rules and Regulations of the Personnel Board and the Enabling Act should contact the Employee Relations Department.

## **12.7 WITNESSES**

It shall be the duty of the Director to subpoena witnesses other than character witnesses, for or against the employee upon written request and affidavit that their testimony is necessary.

## **12.8 SUBPOENAS**

a. Requests for Subpoenas. Parties who wish to obtain subpoenas requiring the attendance and testimony of witnesses, or subpoenas requiring the production of documents or other evidence should file their requests with the Hearing Officer in writing, within a reasonable time before the hearing.

b. Petition to Revoke Subpoenas. Any person to whom a subpoena is directed, or any party, may file a petition to revoke or limit the subpoena. The motion must be filed with the Hearing Officer, and it must include the reasons why compliance with the subpoena should not be required or the reasons why the scope of the subpoena should be limited. The Hearing Officer, shall immediately render a decision whether to quash the subpoena.

## **12.9 RECORD OF TESTIMONY**

All hearings held pursuant to this Rule shall be recorded by a competent stenographer or by recording device, but same shall not be transcribed except upon order of the Board following written request by either party. The Board may charge any party requesting a written transcript the reasonable costs associated therewith.

## **12.10 CITIZEN COMPLAINTS**

a. Definition of Complaint. Any person outside the Classified Service who desires to file a complaint against a Classified Employee shall file such complaint in writing and shall recite therein the specific allegations against the Classified Employee. Only written complaints concerning conduct that is job-related and/or occurs in the line and scope of a Classified Employee's position constituting cause under Rule 12.2 shall be heard.

b. Review by the Director. The Director shall review the complaint to determine whether the allegations, if true, would constitute cause under Rule 12.2. If the allegations would constitute cause, the Director shall proceed as set out in paragraph (c) of this Rule 12.10. Any complaint that does meet this standard shall be dismissed. The Director shall notify the charging party if the complaint is dismissed. The Director's decision to sustain or dismiss a complaint shall not be subject to review.

c. Service of Complaint and Answer. If the Director sustains the complaint under paragraph (b), he shall, within five (5) Business Days after receiving the complaint, serve a copy of the complaint on the accused Classified Employee and the Classified Employee's Appointing Authority. The accused Classified Employee shall, within five (5) Business Days after service of the complaint, file a written answer. The Director shall serve a copy of the answer on the charging party and the Appointing Authority.

d. Hearing. The Board shall order a hearing to be held in the same manner described in Rules 12.5 through 12.9, except that the hearing must be held within twenty (20) Business

Days after the Classified Employee has been served with the complaint. The charging party has the burden of proof with respect to the allegations made against the Classified Employee.

e. Role of the Appointing Authority. For any hearing held under this Rule 12.10, the Appointing Authority may request to participate. The Board may allow the Appointing Authority to participate in any manner that the Board deems appropriate. However, nothing in this subsection shall be interpreted as requiring the Appointing Authority's participation, nor shall the Board have the authority to compel the Appointing Authority's participation.

#### **12.11 CHARGES FILED BY THE DIRECTOR**

An employee in the Classified Service may also be dismissed, demoted, or suspended upon charges made by the Director. Such charges shall be prosecuted in a manner consistent with Rule 12.10.

#### **12.12 CONFIRMATION OF COMPLIANCE**

The Appointing Authority shall immediately comply with all decisions and orders of the Board rendered in accordance with this Rule 12 and shall within ten (10) calendar days deliver written confirmation of compliance with said decisions and orders to the Board. If the Appointing Authority fails to comply with a Board order, the Board may file an appropriate action in the Circuit Court for Jefferson County.

#### **12.13 JUDICIAL REVIEW**

a. Review By Circuit Court, Generally. Any decision rendered by the Board in accordance with Rules 12.6, 12.10, or 12.11 shall be final, subject to appeal by either party to the Circuit Court of Jefferson County to review questions of law and whether the decision or order of the Board is supported by substantial and legal evidence. On such appeal the Circuit Court shall review the record and shall affirm, reverse, remand or render said cause. The decision of the Board shall be controlling until reversed on appeal as provided herein.

b. Review By Circuit Court, Filing Procedure. The appeal shall be perfected by filing with the Director and the Clerk of the Circuit Court of Jefferson County, a statement in writing, signed by the party appealing, to the effect that said party appeals from the decision or order of the Board to the Circuit Court, which statement shall be filed within ten (10) calendar days from the announcement of the decision or order of the Board. The Party appealing must also pay any filing fees required by the Clerk of Circuit Court Jefferson County, along with any security for costs, in an amount and form, as approved by any Judge of the Circuit Court.

#### **12.14 SUSPENSIONS OF LESS THAN FIVE DAYS**

An Appointing Authority may suspend any employee without pay with no right to appeal to the Board, so long as (1) no single suspension exceeds five (5) scheduled working days or 40 working hours, and (2) the total of such suspensions does not exceed ten (10) scheduled working days or 80 working hours in the twelve (12) month period immediately preceding the suspension. To effect such a suspension, the Appointing Authority must serve on the employee a written notice clearly setting out the basis for the suspension. A copy of such notice must be

simultaneously mailed or delivered to the Director. The suspended employee may file a written answer or explanation of such charges with the Board and the Appointing Authority. The Appointing Authority may, in its discretion, hold such hearings as it deems appropriate.

## **RULE 13: ATTENDANCE AND LEAVE**

### **13.1 HOURS OF WORK**

The hours of work shall be fixed by the Appointing Authority.

### **13.2 TYPES OF LEAVE**

The following types of leave are recognized: holiday, vacation, sick, compensatory leave for overtime hours, family and medical, uniformed service, jury, special meetings and examinations, leave without pay, paid injury leave, and administrative leave.

### **13.3 OTHER LEAVE RIGHTS NOT AFFECTED**

This Rule 13 shall not be interpreted to curtail any right that an employee may have under any applicable State or Federal law, including, but not limited to, the Family and Medical Leave Act, the Americans with Disabilities Act, and the Uniformed Services Employment and Reemployment Rights Act. To the extent that this or any Rule conflicts with any applicable State or Federal law, the State or Federal law shall apply.

### **13.4 ATTENDANCE AND LEAVE REPORTING**

The Director shall maintain attendance and leave records on all Classified Employees. Each Appointing Authority shall report employee absences to the Board on forms prescribed by the Director. These forms shall be forwarded immediately to the Board upon the employee's return to duty, or at the close of the payroll period if the employee has not returned to duty.

### **13.5 FAILURE TO REPORT ABSENCES**

If an Appointing Authority or department head fails to report the absence of a Classified Employee and the employee is paid in excess of the amount due, the Appointing Authority shall be liable for the overpayment.

### **13.6 ABSENCE WITHOUT LEAVE**

An employee who is absent from work for any reason other than those recognized in this Rule 13, or who abuses the leave recognized in this Rule 13, may be subject to discipline under Rule 12.

### **13.7 NO ADVANCE LEAVE**

Vacation leave, sick leave, and Compensatory Time shall not be used in advance of being earned. If a Classified Employee has insufficient leave to cover a period of absence, no allowance shall be posted in advance or in anticipation of future leave credits. In such cases, payroll deductions for the time lost shall be made for the pay period in which the absence occurred.

### 13.8 HOLIDAY LEAVE

Each Appointing Authority shall fix the paid holidays that its Classified Employees shall observe. Unless an Appointing Authority has an established policy to the contrary, which is on file with the Board, compensation for holiday time shall be governed by the following rules:

- a. If an employee is required to work on a recognized holiday, the employee shall be awarded eight (8) hours pay at his regular hourly rate or eight (8) hours of Compensatory Time, in addition to the employee's regular pay for the day.
- b. If a recognized holiday falls on an employee's regularly scheduled off-day and the employee takes the full day off, the employee shall be awarded eight (8) hours pay at his regular hourly rate or eight (8) hours of Compensatory Time. If a recognized holiday falls on an employee's regularly scheduled off-day and the employee takes only part of the day off, the employee shall be paid for the hours worked, plus either eight (8) hours pay at his regular hourly rate or eight (8) hours of Compensatory Time.
- c. If a holiday falls on an employee's regularly scheduled ten (10) hour work day and the employee takes the full day off, two (2) hours shall be charged against the employee's accrued vacation leave or Compensatory Time.

### 13.9 VACATION LEAVE

Unless an Appointing Authority has an established policy to the contrary, which is on file with the Board, accrual, accumulation, and use of vacation leave shall be governed by the following rules:<sup>2</sup>

- a. Accrual of Vacation Leave. All full-time Classified Employees shall accrue paid vacation leave. Vacation leave shall accrue at the following rates:

Years of Service Completed	Hours of Vacation Time Accrued per Month	Hours of Vacation Time Accrued per Month (Firefighting Personnel)
Less than 12	8	10.64
At least 12, but less than 25	12	15.96
25 or more	16	21.28

An employee shall not accrue vacation leave during any month in which, for more than fifteen (15) days of the month, the employee is on a leave of absence without pay, is suspended, or is otherwise in a non-pay status.

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<sup>2</sup> Pursuant to 1989 Ala. Acts 765, the provisions of Rule 13.9 (and the corresponding provisions of Section 19 of the Enabling Act), relating to accrual, accumulation, use, disposition, and forfeiture of annual vacation leave, are applicable at the option of each Appointing Authority. The Board strongly encourages Appointing Authorities to abide by these Rules, which are intended to implement Section 19 of the Enabling Act. If an Appointing Authority elects not to apply this Rule or any part thereof, it must so notify the Board in writing, and must provide a copy of the rule(s) to be applied by the Appointing Authority in lieu of this Rule.

b. Accumulation of Vacation Leave. Vacation leave accrued but not used may be accumulated during the calendar year with no maximum amount. However, no more than 320 hours of accrued vacation leave (424 hours for firefighting personnel) may be carried forward from one calendar year to the next, except based on extenuating circumstances and with the approval of an employee's Appointing Authority.

c. Use of Vacation Leave. A Regular Employee may use accrued vacation leave for any purpose. The Appointing Authority or department head shall determine the timing of vacation leave with due consideration to the employee's seniority, length of service, and the employee's request(s). If a vacation has not been allowed a Regular Employee during a full calendar year, then the employee may demand a vacation as of right, not to exceed twelve (12) work days. Except as provided in Rule 13.19, vacation leave must be taken as leave rather than as a cash payment.

d. Forfeiture of Vacation Leave. Except as provided in subsections (1) and (2), an employee shall not be required to forfeit his or her accumulated vacation leave.

1. An employee who is dismissed for cause, as defined in Rule 12, shall forfeit any accumulated vacation leave.

2. If an employee resigns from the Classified Service other than in Good Standing, the Appointing Authority may require the employee to forfeit all or part of his or her accrued vacation leave. If the Appointing Authority so decides, it shall endorse this decision on the personnel action forms separating the employee from the service.

### **13.10 SICK LEAVE**

Unless an Appointing Authority has an established policy to the contrary, which is on file with the Board, accrual, accumulation, and use of sick leave shall be governed by the following rules:<sup>3</sup>

a. Accrual of Sick Leave. All Regular Employees shall accrue paid sick leave at the rate of eight (8) hours per month of service (10.64 hours for firefighting personnel). A Regular Employee shall not accrue sick leave during any month in which, for more than fifteen (15) days of the month, the employee is on a leave of absence without pay, a suspension, or is otherwise in a non-pay status.

b. Accumulation of Sick Leave. Sick leave may be accumulated and carried forward from year to year with no maximum amount.

c. Use of Sick Leave. A Regular Employee may use accrued sick leave for any of the following reasons:

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<sup>3</sup> Pursuant to 1989 Ala. Acts 765, the provisions of Rule 13.10 (and the corresponding provisions of Section 19 of the Enabling Act), relating to accrual, accumulation, use, disposition, and forfeiture of sick leave, are applicable at the option of each Appointing Authority. The Board strongly encourages Appointing Authorities to abide by these Rules, which are intended to implement Section 19 of the Enabling Act. If an Appointing Authority elects not to apply this Rule or any part thereof, it must so notify the Board in writing, and must provide a copy of the rule(s) to be applied by the Appointing Authority in lieu of this Rule.

1. Personal illness of the employee, including inability to work due to pregnancy, childbirth, or related medical conditions.
2. Personal physician and dental appointments.
3. For the employee to receive treatment, care and/or counseling, as either an inpatient or outpatient, for substance abuse at a duly licensed treatment facility.
4. For any other reason, directly related to the health and wellness of the employee, which, in the judgment of the Appointing Authority, constitutes good and sufficient justification for the use of sick leave.

d. Use of Sick Leave for Family Illnesses, etc. Except as otherwise required by state of federal law or as otherwise provided for in a jurisdiction's policy governing sick leave usage, a Regular Employee may use up to twelve (12) days per calendar year of accrued sick leave with pay for an illness or death in the employee's immediate family that necessitates the employee's absence from work. For purposes of this Rule, the phrase "immediate family" includes the employee's spouse, children, parents, grandparents, grandchildren, siblings, and legal guardians, as well as the employee's spouse's "immediate family" and includes step-relationships. If an employee uses sick leave for an illness in the employee's immediate family, the Appointing Authority may require appropriate documentation to substantiate the necessity for the use of leave.

e. Documentation Required for Use of Sick Leave. The Appointing Authority may require a doctor's certificate or other written evidence to substantiate the need for sick leave.

f. Forfeiture of Sick Leave. Except as provided in Rule 13.19, sick leave must be taken as leave rather than as a cash payment, and all accumulated sick leave shall be forfeited upon separation from the Classified Service.

g. Abuse of Sick Leave. Any employee who makes improper use of sick leave may be subject to disciplinary action under Rule 12.

### **13.11 COMPENSATORY TIME IN LIEU OF OVERTIME COMPENSATION**

It shall be the responsibility of each Appointing Authority to determine which of its employees are subject to the overtime and minimum wage provisions of the Fair Labor Standards Act ("FLSA"). If an employee is not exempt from the FLSA, the employee shall be compensated in compliance with the FLSA. Appointing Authorities and Classified Employees may agree to the accrual of compensatory time in lieu of overtime compensation in accordance with the FLSA. In the event of such an agreement, the accrual, use, and disposition of such leave upon separation shall be governed by the FLSA.

### **13.12 PAID INJURY LEAVE**

a. General Rule. A Classified Employee who becomes unable to perform the essential functions of his or her job, with or without reasonable accommodation, because of an accident or exposure to disease arising out of and in the course of employment in the Classified Service, may be granted up to 180 days of paid injury leave. In applying the terms "accident," "exposure to disease," and "arising out of and in the course of employment," the Board and the

Appointing Authorities shall be closely guided by the use of these terms in the Alabama Workers' Compensation Act.

b. Procedural Requirements. In order to be entitled to Paid Injury Leave, the employee must comply with the steps set forth below in paragraphs i. and ii.

i. Written Notice. Within five (5) calendar days of the accident, the last exposure to the hazardous condition, or the employee's identification of the disability as job-related, the employee must give written notice to the Appointing Authority. The Appointing Authority shall forward a copy of the written notice to the Director within five (5) calendar days of receipt of the written notice from the employee.

ii. Application for Leave and Supporting Certification. The employee shall submit a written application for paid injury leave, with the supporting certification described below, to his or her immediate supervisor, who shall transmit the request to the department head. The application shall contain a statement by the employee setting forth the details of the accident and/or the basis for the belief that the disabling condition arose out of and in the scope of employment. The application must also be supported by the certification of a medical doctor or chiropractor. The certification shall include: (a) the nature and extent of the disabling condition; (b) an affirmation of the doctor's or chiropractor's belief that the disabling condition arose out of and in the course of employment, and that the injury or disease would not have occurred but for the employee's job; and (c) the probable or actual period of disability.

c. Initial Decision by Department Head. Within ten (10) calendar days of the receipt of the application and the supporting certification, the department head shall endorse his or her allowance or disallowance of paid injury leave, in whole or in part, on the application.

d. Appeal. An employee whose request for paid injury leave is denied, in whole or in part, shall have the right to appeal the denial. The department head's decision must first be appealed to the Appointing Authority, by making a written appeal to the Appointing Authority within ten (10) calendar days of the employee's receipt of the department head's decision. The Appointing Authority shall notify the employee of its decision within ten (10) calendar days of receiving the employee's appeal. The employee may appeal the Appointing Authority's decision to the Board, by making a written appeal to the Board within ten (10) calendar days of the employee's receipt of the Appointing Authority's decision.

e. Restrictions on Paid Injury Leave. The following restrictions shall apply to paid injury leave:

i. Paid injury leave may be granted only if the disabling condition was caused without the fault or gross negligence of the employee. The phrase, "fault or gross negligence," as used in this Rule, includes: (a) an act or omission rising above mere inattention and demonstrating a lack of ordinary and reasonable care; (b) intoxication by alcohol or a controlled substance; or (c) violation of a written safety policy. Where the fault or gross negligence consists of violation of a written safety policy, a copy of the policy shall (a) be posted, (b) be given or made available to each employee, and (c) be titled "REQUIRED SAFETY RULES."

ii. No further or additional paid injury leave is allowed where the requested leave would occur more than twenty-four (24) months after the last period of paid injury leave for the same disabling condition.

iii. Paid injury leave shall not be allowed for a mental, psychological, psychiatric, or emotional disorder, unless the disorder (a) is produced or proximately caused by a physical injury to the body, and (b) satisfies the “arising out of and in the course of employment” standard set out above.

iv. If the Appointing Authority provides worker’s compensation benefits in accordance with the Worker’s Compensation Act, the paid leave authorized under this Rule shall not exceed the difference between the employee’s regular rate of pay and the worker’s compensation benefit. Merit pay changes and across-the-board pay changes may adjust the rate of regular pay during the disability period.

v. The leave authorized under this Rule must be taken as paid leave; lump-sum and/or commuted payments of injury leave with pay are prohibited.

f. **Return to Work.** If an employee is unable to resume his or her job duties at the end of a period of paid injury leave, further absences may be charged against the employee’s accrued sick leave, vacation leave, and/or Compensatory Time. When the employee is also receiving worker’s compensation payments, only the amount of leave equivalent to the difference between the employee’s regular rate of pay and the worker’s compensation benefit shall be charged against the employee’s accrued leave. If, at the end of a period of paid injury leave, the employee is unable to perform the essential functions of his or her job with or without reasonable accommodation, and the employee has exhausted all other available forms of paid leave, the employee may (a) retire from the service, if eligible; (b) request a leave of absence without pay in accordance with Rules 13.18 or 13.20; or (c) be terminated from the Classified Service.

### **13.13 UNIFORMED SERVICE LEAVE AND REEMPLOYMENT**

It shall be the responsibility of each Appointing Authority to comply with the Uniformed Services Employment and Reemployment Rights Act.

### **13.14 TEMPORARY LEAVE FOR NATIONAL GUARD AND ARMED FORCES RESERVE TRAINING AND ACTIVE SERVICE**

a. In Service of the United States. Any Classified Employee who, by reason of membership in the Alabama National Guard or any other reserve component of the armed forces of the United States, is ordered by appropriate authority to field or coast defense, or to attend a training period, or to service ordered under the provisions of the National Defense Act, or under the federal laws governing the United States Reserves, shall be entitled to a leave of absence. The first 168 hours of leave under this subsection per calendar year shall be paid leave. Nothing in this Rule 13.14(a), however, prohibits an Appointing Authority from providing paid leave in excess of 168 hours.

b. In Service of the State of Alabama.<sup>4</sup> In addition to the leave provided in subsection (a), any Classified Employee who, by reason of membership in the Alabama National Guard or any other reserve component of the armed forces of the United States, is called by the Governor to duty in the active service of the State, shall be entitled to a leave of absence. The first 168 hours of leave under this subsection per calendar year shall be paid leave. Nothing in this Rule 13.14(b), however, prohibits an Appointing Authority from providing paid leave in excess of 168 hours.

c. Seniority and Benefits During Leave. Any period of leave authorized by subsections (a) and/or (b) shall be provided without loss of service time, efficiency rating, annual vacation, and sick leave.

### **13.15 JURY AND OTHER JUDICIAL LEAVE**

a. Leave for Jury Service. Upon submission of a request with appropriate documentation, an employee who is summoned for jury duty shall be granted leave with pay for the time spent in jury service.

b. Leave when Employee Subpoenaed. Upon submission of a request with appropriate documentation, an employee subpoenaed as a witness in a judicial proceeding shall be granted leave with pay for such time away from work as is necessary to comply with the subpoena, provided that the employee is not a party to the judicial proceeding.

### **13.16 LEAVE FOR SPECIAL MEETINGS**

Whenever it is deemed in the best interest of the Classified Service, an employee may be granted leave with pay by the Appointing Authority to attend professional or technical institutes, conferences, or such other meetings. In the discretion of the Appointing Authority, leave with pay may be granted to an employee for the purpose of taking examinations administered by the Board.

### **13.17 FAMILY AND MEDICAL LEAVE**

An employee entitled to Family and Medical Leave shall be entitled to receive leave, under such conditions and in such amounts, as provided under the Family and Medical Leave Act. In the discretion of the Appointing Authority, the leave may be run concurrently with other paid or unpaid leave as afforded under these Rules.

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<sup>4</sup> Note: While not specifically required by this Rule or any other Rule of the Personnel Board of Jefferson County, Ala. Acts 2002-430, § 6 (Ala.Code § 31-12-6 (1975)) provides that a public employer *may* provide an employee the difference between his or her regular salary and the lower active duty military pay during any period of active service. The Board encourages Appointing Authorities, as resources permit, to extend this benefit to Classified Employees.

### 13.18 LEAVE OF ABSENCE WITHOUT PAY

Unless an Appointing Authority has an established policy to the contrary, which is on file with the Board, leave of absence without pay shall be governed by the following rules:<sup>5</sup>

a. Eligibility For and Types of Unpaid Leave of Absence: A request for a leave of absence without pay shall be submitted in writing to the employee's department head and shall state the purpose of the leave, and the dates the leave is to begin and end. Upon recommendation of the department head and approval of the Appointing Authority, such leave may be allowed in the following circumstances and amounts:

1. Extended Medical/Disability Leave of Absence: An employee who has exhausted all other available forms of leave, and is unable to perform the essential functions of his or her job with or without reasonable accommodation, may be granted an unpaid leave of absence of up to one (1) year. To obtain leave under this subsection, the employee must make a written request to the Appointing Authority, supported by a certificate from a licensed physician. The certificate shall include (a) a general statement of the employee's condition, (b) a certification that the employee is unable to perform the essential functions of his or her job with or without reasonable accommodation, and (c) the probable period of such incapacitation. The leave authorized under this subsection shall be for no more than one (1) year. If, during a period of leave under this subsection, the employee becomes capable of performing the essential functions of his or her job with or without reasonable accommodation, the employee shall so notify the Appointing Authority, supported by a certification from a licensed physician affirming the employee's ability to perform the essential functions of his or her job with or without reasonable accommodation.

2. Career Development Leave: A Regular Employee who desires to engage in a course of study which will contribute materially to the employee's value to the Classified Service may be granted an unpaid leave of absence not exceeding one (1) year.

3. Personal Leave: A Regular Employee may be granted a leave of absence for not more than one (1) year for any personal reason considered sufficient by the employee's department head, subject to the final approval of the Appointing Authority.

b. Appeal. An employee whose request for leave of absence without pay is denied, in whole or in part, shall have the right to appeal the denial to the Appointing Authority.

c. Effect of Unpaid Leave Status. **Except as required by state or federal law, leaves of absence without pay shall reduce a Classified Employee's seniority by the length of time the employee was on unpaid leave.**

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<sup>5</sup> Pursuant to 1989 Ala. Acts 765, the provisions of Rule 13.18 (and the corresponding provisions of Section 19 of the Enabling Act), relating to leave of absence without pay, are applicable at the option of each Appointing Authority. The Board strongly encourages Appointing Authorities to abide by these Rules, which are intended to implement Section 19 of the Enabling Act. If an Appointing Authority elects not to apply this Rule or any part thereof, it must so notify the Board in writing, and must provide a copy of the rule(s) to be applied by the Appointing Authority in lieu of this Rule.

### **13.19 DISPOSITION OF LEAVE UPON RESIGNATION OR RETIREMENT**

A Regular Employee who wishes to resign or retire from the Classified Service in Good Standing shall provide written notice to the Appointing Authority not less than fifteen (15) days prior to the effective date of the resignation or retirement. The Appointing Authority may reduce the length of advance notice required. A Regular Employee who in Good Standing resigns, retires, or is separated in a reduction in force from the service shall receive terminal pay for his accrued vacation, up to a maximum of 320 hours. In addition, a Regular Employee who in Good Standing resigns, retires, or is separated in a reduction in force from the service after five (5) years of service may, subject to the approval of the Appointing Authority, receive terminal pay for 50% of the first 480 hours of accrued sick leave. If a Regular Employee with at least five (5) years of service is separated from the service through a reduction in force and is subsequently rehired from a Layoff List, that portion of the employee's accrued sick leave beyond the accrued sick leave included in a terminal pay calculation shall be reinstated.

### **13.20 ADMINISTRATIVE LEAVE**

Unless an Appointing Authority has an established policy to the contrary, which is on file with the Board, administrative leave shall be governed by the following rules:<sup>6</sup>

a. General Rule. An Appointing Authority may place a **Full-time** employee on administrative leave, with or without pay. An employee placed on administrative leave, either with or without pay, shall not attend work and shall not perform his or her regular job duties. Administrative leave records must be created and maintained as required by Rule 13.4.

b. Administrative Leave With Pay. While on administrative leave with pay, an employee shall be entitled to all compensation, service time, and benefits earned and accruing to his or her Class. Administrative leave with pay may be authorized as follows:

1. Up to Five (5) Days Authorized by Appointing Authority. On its own initiative, an Appointing Authority may place an employee on administrative leave with pay for a period of time not to exceed five (5) working days. Prior to placing an employee on administrative leave with pay, the Appointing Authority must forward to the Director a written statement of the reason(s) for the action.

2. Up to Ten (10) Additional Days Authorized by the Director. Should an Appointing Authority desire to keep an employee on administrative leave with pay for more than five (5) working days, an Appointing Authority must, in advance, forward a written request to the Director setting forth the reasons justifying the extension of administrative leave with pay. The Director may extend administrative leave with pay for up to ten (10) additional working days in addition to the five (5) days authorized by the preceding paragraph. The approval of the Director must be obtained prior to the

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<sup>6</sup> Pursuant to 1989 Ala. Acts 765, the provisions of Rule 13.20 (and the corresponding provisions of Section 19 of the Enabling Act), relating to administrative leave, are applicable at the option of each Appointing Authority. The Board strongly encourages Appointing Authorities to abide by these Rules, which are intended to implement Section 19 of the Enabling Act. If an Appointing Authority elects not to apply this Rule or any part thereof, it must so notify the Board in writing, and must provide a copy of the rule(s) to be applied by the Appointing Authority in lieu of this Rule.

extension of any period of administrative leave with pay beyond the five (5) days authorized by the preceding paragraph.

3. Up to Thirty (30) Additional Days Authorized by the Board. Should an Appointing Authority desire to keep an employee in the status of administrative leave with pay beyond the fifteen (15) days authorized by the preceding paragraphs, the request shall be presented to the Board in writing and shall include the reasons for the request. The Board shall either approve or deny said request, in writing. The Board may extend administrative leave with pay for up to thirty (30) additional working days in addition to the fifteen (15) days authorized by the preceding paragraphs.

c. Administrative Leave Without Pay. An Appointing Authority may place an employee on administrative leave without pay for a period of up to one (1) year for any reason deemed to be in the best interest of the service. A Regular Employee who is involuntarily placed on administrative leave without pay for a period exceeding five (5) working days may appeal to the Board under Rule 12.

### **13.21 REASONABLE ACCOMMODATIONS UNDER THE AMERICANS WITH DISABILITIES ACT**

Appointing Authorities are expected to comply with the Americans with Disabilities Act. Any employee who believes that he or she needs a reasonable accommodation in order to perform the essential functions of his or her position should notify the Appointing Authority of the need.

### **13.22 FITNESS FOR DUTY EXAMINATIONS**

An Appointing Authority may require an employee to submit to a fitness for duty examination when it is necessary to determine whether the employee is able to perform the essential functions of his or her job, with or without reasonable accommodation, without constituting a hazard to himself or herself, and without endangering the safety, health, and welfare of fellow employees and the public. A fitness for duty examination may be performed by a physician or other qualified examiner designated by the Appointing Authority.

### **13.23 EMPLOYMENT OR REEMPLOYMENT PURSUANT TO A DISABILITY**

1. A Regular Employee who retired due to disability may, upon request of an Appointing Authority and with the approval of the Personnel Director, be returned to employment in the jurisdiction from which the employee separated. Such employee must be certified as eligible to return to work by a physician licensed in the State of Alabama.

The employee may be returned to:

a. The class last held, provided the employee meets the current minimum qualifications of such class; or

b. Any class previously held in the Merit System, provided the employee meets the current minimum qualifications or,

c. With the approval of the Director, any class at the same or lower grade than the class last held for which the employee is qualified.

2. A Regular Employee who becomes disabled due to injury or illness and is certified by a physician licensed in the State of Alabama as no longer being able to perform his or her job duties such that he or she is eligible for treatment as disabled under a jurisdiction's long-term disability plan may, upon request of an Appointing Authority and with the approval of the Personnel Director, be treated as outlined in b and c above.

## **RULE 14: EFFICIENCY RATINGS**

### **14.1 EFFICIENCY RATINGS**

The Director shall be responsible for obtaining and preserving efficiency ratings on all Classified Employees no less than annually. Efficiency ratings shall reflect the performance of Classified Employees in the same Class and/or Grade, so that standards of performance may be established to determine relative performance, and measure the performance of their assigned duties.

### **14.2 FORMS**

For purposes of the efficiency ratings required by the Enabling Act and these Rules, all Appointing Authorities must use the efficiency rating forms approved by the Director. However, this Rule does not prohibit an Appointing Authority from completing assessment or evaluation forms required by any state or federal accrediting or licensing body. In the event an Appointing Authority completes assessment or evaluation forms required by any state or federal accrediting or licensing body, completed copies of such forms shall be provided to the Director.

### **14.3 EFFICIENCY RATING PLAN**

All Appointing Authorities shall use efficiency reviews approved by the Director. Such plan shall be based on accepted personnel administration practices in respect to the measurement of performance and promotional potential. All persons responsible for reviewing employee performance shall do so in a careful and responsible manner, conforming to all current policies established by the Board or the Director, in cooperation with the Appointing Authority.

### **14.4 APPEAL OF EFFICIENCY RATINGS**

Individuals responsible for completing efficiency ratings shall discuss such ratings with their respective Employees. An Employee who disagrees with his or her rating may file a written request to meet with the Reviewing Officer and Department Head within seven (7) calendar days after receipt of the efficiency rating. The Reviewing Officer and the Department Head will, as soon as practicable, but in no event later than thirty (30) calendar days from the date of the rating, review the rating with the Employee. There shall be no appeal of efficiency ratings to the Director or to the Board.

## **RULE 15: GRIEVANCES**

### **15.1 DEFINITION**

A grievance is a complaint by a Regular Employee or his or her representative alleging that an action taken by a co-employee, supervisor or other person acting on behalf of the Regular Employee's Appointing Authority, adversely affected a substantial term or condition of the Regular Employee's employment with an Appointing Authority. It shall be the burden of the employee to provide sufficient proof of any allegations made against management. Such proof need only be presented in summary or outline form within the statements made on the grievance forms and shall not require submission of documentation in the form of affidavits or other legal documents.

### **15.2 REQUIREMENTS FOR GRIEVANCE**

In order to be adjusted under the provisions set forth in this Rule, a grievance shall cite the details (such as dates, locations, times of day, witnesses, etc.) concerning a particular incident(s) with sufficient specificity to enable the Appointing Authority to prepare an adequate response. Any act of retaliation committed against a Regular Employee for having filed a grievance shall be eligible for adjustment under this Rule.

### **15.3 MATTERS EXCLUDED FROM GRIEVANCE PROCEDURE**

Notwithstanding any other provision of this Rule 15, the following matters are not subject to adjustment under the grievance procedure. If any one of these exclusions applies, the matter is not grievable:

- a. Matters addressed by, or discussed in, another Rule (i.e., classification, pay, reductions-in force, efficiency ratings, etc.), regardless of whether the other Rule contains an appeal procedure. An employee may not circumvent this exclusion by alleging that the Rule in question was applied in an illegal, retaliatory, disciplinary, or other unfair manner;
- b. Loss or absence of premium pay;
- c. Oral and/or written reprimand or an informal performance evaluation;
- d. Matters subject to appeal under Rule 12 of these Rules;
- e. Assignment-related matters such as such as changes in duties within Class, off-days, shift and vacation scheduling, except those assignments considered disciplinary. To avoid this exclusion, allegations of disciplinary motive must be supported by specific facts; and
- f. Matters relating to an appointing authority's internal policy or rules that are applied consistently to all Classified Employees and for which there exists no conflict with these Rules or the Act. To avoid this exclusion, the employee must specify the manner in which the policy or rule was applied inconsistently. The Rules and Regulations are not an "internal policy or rule" for purposes of this exclusion.

## 15.4 GRIEVANCE PROCEDURE

Grievants are assured of freedom from restraint, interference, discrimination or reprisal for presenting a grievance. Counsel or other persons of his or her choosing through the grievance process may represent the grievant through the grievance process. The Grievance shall be conducted according to the following process:

a. Step One:

i. The Grievance, to be properly commenced, must be submitted to the grievant's immediate supervisor within seven (7) calendar days of the incident giving rise to the grievance. A copy of the grievance must be filed with the Employee Relations Department of the Board. All such complaints shall cite with specificity the reason and nature of the complaint.

ii. Within seven (7) calendar days of receipt of the grievance, the grievant's immediate supervisor shall reply to the grievant in writing in a form approved by the Director. A copy of his or her reply shall be furnished to the Employee Relations Department of the Board.

iii. In lieu of replying, the grievant's immediate supervisor may elect to refer the complaint to his or her immediate superior within the time period of his or her reply, and must acknowledge receipt of the grievance in writing to the grievant no later than the next business day after receipt of the referred grievance. Failure to reply shall result in submission of the grievance to Step Two.

iv. Should the supervisor and/or his or her immediate superior not return an answer on official forms within the established time limits, the grievant may proceed to the next step within the time limit outlined below.

b. Step Two:

If the grievant is not satisfied with Step One, the grievant may submit, within five (5) calendar days of the answer or its due date, whichever occurs first, the grievance to the department head in which he or she works. Such departmental head shall reply to the grievant within five (5) calendar days of receipt or referral of the grievance in writing. A copy of the reply by the department head shall be furnished to the Employee Relations Department of the Board.

c. Step Three:

i. If unresolved by the department head's answer, the grievant may submit the grievance to the Director on official forms, signed by the grievant, within five (5) calendar days of the Step II answer or its due date. The Director shall then determine whether the grievance is adjustable under this Rule. The Director shall notify the grievant in writing of his or her decision. Either party to the grievance may appeal the Director's determination to the Board within ten (10) calendar days from date of receipt.

ii. Hearing Procedures. If the Director determines that the matter is subject to adjustment under Rule 15, then he shall appoint a Hearing Officer, next in order from a list of such local attorneys who serve as Hearing Officers for other appeal cases before the Board, provided that the Hearing Officer is willing and available to serve in this capacity. The Hearing Officer shall convene a formal hearing within ten (10) calendar days after selection. After a formal hearing, the Hearing Officer shall render findings of fact and a recommendation to the

Board within ten (10) calendar days of the completion of taking testimony and evidence. The Board shall render a decision at its next occurring regular Board meeting.

#### **15.5 RELATED PROVISIONS**

a. The Director shall provide such administrative services as may be necessary and shall exercise his authority to require the production of records or appearance of witnesses as may be required to carry out the provisions of this Rule 15.

b. Nothing within the content of this Rule 15 shall be so construed as to limit an Appointing Authority's right to manage its affairs and governmental operations or to infringe on its right and responsibilities to appropriate funds and to fix budgets for the proper expenditure of public funds.

c. Failure of the grievant to take the complaint to Step II or III within the established time limit shall be deemed to mean that the grievance has been resolved.

## **RULE 16: CERTIFICATION OF PAYROLLS**

### **16.1 COMPUTATION OF PAY**

a. Classified Employees shall be paid in accordance with the Pay Plan established by the Board for the Appointing Authority served.

b. If employment begins or ends within a pay period, the Classified Employee shall be paid for hours worked at the Classified Employee's hourly rate of pay calculated under the official Pay Plan.

c. In no case shall a new appointee be placed in pay status before the date of assumption of duties. Except in the case of disciplinary action, a Classified Employee returning from an absence of more than three work days in non-pay status shall not be placed in pay status before the date of resumption of duties. In the case of discipline, a Classified Employee may be returned to duty on a scheduled off day.

### **16.2 SUBMISSION AND CERTIFICATION OF PAYROLL**

a. All payrolls shall be prepared and submitted in electronic form and/or in sufficient copies and upon forms prescribed by the Director in sufficient time for approval by the Director prior to payment of any funds or salaries. All payrolls shall be signed and verified by competent authority as being accurate and consistent with the Act and these Rules and Regulations. Although the Director may rely upon such verification in certifying payrolls, the Director may audit, sample or otherwise independently verify such payrolls.

b. It shall be unlawful for any Appointing Authority or officer thereof to make or approve any disbursement of public funds for personal services unless the Director has certified that the payment is consistent with the Act and these Rules and Regulations. Any public funds disbursed in a manner contrary to the Act and these Rules and Regulations may be recovered in a civil action in accordance with Sections 12, 18, and 24 of the Act.

## **RULE 17: PROHIBITED ACTIVITIES AND OTHER GENERAL PROVISIONS**

### **17.1 PROHIBITED ACTIVITIES**

a. No person shall be appointed or promoted to, or dismissed from any position, or in any way favored or discriminated against with respect to employment because of age, color, national origin, military/veteran status, race, religion, political affiliation or opinion, or sex.

b. No person shall seek or attempt to use any political endorsement in connection with any appointment to a position.

c. No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration.

d. No Appointing Authority shall prohibit or interfere with any Classified Employee's right to participate in city, county and state political activities to the same extent as any other citizen of the State of Alabama, including endorsing candidates and contributing to campaigns of their own choosing.

e. No Appointing Authority shall prohibit or interfere with any Classified Employee's right to join local political clubs and organizations and state or national political parties.

f. No Appointing Authority shall prohibit or interfere with any Classified Employee's right to publicly support issues of public welfare, circulate petitions calling for or in support of referendums, and contribute freely to those of their choosing.

g. No off duty and out of uniform law enforcement officer, firefighter, or peace officer shall be prohibited from engaging in city, county, or state political activity, provided such activity is otherwise in compliance with these Rules and the Act.

h. No person shall attempt to use his official authority or position for the purpose of influencing the vote or political action of any person.

i. Any Classified Employee who engages in political activities in accordance with this Rule 17.1 shall do so only while on approved leave or while on personal time. No employee shall solicit any type of political campaign contributions from a subordinate employee. No Classified Employee shall coerce or attempt to coerce any subordinate employee to work in any capacity in any political campaigns or cause.

### **17.2 CANDIDACY FOR PUBLIC OFFICE**

a. If a Classified Employee resigns his or her position in order to run for public office, he or she shall submit a written resignation to the Appointing Authority, with a copy to the Director, stating the purpose of such resignation. Provided the Classified Employee returns

to work within six (6) months from the date of his or her resignation and his or her position has not been filled, the Classified Employee will be treated as if he or she had been on an authorized unpaid leave.

b. Any Classified Employee who qualifies to seek a political office with the Appointing Authority with which he or she is employed, shall be required to take an unpaid leave of absence pursuant to the provisions of Rule 13, or use accrued overtime or vacation time with said Appointing Authority and/or governmental entity from the date he or she qualifies to run for office until the date on which the election results are certified, or the Classified Employee is no longer a candidate, or there are no other candidates on the ballot. Any Classified Employee who violates this rule shall forfeit employment with said Appointing Authority and/or governmental entity.

### **17.3 OUTSIDE EMPLOYMENT AND CONFLICTS OF INTEREST**

An Appointing Authority may require that a Classified Employee who wishes to engage in any outside work or activity for personal profit file a written request setting out the nature of such outside employment. The Appointing Authority may reject the request if such employment may cause an actual or apparent conflict of interest, or if such employment would otherwise be incompatible with the employee's position in the Classified Service. The Appointing Authority's decision shall not be appealable to the Director or to the Board.

### **17.4 DUTIES OF COUNTY AND MUNICIPAL OFFICIALS**

All elected authorities and officials subject to the Act shall aid in all proper ways in carrying into effect the provisions of the Enabling Act and these Rules and Regulations and to assist in the administration and improvement of the Merit System.