

RULE 11 – APPEALS

11.1 Matters Which May Be Appealed

- A. Only regular status law enforcement officers, who are not at-will employees, (“Appellant”) may Appeal disciplinary actions resulting in a disciplinary dismissal, suspension or reduction in rank or compensation. For purposes of Rule 11 and its sub-parts, the term law enforcement officers refers only to those law enforcement officers who are not at-will.
- B. Matters not specifically stated in this Rule are not within the jurisdiction of the Council and cannot be appealed.
- C. Law enforcement officers who are on initial probation, layoff reappointment, intermittent, or exempt from these Rules may not bring an appeal before the Council on any matter.
- D. Claims of discrimination based upon Federal and/or State Civil Rights Laws, including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act as Amended (“ADAAA”), the Age Discrimination in Employment Act (“ADEA”), the Equal Pay Act (“EPA”) and the Family Medical Leave Act (“FMLA”), must be filed with the appropriate State and/or Federal agency charged by Federal and/or State law with enforcement of those laws. The Council is without jurisdiction to hear such matters.

11.2 Amendment

Within ten (10) business days of receipt of written notice of a disciplinary action, and prior to the beginning of the Appeal hearing, the Appellant’s Sheriff (“Respondent”) may serve an amended notice of disciplinary dismissal, suspension or reduction in rank or compensation on the Appellant.

11.3 Appeal Procedure

A. **Filing the Appeal.** Appeals to the Council must be filed with the Human Resources Director, in writing and within ten (10) calendar days of the receipt of written notice of a disciplinary action resulting in disciplinary dismissal, suspension or reduction in rank or compensation. In the event the prescribed deadline falls on a non-business day, the deadline shall be 5:00 p.m. of the next regularly scheduled business day of the Human Resources Department. Failure to file a timely Appeal is a jurisdictional defect and the Council will not hear such Appeal. Upon receipt of the Appeal, the Human Resources Director shall

forward a copy of the appeal to the Respondent, and shall notify the Chair that an appeal has been filed.

B. The Appeal shall state the facts upon which it is based and the remedy requested.

C. No later than ten (10) business days before the Appeal hearing the Appellant and the Respondent shall exchange the names of all witnesses who will testify at the hearing and exchange copies of any documents that may be used at hearing. The parties shall identify each witness being called to testify and the testimony being offered.

11.4 Initial Determination of Jurisdiction.

A. The Director shall make an initial determination of whether or not the Council has jurisdiction over the appeal under these rules. If it is determined by the Director that the Council does not have jurisdiction, the Director shall so notify the law enforcement officer in writing.

B. If it is determined that the Council does have jurisdiction the Hearing shall be scheduled in accordance with these rules.

C. Any party disputing this initial determination of jurisdiction must file written notification with the Director within ten (10) business days of receipt of the notice from the Director. The dispute shall be determined by the Council, if appropriate.

11.5 Hearing Officers. The Council may assign appeals to an independent Hearing Officer from a list of such hearing officers maintained by the Director. When an Appeal is so assigned, the Hearing Officer shall be the authorized representative of the Council and is fully empowered to grant or refuse extensions of time, to set the proceedings for hearings, to conduct the hearing, and to take action in connection with the proceedings which the Council itself is authorized to take by law or by these Rules, other than making the final findings and decisions. No assignment of an Appeal to a Hearing Officer shall preclude the Council from withdrawing it and conducting the hearing itself or from reassigning an Appeal to another Hearing Officer. The Hearing Officer shall prepare and submit a Hearing Officer's report. The Hearing Officer's report shall be submitted to the Director for transmittal to the Council not less than fourteen (14) business days after the hearing has concluded. Copies of the Hearing Officer's report shall, upon receipt by the Director, be mailed to all members of

the Council and to the law enforcement officer and Sheriff, and their respective representatives. Written objections to the Hearing Officer's report may be submitted no less than seven (7) business days after receipt of the Hearing Officer's report. The Council may, at its discretion, request additional testimony or further arguments and provide the parties a minimum notice of five (5) business days to present such testimony or argument at a properly noticed Council meeting.

11.6 Time for Hearing. Within twenty (20) calendar days of receipt of the Appeal, the Director shall set a date for a hearing of the Appeal.

11.7 Notice of Hearing. Written notice of the time, date, place of hearing, and the name of the Hearing Officer, shall be mailed, electronically mailed or delivered personally by the Director to the Appellant and the Respondent. The notice of hearing shall be mailed, electronically mailed or personally served at least fifteen (15) business days before the date of such hearing. Written acknowledgment of the date of receipt by the Appellant shall be obtained or verified through receipt of certified mail, electronic mail or a hand signature.

11.8 Continuance of Hearing

A. Either Appellant or Respondent may request a continuance of the hearing. Such a request must be submitted to the Director, in writing, within ten (10) business days prior to the date set for hearing. The Director will send copies of the request to the other party and forward the request to the Chair or assigned Hearing Officer. Only the Chair or assigned Hearing Officer can grant or deny a request for a continuance. The Chair or assigned Hearing Officer will provide the other party three (3) business days to make a written objection to the continuance before making a final ruling on the continuance. A decision on the granting or denial of a continuance is final and not appealable.

B. Failure to request a continuance in conformance with these Rules or subsequent failure by either party to appear at the time and place set for hearing shall be grounds for dismissal of the case upon motion of either party to the Council or assigned Hearing Officer or upon the Council's or Hearing Officer's own motion.

11.9 Place of Hearing. Appeals shall be heard in Florence, unless a request is filed to have the Appeal heard in another location within the County. Both parties and the Council or assigned Hearing Officer must agree to such a request.

11.10 Nature of Hearing

A. Each hearing shall be held pursuant to A.R.S. § 38-1101, *et seq.* and in accordance with appeal hearing rules adopted by the Council. The Appellant shall appear personally and may produce evidence, have counsel or other representative, and if requested by the Appellant, request a public hearing.

B. The hearing shall be informal and technical rules of procedure and evidence shall not apply to the proceedings, except that irrelevant, immaterial, unduly repetitious evidence, or evidence protected by the rules of privilege recognized by law may be excluded.

C. All testimony at the hearings shall be recorded manually or by mechanical or electronic device. The Council shall pay all charges incurred in connection with the presence of a court reporter or the utilization of mechanical or electronic devices, excluding, however, the costs of the preparation of all or any part of any transcript. The party or parties ordering the transcription shall pay the transcription costs.

D. In the event that there is a dispute as to the jurisdiction of the Council to hear the appeal, the Council or assigned Hearing Officer shall first take evidence with respect to the jurisdictional question only. If the Council or assigned Hearing Officer concludes that the Council has proper jurisdiction to hear the Appeal, then the matter shall proceed to hearing on all remaining issues. In the event that the Council or assigned Hearing Officer concludes that the Council is without jurisdiction, then the matter shall be dismissed and the hearing terminated.

11.11 Power of Subpoena

A. The Appellant or Respondent may request the Board of Supervisors to issue subpoenas to compel attendance of any person or produce any books or papers relevant to the Appeal issues for an Appeal hearing before the Council. The request for subpoenas from the Appellant or Respondent shall be based upon a written request to the Director containing the names and addresses of those persons the Appellant or Respondent wished to subpoena. All subpoenas shall be considered served by mailing first-class mail or electronically for Pinal County employees, to the witness by the Business Liaison.

B. A party may request personal service of a subpoena, with such service made at the requesting party's expense. In requesting a subpoena, the requestor affirms that the witness has relevant testimony to present at the Appeal hearing. If a subpoenaed witness testifies and the Chair or assigned Hearing Officer finds that the testimony was not relevant, the requesting party may be liable to reimburse the Board of Supervisors for any costs related to issuance of the subpoena, including any wages or over-time of a County employee. Any County employee who is subpoenaed to appear at an Appeal hearing, whom the Chair or assigned Hearing Officer finds has relevant testimony will receive his or her normal wages whether he or she testifies while on duty or off duty. In the event any person fails to appear and or produce documents in response to a subpoena any party or member of the Council, by and through its counsel, may apply to the Superior Court for relief pursuant to A.R.S. § 12-2212.

11.12 Exclusion of Witnesses. Upon motion of the Appellant or Respondent, the Chair or assigned Hearing Officer may exclude, from the hearing room, any witnesses not at the time under examination. The Appellant, Respondent, their attorneys or other representative, shall not be excluded from the hearing room.

11.13 Witness Fees. Witnesses, other than County employees, may request witness fees pursuant to A.R.S. § 12-303, which shall be paid by the requesting party. If the Council or assigned Hearing Officer on his/her own motion subpoenas a witness, fees and mileage may be paid from funds of the Council upon presentation of a duly executed claim.

11.14 Discovery

Apart from the requirements of A.R.S. § 38-1101(E), each party may provide discovery to a requesting party upon a written request of the requesting party made not less than ten (10) business days before the date set for hearing, with a copy of the discovery request provided to the Chair or assigned Hearing Officer. A party shall provide the requested discovery to the requestor within five (5) business days of receipt of the request. Discovery includes the following documents:

1. The Appellant's entire personnel file, including any personnel file or files retained by offices other than the County Human Resources Department;
2. All memoranda, writings, other documents or printed or recorded materials prepared by or for the Appellant or Respondent as a result of the events underlying the disciplinary action which is the subject of the Appeal, except those which are protected by privilege. In the event any

such memoranda, writings, or other documents are claimed by a party to be privileged, the party claiming privilege shall identify each such memorandum, writing, or other document, and inform the Chair, assigned Hearing Officer, and the other party;

3. Any and all documents which the Appellant or Respondent intends to utilize as an exhibit at the hearing, subject to the rules of relevance and privilege set forth above.

4. If either the Appellant or Respondent offers as evidence any document not previously provided to the other party, the Chair or assigned Hearing Officer may exclude the evidence or postpone the hearing to give the other party an opportunity to review the document.

11.15 Findings of Fact, Conclusions of Law and Order. The Council shall make written Findings of Fact, Conclusions of Law and Order ("Order") within twenty (20) business days from the conclusion of the hearing or receipt of the Hearing Officer's report, or at their next scheduled meeting following the hearing, at their discretion. Copies shall be sent to the Appellant and Respondent at their addresses listed in the Council records or to their legal counsel, if any.

11.16 Back Pay Award and Deductions from Back Pay Award

If the Appellant has been dismissed, suspended or received a reduction in rank or compensation, and upon appeal the Council revokes or modifies the Sheriff's Disciplinary Order, thereby reinstating the Appellant with back pay, any interim earnings or amounts actually earned or earnable with reasonable diligence, including unemployment compensation, shall be deducted from the back pay award. A calculation of the back pay award, reduced by the amounts determined, shall be determined at a subsequent meeting, after appropriate hearing, as needed, and before the issuance of the Council's signed Order.

11.17 Withdrawal of an Appeal

The Appellant may submit a written request to withdraw the Appeal at any time prior to the Council or assigned Hearing Officer's decision at the Appeal hearing. Such request shall be filed with the Director.

11.18 Decision by Council

If, after the Appeal hearing, a majority of the Council or the assigned Hearing Officer determines that the Sheriff's action was arbitrary or capricious, the action shall be revoked or modified. Otherwise the action shall be affirmed.

11.19 Compliance with the Council's Order

The Sheriff shall have thirty-five (35) days from the date of the signed decision of the Council to either file for an administrative review or to take such measures as are necessary to comply with the decision of the Council. The Sheriff shall render a report of compliance or non-compliance with the Council's Order or provide a copy of the Complaint filed in Superior Court to the Director.

11.20 Administrative Review

The Council's Order shall be final and shall be subject only to administrative review as provided in A.R.S. § 12-901, *et seq.*