



INSTRUCTIONS FOR FILING AN APPEAL WITH THE MISSOURI PERSONNEL ADVISORY BOARD

1. Review the enclosed materials carefully. The attached "Application For Appeal" outlines the information you must supply before the Board can hear your appeal. The other attached pages contain the Missouri statutes and regulations that authorize most of the disciplinary appeals heard by the Personnel Advisory Board.

2. Write full, accurate and truthful answers for the information requested by the Application For Appeal. The Board uses this information initially to decide if it can hear your appeal. If the Board then accepts your appeal, the Board will use this information to decide what the issues will be in the hearing. Remember, you may retain an attorney, at your own expense, to advise and represent you in your appeal.

3. Within thirty (30) days after the effective date of the disciplinary action you are appealing, deliver your written appeal by fax* (573-522-8462), by mail, or by hand to:

Personnel Advisory Board
Room 430, Truman Building
P.O. Box 388
Jefferson City, MO 65102

* If you fax your Application for Appeal, you must mail the Board a hard copy within ten (10) business days. If you do not, your fax filing will be deemed null and void for all purposes.

There is no provision for extending the appeal period.

**IF YOU DO NOT FILE YOUR APPEAL ON TIME,
THE BOARD WILL DISMISS YOUR APPEAL WITHOUT A
HEARING.**



**APPLICATION FOR APPEAL
TO THE
PERSONNEL ADVISORY BOARD
OFFICE OF ADMINISTRATION**

(Pursuant to Sec. 36.390-5, RSMo.)

* If you fax your Application for Appeal, you must mail the Board a hard copy within ten (10) business days. If you do not, your fax filing will be deemed null and void for all purposes.

_____)	
Name of Appellant (Employee))	
v.)	Personnel Advisory
_____)	Board Appeal
Appointing Authority)	

Disciplinary action being appealed: (check one)

- Demotion
- Suspension of more than five working days
- Dismissal
- Other, per 105.055, RSMo 1986 **

Effective date of disciplinary action: _____

Please review carefully the notice of disciplinary action given to you by the Appointing Authority (your employer). Then fill out the remainder of this form and mail to the Personnel Advisory Board, P.O. Box 388, Jefferson City, Missouri, 65102. This form **must be received within thirty (30) days** of the date of the disciplinary action.

** If you are claiming that an adverse employment action was taken against you that violated §105.055 only, you are to fill out page 3 and 4 only, and an additional form will be sent to you. If you are claiming a §105.055 violation in addition to other reasons for your appeal, fill out this entire form.

1. I believe the action taken was because of:

(a) Political reasons ()

(b) Religious reasons ()

(c) Racial reasons ()

(d) Not for the good of the service ()

(e) Other -- Specify _____

2. My claim that the action taken was for the reason or reasons set out under No. 1 above is because: (STATE CLEARLY YOUR REASONS FOR EACH CLAIM MADE)

3. My answers to the reasons given by the Appointing Authority for his action are as follows:

4. (Do not complete unless you want witnesses to be subpoenaed.)

I wish the following witnesses to be subpoenaed if a hearing is granted.

THE PERSONNEL ADVISORY BOARD DOES NOT PAY ANY EXPENSES OF THE APPELLANT, APPOINTING AUTHORITY, OR WITNESSES WHO APPEAR AT HEARING OF APPEALS.

Name	Address
Name	Address
Name	Address
Name	Address
Name	Address
Name	Address
Name	Address
Name	Address
Name	Address

5. I wish the Board to subpoena the following books, papers or records, which I will need for the hearing and believe to be pertinent to the investigation; (IDENTIFY IN DETAIL THE RECORDS YOU DESIRE TO BE AVAILABLE AT THE HEARING, THAT IS, NAME THE BOOKS OR RECORDS, THE NATURE OF THE CONTENTS, WHERE THEY MAY BE LOCATED, AND THE CUSTODIAN OR KEEPER OF THE RECORDS):

6. What is intended to be proved by above witness (or witnesses) and records? Explain:

I affirm that I have read the reasons given by the Appointing Authority, and that the statement and answers given above are true to the best of my belief, and that the appeal which I request is not vexatious or frivolous.

Date: _____

(Signature of Employee)

(Address)

(City, State and Zip)

(Telephone Number)

If you have an Attorney, he should sign below:

(Signature of Attorney)

(Attorney's Name - Typed)

(Missouri Bar Number)

(Address)

(City, State and Zip)

(Telephone Number)

* If you fax your Application for Appeal, you must mail the Board a hard copy within ten (10) business days. If you do not, your fax filing will be deemed null and void for all purposes.

Title I - Code of State Regulations
RULES OF THE PERSONNEL ADVISORY BOARD
AND THE PERSONNEL DIVISION
1 CSR 20-4.010 - Appeals

(3) Appeals Must be Submitted and Hearings Conducted Following the Procedures and Guides Provided in this Rule.

(A) Appeal submission and preparation for hearing are governed by the following provisions:

1. Appeals shall be written. The appeal may be filed by fax, by mail, or by other delivery to the Board's office. The written appeal must provide substantially the following information: appellant's name; appointing authority and agency; the type of disciplinary action appealed; the effective date of the disciplinary action; the appellant's reason for appealing the disciplinary action; the appellant's response to the reasons given by the appointing authority; names of witnesses to be subpoenaed if a hearing is granted; a detailed description of any books, papers, or records to be subpoenaed, along with their location, and a statement of the reasons that the items are needed for the hearing; the name, address, telephone number and signature of the appellant's attorney, if any; the appellant's signed acknowledgement and certification of truth for the information supplied in the written appeal;

2. The Appellant may file the appeal on the form for appeal prescribed by the board. The information required for completion of that form shall be deemed sufficient to satisfy the requirement for a written appeal. The board will provide to the appellant or to the appointing authority, on request, a copy of the current form for appeal. The appointing authority shall deliver a copy of the form to any employee receiving appealable disciplinary action. The completed form or other written appeal must be received at the office of the board within thirty (30) days after the effective date of the disciplinary action appealed. A copy of the appellant's contentions set out in the appeal will be furnished to the appointing authority;

3. A party may file a document by—

A. Registered or certified mail.

A document filed by registered or certified mail is deemed filed on the date that it is delivered to and received by the board;

B. Electronic facsimile transmission (fax). A document filed by fax is deemed filed at the time the board receives a fax of the complete document, provided that the original of the document is sent to the board and received within ten (10) business days of the fax. If a document arrives by fax after 5:00 p.m. and before 12:00 midnight or on a Saturday, Sunday or legal holiday, it is filed on the board's next business day, unless the board orders otherwise;

I. The time controlling when a fax arrives at the board's office is the board's fax machine's journal;

II. The person fax filing a document bears the risk of loss in transmission, nonreceipt or illegibility. If the document is not received or is materially illegible, the document is deemed not filed and totally null and void for all purposes;

III. Any party or

attorney who lists s fax number on a letterhead or pleading in the case file or in a telephone or professional directory or otherwise shall be deemed to have consented to receive service of documents by fax from the board or any other party or attorney; or

C. Any other method. A document filed by any method other than registered mail, certified mail or fax is deemed filed on the date the board receives the document in its office;

4. A party filing by fax shall—

A. Notify the board in advance, if possible, of its intention to file the document by fax;

B. Fax the document to the board's dedicated fax number;

C. Fax the document, if possible, to all other parties having electronic facsimile equipment. If unable to fax, a party shall notify all other parties of its intention to file the document by fax. The notice need not be in writing. A good faith attempt at compliance with this notice requirement shall satisfy the requirements of this subparagraph. This subparagraph does not apply to fax filing of the original appeal;

D. Send the original signed document to the board;

E. Certify in the documents—

I. The method of notice used to fulfill the requirements of subparagraph (3)(A)4.C. of this rule; and

II. Compliance with the requirements of subparagraph (3)(A)4.D. of this rule; and

F. Send a copy of the document to all other parties except when filing the original appeal;

5. Appellants may represent themselves and handle their own cases but shall have the right to be represented by duly licensed attorneys. A party to an appeal cannot be represented by anyone other than a duly licensed attorney except that the appointing authority may appear by an employee in the agency. If either party intends to employ and be represented by an attorney, that party promptly shall notify the Personnel Advisory Board of the name and address of his/her attorney;

6. If either party to an appeal desires the issuance of a subpoena for any witness or records at any hearing, that party must apply for it sufficiently in advance of the hearing that the subpoena may be delivered to the requesting party by mail or by fax at least one (1) day before the hearing. The requesting party shall provide the name and address of any witness subpoenaed, a detailed description of any records to be subpoenaed, and a statement of what is intended to be proved by the records. The Personnel Advisory Board issues the subpoena by request, but the service of the subpoena rests in the hands of the party requesting it. Service of the subpoena is to be effected in accordance with section 536.077, RSMo;

7. Upon the acceptance of an appeal, the appellant and appointing authority or their representatives may meet with the Personnel Advisory Board, at a time

and place set by the board for a prehearing conference to determine the facts at issue. At the prehearing conference both parties may stipulate on mutually agreed matters relevant to the disciplinary action or the appeal may be resolved by agreement of the parties. If, during the prehearing conference, the case is not resolved and the appeal goes forward to a hearing before the Personnel Advisory Board, the board may confine the hearing to the law and facts at issue as stipulated by mutual agreement of the parties to the appeal. All parties are required to provide the board with a current address and telephone number. If the appellant fails to provide the board with a current address and telephone number and cannot be reached to schedule a pre-hearing conference, or does not participate in the prehearing conference after receiving written notice of the date, time and location of the prehearing conference, it shall be deemed that the appellant no longer wishes to proceed with the appeal and is withdrawing the appeal;

8. All motions or other pleadings by the parties shall be submitted in writing with a copy served or mailed to the opposing party. Parties to an appeal may amend their pleadings as a matter of course at any time before a responsive pleading is filed and served or if the pleading is one to which no responsive pleading is required and the action has not been set for hearing, the party may so amend it at any time within thirty (30) days after it is filed. Otherwise, a party may amend a pleading only by leave of the Personnel Advisory Board or by written consent of the adverse party; and leave shall be given freely when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Personnel Advisory Board otherwise orders; and

9. Service of filings other than the original appeal;

A. Unless otherwise provided by these rules or by other law, any party to a proceeding before the board or any person who seeks to become a party shall serve upon all attorneys of record and unrepresented parties a copy of any document or item the party files;

B. Methods of service.

I. A person may service a document on an attorney by:

(a) Delivering it to the attorney;

(b) Leaving it at the attorney's office with a secretary, clerk or attorney associated with or employed by the attorney served;

(c) Mailing it to the attorney's last known address; or

(d) Facsimile transmitting (faxing) it to the attorney's last known fax number;

C. Any document or item filed shall contain or be accompanied by a certification of how

and when the filing party has met the provisions of subparagraph (3)(A)9.A. of this rule; and

D. The requirements of this paragraph shall not apply to an original appeal.

(B) Hearings Procedure. The conduct of hearings before the Personnel Advisory Board is subject to the following provisions:

1. Hearings will be held in the Office of the Personnel Advisory Board in Jefferson City, Missouri, unless a different location is specified by action of the board;

2. If no prehearing conference has been held, the board will make a determination of what questions are at issue based upon the notice of the disciplinary action and the appellant's contentions in the appeal prior to the taking of testimony. The hearing shall be confined to and come within the scope of law and facts that the board has determined to be at issue. The board may exclude evidence which is purely cumulative;

3. The person who imposed the discipline is to attend the hearing. If that person is not the appointing authority, it must be the subordinate to whom authority has been delegated. The person does not have to attend the hearing if:

A. The Appellant has waived his or her attendance;

B. The parties agree to present his or her testimony by other means such as stipulation, affidavit, or testimony over the telephone or if either party wishes to present the testimony by deposition;

C. He or she is unable to attend the hearing for a reason that is accepted as legitimate by the board and the absence of his or her testimony would not unduly prejudice the appellant;

4. If the person who imposed the discipline is legitimately unavailable to provide his or her testimony for the hearing and the board determines that not having this testimony unduly prejudices the appellant, then the board may disapprove the appellant's discipline;

5. The person conducting the hearing will read a statement citing the appropriate sections of the merit system law applicable to appeals;

6. The person conducting the hearing will read the charges of the appointing authority and the contentions of the appellant. By agreement these documents may be inserted in the record without reading before commencing the taking of testimony;

7. All witnesses will be sworn or affirmed. When possible, witnesses will stand to be sworn or affirmed;

8. The Personnel Advisory Board, on request of either party or on its own motion, may order that the witnesses be separated so as to preclude any witness, other than the parties and their attorneys, from hearing the testimony of other witnesses. When requested by the appellant, only one (1) person in addition to counsel shall remain in the room to represent the appointing authority;

9. The appointing authority will be required to present his/her case first. Experience has

shown this method gives the board a clearer and quicker picture of the issues. This is not a shift of the burden of proof, but is only the burden of going ahead with the proof;

10. The Personnel Advisory Board may take notice of its rules, the class specifications, official records of the Personnel Division and the pay plan without the necessity of an offer in evidence;

11. The Personnel Advisory Board may fix the total time to be allowed for oral argument;

12. At the hearing the entire proceedings will be tape recorded. After the board announces its Findings of Fact, Conclusions of Law, decision and order, or at an earlier time if the Board determines that the interest of efficient administration would be served, a copy of the recording will be made available to either party. The board will not transcribe the record from aural to written form. The cost of a transcription will be borne by the requesting party. The transcription may be performed by any commercial business or agency selected by the requesting party; The board will forward directly to the selected business or agency a copy of the aural recording;

13. No rehearing, which includes any post-hearing motion other than a Nunc Pro Tunc, Request for Attorney's Fees or Motion for Back Pay, shall be granted from a final decision of the Personnel Advisory Board. Should such a post-hearing motion be filed, it shall be deemed denied by the board and no ruling from the board is necessary; however, at any time prior to issuance of the decision, the board may require the production of additional documents and records, the presentation of additional testimony after prior notification to both parties, or both;

14. When the board issues an order dismissing an appeal or its findings of fact, conclusions of law and decision, that order is a final decision on the merits and may be appealed as provided in Chapter 536, RSMo. A motion for attorney's fees, if any, is due to the board within thirty (30) days of its dismissing an appeal or its findings of fact, conclusions of law and decision. The filing of a petition for judicial review or the fact that back pay has not been determined does not stay the thirty (30)-day requirement for filing the motion for attorney's fees with the board.

15. An appeal set for hearing may be continued by the Personnel Advisory Board for cause deemed sufficient or by consent of both parties to the appeal. However, a continuance will not be granted except for compelling cause or to serve the ends of justice. If an appellant requests and is granted a continuance, the Personnel Advisory Board, in its discretion, may deny the appellant any compensation for that portion of time lost by reason of the continuance made at the request if the appellant's appeal is finally sustained. If an appeal scheduled for hearing is not reached, it shall be reset and given precedence over any subsequent appeal;

16. The finding of the board will be announced in writing subsequent to the hearing. Parties

will be notified by letter sent by certified mail. The finding will be made as provided in section 36.390(5), RSMo; and

17. As appropriate and where no specific rule governs the issue, the Personnel Advisory Board will utilize the rules of the civil procedure for guidance.

(C) Special Hearing Procedures. In the hearing of appeals from disciplinary actions and in the conduct of other appeals or investigations authorized under these rules or the merit system law, the board or the chairman of the board may delegate responsibility for the conduct of investigations and the hearing of appeals provided under any section of the law to a member of the board or to a hearing officer designated by the board. The hearing officer shall have the power to administer oaths, subpoena witnesses, and compel the production of records pertinent to any hearing or investigation. The hearing officer may take any action in connection with the hearing or investigation which the board itself is authorized to take by law other than making the final determination, decision or appropriate order. When a hearing has been completed, the individual board member or the hearing officer who conducted the hearing shall prepare a summary of the hearing and the evidence and recommend a Findings of Fact, Conclusions of Law, decision and appropriate order for approval of the board. The board may adopt such recommendations in whole or in part, require the production of additional testimony, reassign the case for rehearing or may itself conduct such new or additional hearing as is deemed necessary prior to rendering a final decision (*See section 36.390, RSMo*). Whenever this rule uses the term Personnel Advisory Board or board, the same shall apply to a member of the board or a hearing officer who has been delegated the responsibility to conduct the investigation or hear the appeal.

(4) Mediation.

(A) Upon the filing of a request for mediation by both parties, or upon a request for mediation by both parties made at the prehearing telephone conference that establishes the hearing date of a disciplinary appeal, mediation services may be provided by a hearings officer, a board member, or a neutral third party for the purpose of attempting a resolution of the appeal.

(B) The Personnel Advisory Board may order that mediation proceed in a disciplinary case before any further proceeding in such case.

(C) A written application for mediation services should include the case number, the name of each party and a brief explanation of the case.

(D) If the mediator is also a hearings officer or a board member, that hearings officer or board member shall be disqualified from conducting an evidentiary hearing relating to that particular case and shall not make any communication regarding the mediation discussions in the case to any board member or the hearings officer appointed to preside in the case. Further, such a board member shall not vote or otherwise participate in the decision on such a disciplinary appeal.

(E) If necessary, the hearings officer presiding over the case may stay the case pending mediation. In no event, however, shall mediation take over two (2) months. If a case cannot be resolved in that amount of time, it shall proceed to hearing. The parties, however, are always free to settle an appeal, and the appellant is always free to withdraw the appeal even should mediation efforts fail to resolve an appeal.

(F) Failure to appear and participate in good faith in mediation shall be grounds for sanctions including dismissal or default of the noncompliant party.

(G) Should there be any cost charged by a third party mediator, the cost shall be divided evenly between the parties unless the Personnel Advisory Board orders otherwise.

REVISED STATUTES OF MISSOURI - 2006

36.370. Suspension of employees

An appointing authority may, for disciplinary purposes, suspend without pay any employee in his division for such length of time as he considers appropriate, not exceeding twenty working days in any twelve-month period except that this limitation shall not apply in the event of a terminal suspension given in conjunction with a dismissal. In case of a suspension, the director shall be furnished with a statement in writing specifically setting forth the reasons for such suspension. Upon request, a copy of such statement shall be furnished to such employee. With the approval of the director, any employee may be suspended for a longer period pending the investigation or trial of any charges against him. Any regular employee who is suspended for more than five working days shall have the right to appeal to the board as provided under section 36.390.

36.380. Dismissal of employee

An appointing authority may dismiss for cause an employee in his division occupying a position subject hereto when he considers that such action is required in the interests of efficient administration and that the good of the service will be served thereby. No dismissal of a regular employee shall take effect unless, prior to the effective date thereof, the appointing authority gives to such employee a written statement setting forth in substance the reason therefor and files a copy of such statement with the director. . . . Any regular employee who is dismissed shall have the right to appeal to the board as provided under section 36.390.

36.390. Right of appeal, procedure, regulation

5. Any regular employee who is dismissed or involuntarily demoted for cause or suspended for more than five working days may appeal in writing to the board within thirty days after the effective date thereof, setting forth in substance the employee's reasons for claiming that the dismissal, suspension or demotion was for political, religious, or racial reasons, or not

for the good of the service. Upon such appeal, both the appealing employee and the appointing authority whose action is reviewed shall have the right to be heard and to present evidence at a hearing which, at the request of the appealing employee, shall be public. At the hearing of such appeals, technical rules of evidence shall not apply. After the hearing and consideration of the evidence for and against a suspension, demotion, or dismissal, the board shall approve or disapprove such action and may make any one of the following appropriate orders:

(1) Order the reinstatement of the employee to the employee's former position;

(2) Sustain the dismissal of such employee;

(3) Except as provided in subdivisions (1) and (2) of this subsection, the board may sustain the dismissal, but may order the director to recognize reemployment rights for the dismissed employee pursuant to section 36.240, in an appropriate class or classes, or may take steps to effect the transfer of such employee to an appropriate position in the same or another division of service.

105.055. State employee reporting mismanagement

1. No supervisor or appointing authority of any state agency shall prohibit any employee of the agency from discussing the operations of the agency, either specifically or generally, with any member of the legislature, state auditor, attorney general, or any state official or body charged with investigating such alleged misconduct.

2. No supervisor or appointing authority of any state agency shall:

(1) Prohibit a state employee from or take any disciplinary action whatsoever against a state employee for the disclosure of any alleged prohibited activity under investigation or any related activity, or for the disclosure of information which the employee reasonably believes evidences:

(a) A violation of any law, rule or regulation; or

(b) Mismanagement, a gross waste of funds or abuse of authority, or a substantial and specific danger to public health or safety, if the disclosure is not specifically prohibited by law; or

(2) Require any such employee to give notice to the supervisor or appointing authority prior to making any such report.

3. This section shall not be construed as:

(1) Prohibiting a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the employee to legislators on behalf of the agency;

(2) Permitting an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to leaves, unless the employee is requested by a legislator or legislative committee to appear before a legislative committee;

(3) Authorizing an employee to represent the employee's personal opinions as the opinions of a state agency; or

(4) Restricting or precluding disciplinary action taken against a state employee if: the employee knew that the information was false; the information is closed or is confidential under the provisions of the open meetings law or any other law; or the disclosure relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety.

4. As used in this section, "**disciplinary action**" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal or withholding of work, whether or not the withholding of work has affected or will affect the employee's compensation.

5. Any employee may file an administrative appeal whenever the employee alleges that disciplinary action was taken against the employee in violation of this section. The appeal shall be filed with the state personnel advisory board; provided that the appeal shall be filed with the appropriate agency review board or body of nonmerit agency employers which have established appeal procedures substantially similar to those provided

for merit employees in subsection 5 of section 36.390 RSMo. The appeal shall be filed within thirty days of the alleged disciplinary action. Procedures governing the appeal shall be in accordance with chapter 36, RSMo. If the board or appropriate review body finds that disciplinary action taken was unreasonable, the board or appropriate review body shall modify or reverse the agency's action and order such relief for the employee as the board considers appropriate. If the board finds a violation of this section, it may review and recommend to the appointing authority that the violator be suspended on leave without pay for not more than thirty days or, in cases of willful or repeated violations, may review and recommend to the appointing authority that the violator forfeit the violator's position as a state officer or employee and disqualify the violator for appointment to or employment as a state officer or employee for a period of not more than two years. The decision of the board or appropriate review body in such cases may be appealed by any party pursuant to law.