

DEPARTMENT: Superior Court Adult Probation Dept. Clerk of Superior Court Juvenile Court	DIVISION: ALL
RULE NAME: Judicial Merit Rules RULE: Appeals RULE NUMBER: 11	DATE ADOPTED: March 1, 2003 DATE AMENDED: October 30, 2003 DATE AMENDED: February 25, 2016

RULE 11 - APPEALS

11.01 Matters That May Be Appealed

- A. Employees in classified positions who have attained regular status may appeal in writing within ten (10) calendar days of receipt of a written order from the Appointing Authority for any disciplinary action. (Amended October 30, 2003)
- B. Within ten (10) calendar days of receipt of a written notice of separation from employment by the Appointing Authority, an employee who is separated from any court department through a reduction in force (RIF) may request a review of the circumstances by the Presiding Judge. Based on the finding of this review, the Presiding Judge may determine to treat the separation as a dismissal and grant the employee an appeal.
- C. An employee may appeal an action taken by an Appointing Authority on a grievance if the employee alleges the action violates Rule 3.10.

11.02 Matters That May Not Be Appealed

A probationary status employee has no right of appeal from any disciplinary action taken by an Appointing Authority.

11.03 Appeal Procedure

- A. All appeals must be filed in writing with the Presiding Judge within ten (10) calendar days of receipt of a written notice of the disciplinary action taken. The appeal will be considered filed when received in the office of the Presiding Judge. A copy of the appeal will be delivered to the Appointing Authority within three (3) working days of receipt of a statement of appeal.

B. The written statement of appeal will:

1. State the reason for the appeal.
2. State in sufficient detail the necessary facts upon which the appeal is based and the action requested of the Presiding Judge.
3. Identify all people and agencies involved.
4. Provide a return address.

11.04 Answer

No answer to the statement of appeal need be filed by the Appointing Authority, but any answer must be in writing and filed with the Presiding Judge and served on the employee within five (5) calendar days after the Appointing Authority's receipt of the appeal statement. Any answer if filed must be in writing and filed with the Presiding Judge.

11.05 Time of Hearing

Every appeal hearing will commence within twenty (20) working days from the receipt of an appeal by the Presiding Judge unless the time is extended by mutual consent of the employee and the Appointing Authority.

11.06 Notice of Hearing

Written notice of the time, date and place of hearing of an appeal will be served by the Presiding Judge on the employee and the Appointing Authority at least seven (7) calendar days before the date of such hearing.

11.07 Nature of Hearing

Appeal hearings are closed to the public. Parties may represent themselves or be represented by legal counsel or a non-attorney representative of their choosing. Technical rules of evidence will not apply to the proceedings, except that irrelevant, immaterial, incompetent, or unduly repetitious evidence or evidence protected by the rules of privilege recognized by law may be excluded. All testimony will be recorded manually or by recording device.

11.08 Exclusion of Witnesses

Upon motion of any employee or Appointing Authority, the Presiding Judge may exclude from the hearing room any witnesses not at the time under examination. Parties to the proceedings, or their attorneys, or other persons conducting the case, will not be excluded.

11.09 Witness Fees

Witnesses, other than employees, when subpoenaed to attend a hearing are entitled to the same fee as is allowed witnesses in civil cases in courts of record. If a witness is subpoenaed upon request of the employee or Appointing Authority, fees and mileage will be paid by the party requesting the witness. Fees and mileage will be paid upon presentation of a duly executed claim in a manner provided for by the Court Administrator. Reimbursement to employees subpoenaed as witnesses will be limited to payment of mileage by the party making the request.

11.10 Depositions

If a witness does not reside within the county or within one hundred (100) miles of the place where the hearing is being held, is out of the state or is too infirm to attend the hearing, parties thereto at their own expense may cause a deposition to be taken. If the presence of a witness cannot be procured at the time of the hearing, the deposition may be used in evidence by either party or the Presiding Judge.

11.11 Proposed Finding of Facts

Both employee and Appointing Authority have the right to file proposed findings of fact within ten (10) working days following the conclusion of the hearing. In the event such proposed findings of the fact are filed by either or both parties, the written findings of fact of the Presiding Judge will include a ruling upon each such finding proposed by the employee and the Appointing Authority.

11.12 Findings of Fact, Conclusion of Law and Order

At the conclusion of the appeal hearing, the Presiding Judge may make a verbal finding, effective immediately. However, any findings of fact, conclusions of law, and decisions must be in writing and a copy served by certified mail to the employee and the Appointing Authority at the addresses given at the hearing or to a representative designated to receive same, or hand delivered in person to both parties within fifteen (15) calendar days of the conclusion of the hearing.

11.13 Withdrawal of an Appeal

Employees may submit a written request to withdraw an appeal at any time prior to the decision of the Presiding Judge. The employee will submit copies of the request to the Presiding Judge and the appropriate Appointing Authority.

11.14 Decision by Presiding Judge

A. If, after the hearing, and upon review of the proposed findings of fact and conclusions of law filed by either the employee, Appointing Authority or both, the Presiding Judge determines that the action appealed from was arbitrary or taken without reasonable cause, the appeal will be sustained; otherwise the appeal will be dismissed.

- B. The Presiding Judge has full authority to direct remedial action and will do so after taking into consideration just and equitable relief to the covered employee in the best interest of the judicial branch and the public.

11.15 Compliance of Appointing Authority

- A. In the event the Presiding Judge orders the Appointing Authority to reinstate the employee, the Presiding Judge may also order the Appointing Authority to reinstate the employee with or without back pay for such period and in such amounts as the Presiding Judge deems proper under the circumstances.
- B. The findings and decision of the Presiding Judge is final and the Appointing Authority must immediately comply with such decision. Upon a decision by the Presiding Judge sustaining an appeal, the Appointing Authority of the employee will take such measures as are necessary to comply with the remedial action directed by the Presiding Judge and will render a report of such actions to the Presiding Judge within fourteen (14) calendar days of the decision.

11.16 Settlements

All settlement agreements will be submitted to the court in writing for approval by the Presiding Judge.