

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 1120-11  
GRIEVANCE**

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**1120-11-.01 POLICY.**

- (1) Career employees will be given every opportunity to resolve bona fide grievances through established procedures. Every reasonable effort will be made to resolve grievances at the lowest possible step in the procedure.
- (2) Employees using this procedure are entitled to process grievances without fear, interference, discrimination, or reprisal.

**Authority:** T.C.A. § 8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

**1120-11-.02 RESPONSIBILITY.**

- (1) The Commissioner is responsible for providing and maintaining the basic standards and guidelines for implementing this chapter.
- (2) Appointing authorities are responsible for the proper implementation of this chapter throughout their respective agencies. Modification of these procedures may be made in order to satisfy unusual circumstances within an agency if such modification is approved by the Commissioner.
- (3) Appointing authorities are responsible for ensuring that all employees and supervisory staff are aware of the provisions of this chapter.

**Authority:** T.C.A. § 8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

**1120-11-.03 BASIC STANDARDS.**

- (1) A grievance must be filed at the appropriate step in the grievance procedure within fifteen (15) standard workdays (Monday - Friday, 8:00 a.m. - 4:30 p.m.) of the action which is the basis for the grievance; otherwise it will be considered untimely and invalid.
- (2) Although no standard grievance forms are provided, agencies may develop and make available such forms to employees. An agency may not deny an employee's grievance because a standard form was not used. Grievances must be expressed in reasonable terms. Each grievance submitted should contain:

(Rule 1120-11-.03, continued)

- (a) the basis for the grievance;
  - (b) the settlement or corrective action desired by grievant; and
  - (c) sufficient facts or other information to begin an investigation.
- (3) A grievant may represent himself or be represented by a state employee representative of the employee's choice at any step of the grievance procedure prior to a Level 4 hearing. The grievant and the agency may have counsel present at the informal discussion or hearing of facts prior to Level 5, but counsel may not participate in the discussion or hearing. The presence of any other observer is at the discretion of the manager or supervisor in charge of the discussion or hearing.
  - (4) At the informal hearing before the appointing authority (i.e., the Level 4 hearing), an attorney or a representative of an employee may speak on behalf of the employee. The presence of any other observer at this discussion is at the discretion of the appointing authority or designee in charge of that discussion.
  - (5) The grievant and the agency may be represented by counsel in actions before the Civil Service Commission, which is the final step of this procedure. The presence of additional observers at this step is at the discretion of the presiding Administrative Law Judge.
  - (6) Grievants may present grievances during the standard workday or other mutually agreeable hours as work situations may require. Grievance discussions held during the scheduled off-duty hours for a grievant, witness, or representative will be considered the same as hours worked, including overtime if applicable. Grievants or employees who are required to appear as witnesses or representatives will not be required to use leave for such periods and shall be reimbursed for travel and other expenses in accordance with the comprehensive travel regulations.
  - (7) Grievances concerning suspension without pay, demotion, dismissal, or any other loss of a property right must be filed directly with the appointing authority, warden, or superintendent.
  - (8) An employee who believes that a disciplinary action or layoff is the result of discrimination prohibited by T.C.A. § 8-50-103 or T.C.A. § 4-21-401 may file a grievance directly with the appointing authority, warden, or superintendent. A grievant may also proceed directly to the Tennessee Human Rights Commission as provided in T.C.A. §§ 4-21-401 and 8-50-103.
  - (9) The agency must communicate grievance decisions in writing directly to the grievant in a timely manner as outlined in Chapter 1120-11-.04. Agencies must use certified or registered mail if mailing the written decision. If hand delivered, a grievance decision must include a written heading indicating "Hand Delivered" with a place for the employee's signature. No other form of communication is acceptable.

**Authority:** T.C.A. § 8-30-326 and 8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

**1120-11-.04 PROCEDURES.** Procedures shall not be more than five (5) steps to finality, as follows:

- (1) Step I - Grievant's Immediate Supervisor
  - (a) The employee presents a written grievance to the supervisor within fifteen (15) workdays of the action which is the basis for the grievance.

(Rule 1120-11-.04, continued)

- (b) The supervisor investigates and issues a written decision to the grievant within fifteen (15) workdays of the discussion.
- (2) Step II - Next Appropriate Higher Level of Management
  - (a) The employee submits a written grievance to the appropriate manager within fifteen (15) workdays of receipt of the Step I written decision.
  - (b) The manager conducts an informal discussion or hearing of facts and allegations, investigates and issues a written decision to the grievant within thirty (30) workdays of the receipt of the grievance.
- (3) Step III - Next Appropriate Higher Level of Management
  - (a) The employee submits a written grievance to the appropriate manager within fifteen (15) workdays of receipt of the Step II written decision.
  - (b) The manager conducts an informal discussion or hearing of facts and allegations, investigates and issues a written decision to the grievant within thirty (30) workdays of the receipt of the grievance.
- (4) Step IV – Appointing Authority Level
  - (a) The employee submits a written grievance to the appointing authority or designee within fifteen (15) workdays of receipt of the Step III written decision.
  - (b) The appointing authority or designee conducts an informal discussion or hearing of facts, allegations, and testimony. Whenever possible, a manager who had no input or involvement in the original decision to discipline shall conduct the fourth step hearing. The informal discussion or hearing is not a contested case hearing pursuant to the Uniform Administrative Procedures Act.
  - (c) The appointing authority or designee investigates and issues a written decision to the grievant. The appointing authority shall have sixty (60) workdays, from the receipt of the grievance, to complete the hearing and issue a written decision.
  - (d) The appointing authority shall have full authority to overturn, reduce, or alter any disciplinary action based on information gathered at the Step IV hearing, including reinstatement of leave and awards of back pay, if appropriate, which may be offset by income earned from alternative employment or unemployment insurance payments received.
- (5) Step V (Formal - Career Employee only)
  - (a) The employee submits a written grievance, all relevant documentation, and a copy of the Step IV written decision within thirty (30) calendar days of receipt of the Step IV decision to:

Secretary, Civil Service Commission  
Tennessee Department of Human Resources  
First Floor, James K. Polk Building  
505 Deaderick Street  
Nashville, TN 37243

(Rule 1120-11-.04, continued)

- (b) Hearings will be held pursuant to T.C.A. § 8-30-328 and the Uniform Administrative Procedures Act.
- (c) An agency or employee may appeal the decision of the Administrative Law Judge to the Civil Service Commission. Administrative reviews before the Civil Service Commission shall be limited to the technical records from the administrative procedures division, which may include transcripts from the fifth level hearing. Parties may submit additional proposed findings of fact and conclusions of law to the Commission no later than ten (10) workdays prior to the scheduled review.
- (6) By written agreement, the manager involved and employee may extend the time limits set herein not in excess of six (6) months.
- (7) Failure of management to proceed within any established time limits entitles the grievant to proceed to the next step in this procedure.
- (8) Hearings conducted at Step V will conform to the model rules of the Secretary of State for contested cases and the Department hereby adopts Secretary of State Rule 1360-4-1 in statutory compliance.

**Authority:** T.C.A. § 8-30-328 and 4-5-219. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

#### 1120-11-.05 SCOPE OF PROCEDURE.

- (1) The Commission will serve as the final step for all grievances by career employees.
- (2) The agency appointing authority will serve as the final step for all grievances by executive service employees.

**Authority:** T.C.A. § 8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

#### 1120-11-.06 GRIEVABLE MATTERS.

- (1) Disciplinary suspension or demotion;
- (2) Disciplinary dismissal;
- (3) Any disciplinary action or layoff that the employee believes is the result of discrimination prohibited by T.C.A. § 8-50-103 or T.C.A. § 4-21-401. The employee may file such grievance directly with the appointing authority, warden, or superintendent;
- (4) Involuntary geographical transfer of an employee or official duty station more than fifty (50) miles. Distance will be determined by drawing a circle, with a fifty (50) mile radius, centered on the previous official duty station;
- (5) Non-compliance with an approved reduction in force plan by an appointing authority;
- (6) Prohibited political activity as outlined in T.C.A. Title 2, Chapter 19 (the "Little Hatch Act");

(Rule 1120-11-.06, continued)

- (7) Coercion of an employee to waive his right to consideration on an eligibles list;
- (8) Final performance evaluations based on procedural grounds to the fourth step; and
- (9) Other matters determined at the sole discretion of the appointing authority to be grievable, but not included in section 1120-11-.07 below.

**Authority:** T.C.A. §§ 8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 25, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

#### **1120-11-.07 EXCEPTIONS AND NON-GRIEVABLE MATTERS.**

- (1) Actions that affect employees who are not career employees;
- (2) Actions that affect employees who are not covered under T.C.A. § 41-22-407 (d)(3);
- (3) Actions that affect an employee serving an initial probationary period;
- (4) Normal supervisory counseling and management;
- (5) Non-selection for promotion when the appointment was in compliance with these Rules and the Act;
- (6) Oral and written reprimands;
- (7) Performance evaluation ratings;
- (8) Actions resulting from suggestions adopted by the State Employee Suggestion Award Board;
- (9) Actions resulting from reductions in force when the actions by the appointing authority were in compliance with statutes and rules;
- (10) Shift, post, and overtime assignments;
- (11) Reasonable work assignments outside those normally associated with the employee's assigned job classification;
- (12) Salary range assigned to classifications;
- (13) Administration of salary increases established and funded by the legislature;
- (14) Classification of position;
- (15) Denial of leave requests except as provided for in T.C.A. § 8-50-110 and T.C.A. § 8-50-802;
- (16) Matters relating to internal agency or program management based on discretionary decision making;
- (17) Demotions during subsequent probation when the demotion is to the job classification the employee held prior to the promotion and at a salary rate no lower than the salary rate had the promotion not occurred;

(Rule 1120-11-.07, continued)

- (118) Agency rules or policies which do not conflict with statutes, rules, or policies of the Department of Human Resources; and
- (19) Any other matter over which an appointing authority or the Commission has no control or jurisdiction or is without the authority to grant requested relief.

**Authority:** T.C.A. § 8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

#### **1120-11-.08 TECHNICAL ADVICE AND ASSISTANCE.**

- (1) Technical questions regarding this rule may be resolved by referring questions to the agency human resources office.
- (2) Unresolved technical questions to an agency human resources office may be resolved by referring such to the Department's Employee Relations Division.
- (3) Disputes over grievability may be resolved by an agency's appointing authority or by the Civil Service Commission. The Commission may review such determinations and, at its discretion, take whatever action it deems appropriate.
- (4) The intent of this policy is to legally, efficiently, and fairly resolve bona fide grievances. The initiation of a grievance should not be considered as a negative reflection against an employee, supervisor, or agency management, but should be considered as an effort to communicate and seek resolution of work related problems.
- (5) Management should consider grievances objectively, fairly, and expeditiously while maintaining a helpful, cordial, and professional attitude throughout the process of redress.

**Authority:** T.C.A. § 8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 25, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

#### **1120-11-.09 REPEALED.**

**Authority:** T.C.A. §8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal filed December 14, 2010; effective May 31, 2011.

## SAMPLE LETTERS TIP SHEET

### Recommendation for Disciplinary Action for Career Employees

- Address recommendations to the employee from the appropriate supervisor or manager.
- State the type discipline recommended (suspension, demotion, dismissal).
- Detail the times, places, and other pertinent facts concerning the performance or conduct issue(s). Include applicable training provided, supervisory counseling, performance evaluations, other discipline related to the issue(s), etc.
- Provide an offer of due process (pre-decision meeting). Include a deadline for requesting a due process hearing with a name and contact information for a person to set up the hearing or include the name of the manager and contact information for the individual that will conduct the hearing with the date, time, and location.

### Disciplinary Letters for Career Employees

- Address a disciplinary letter to the employee from the appointing authority.
- State the specific discipline imposed, e.g., date(s) of suspension, demotion to a lower classification, dismissal.
- Provide applicable section(s) of Tennessee Code Annotated, Rules of the Department of Human Resources (DOHR), and/or any internal agency rules or policies which are the basis for the discipline.
- Detail the times, places, and other pertinent facts concerning the performance or conduct issue(s). Include applicable training provided, supervisory counseling, performance evaluations, other discipline related to the issue(s), etc. When dismissing for gross misconduct, clearly describe the job related misconduct and provide section(s) of Tennessee Code Annotated under which the employee may be criminally prosecuted.
- State whether the employee declined or accepted the offer of due process. If accepted, include the date and person that conducted the pre-determination meeting with the resulting recommendation. **A waiver of due process does not negate the employee's right to grieve the disciplinary action.**
- State the employee's 4<sup>th</sup> step grievance rights to appeal by filing a written request to the appointing authority within 15 workdays from written notification of the discipline. Provide the name and telephone number of an agency contact for questions (usually the agency human resources office). You may also include the telephone number for DOHR's Employee Relations Division (615-741-1646).

- For letters of dismissal, state the appointing authority's recommendation regarding reemployment. The employee is eligible for reemployment with the agency unless the appointing authority recommends "no rehire" in a dismissal letter. For additional information regarding rehire recommendations, see DOHR Policy 11-017 at <http://www.tn.gov/dohr/employees/policies/pdf/11-017.pdf>.

### **Appointing Authority's 4<sup>th</sup> Step Decision Letter**

- Only issued when the employee requests a 4<sup>th</sup> step grievance hearing.
- Address 4<sup>th</sup> step decision letter to the employee from the appointing authority.
- State the name of the person who conducted the hearing (appointing authority or the designee) and the date of the hearing.
- State the specific discipline issued (suspension, demotion, dismissal) and provide applicable section(s) of Tennessee Code Annotated, Rules of the Department of Human Resources, and/or any internal agency rules or policies.
- Include the basis for the decision by either attaching the original discipline letter, the recommendation from the 4<sup>th</sup> step hearing officer, internal investigation reports, etc., or by detailing the basis in full as stated in the original discipline letter.
- If the appointing authority conducted the 4<sup>th</sup> step hearing, state the final decision of the appointing authority. If a designee conducted the 4<sup>th</sup> step hearing, state the designee's recommendation and the appointing authority's final decision.
- Rules of the Department of Human Resources, Rule 1120-11-.04(4)(d) states, "The appointing authority shall have full authority to overturn, reduce, or alter any disciplinary action based on information gathered at the step IV hearing including reinstatement of leave and awards of backpay, if appropriate, which may be offset by income earned from alternative employment or unemployment insurance payment received."
- The letter must contain the employee's grievance rights to appeal to the 5<sup>th</sup> step by filing a written request to the Civil Service Commission within 30 calendar days from written notification of the 4<sup>th</sup> step grievance decision. If the appointing authority alters the original disciplinary action, the letter must detail the right to proceed to the 5<sup>th</sup> step if the disciplinary action results in a continued loss of a property right, e.g., dismissal reduced to a suspension, 5 day suspension reduced to a 1 day suspension, etc. Provide the name and number of an agency contact for questions (usually the human resources office). You may also include the telephone number for DOHR's Employee Relations Division (615-741-1646).

**SAMPLE LETTER – WRITTEN FOLLOW UP TO AN ORAL WARNING\***  
**Letter or Memorandum**  
**From the Appropriate Supervisor/Manager**  
**Hand Delivered**

**TO:** [EMPLOYEE]

**FROM:** [APPROPRIATE SUPERVISOR/MANAGER]

**DATE:**

**SUBJECT:** Written Follow up of an Oral Warning

This is a written follow up of the oral warning you received on [DATE] as a result of your [STATE PERFORMANCE OR CONDUCT ISSUE(S) DISCUSSED WITH THE EMPLOYEE].

[DETAIL THE TIMES, PLACES, AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUE(S).]

[INCLUDE ANY EXPECTATIONS, CORRECTIVE ACTION, IMPROVEMENT PLANS, AND/OR TIMEFRAMES FOR IMPROVEMENT DISCUSSED WITH THE EMPLOYEE.]

Pursuant to Rules of the Department of Human Resources, Rule 1120-11-.07(6), oral warnings are non-grievable.

I am confident that you can correct these issues addressed above and there will be no further problems in the future. Failure to correct this problem may lead to further disciplinary action. Please let me know if you have any questions.

\*Written follow-up to an oral warning discussion is not required but helps document the issues discussed, the expectations of the supervisor, and the consequences of continued unacceptable performance or conduct. Written follow-up to an oral warning should not be construed as a written warning as described in the Rules of the Department of Human Resources, Rule 1120-10-.06(2) and will not become part of the employee's official personnel file.

**SAMPLE LETTER – WRITTEN WARNING**  
**Memorandum**  
**From the Appropriate Supervisor/Manager**  
**Hand Delivered**

**TO:** [EMPLOYEE]  
**FROM:** [APPROPRIATE SUPERVISOR/MANAGER]  
**DATE:**  
**SUBJECT:** Written Warning

This memorandum serves as a written warning. I am issuing this written warning as a result of your [STATE PERFORMANCE OR CONDUCT ISSUES].

**[DETAIL THE TIMES, PLACES, AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC.]**

**[INCLUDE ANY EXPECTATIONS, CORRECTIVE ACTION, IMPROVEMENT PLANS, AND/OR TIMEFRAMES FOR IMPROVEMENT DISCUSSED WITH THE EMPLOYEE.]**

This written warning will be placed in your official personnel file. If there are no further disciplinary actions with respect to the same area of [PERFORMANCE OR CONDUCT] within the next two (2) years, this written warning will be removed from your file.

Written warnings are non-grievable under the Rules of the Department of Human Resources, Rule 1120-11-.07(6). However, you may submit a written request for a review of this written warning to [APPOINTING AUTHORITY'S NAME] within 30 calendar days from receipt of this warning. Your written request for review should include documentation of any mitigating circumstances which cause you to believe that this warning is undeserved. You may find additional information regarding the review of written warnings at the Rules of the Department of Human Resources, Rule 1120-10-.07.

You are to correct the issues addressed in this written warning and I expect no further problems in these areas in the future. Failure to correct these problems may lead to further disciplinary action, up to and including dismissal. Please let me know if you have any questions.

I acknowledge receipt of this written warning:

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Employee's signature and date

cc: [Agency Human Resources Office]

NOTE: A copy of the written warning may be placed in the employee's official personnel file at the discretion of the appointing authority. Pursuant to Tenn. Code Ann. § 8-30-330, any written warning shall be automatically expunged from the employee's personnel file after a period of two (2) years from the date of the letter if there is no further disciplinary actions with respect to the same area of performance, conduct, and discipline. See Department of Human Resources Policy 11-012 at <http://www.tn.gov/dohr/employees/policies/pdf/11-012.pdf>.

**SAMPLE LETTER – RECOMMENDATION FOR SUSPENSION**  
**Letter or Memorandum**  
**From the Appropriate Supervisor/Manager**  
**Hand Delivered or Certified Mail**

**TO:** [EMPLOYEE]  
**FROM:** [APPROPRIATE SUPERVISOR/MANAGER]  
**DATE:**  
**SUBJECT:** Recommendation for Suspension

This is to inform you of my intent to recommend your suspension without pay for [NUMBER] workday(s).

**[DETAIL THE TIMES, PLACES, AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUE(S). INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THE ISSUE(S), ETC.]**

You may request a due process hearing prior to submission of this recommendation to [APPOINTING AUTHORITY]. At a due process hearing, you may present written statements of witnesses or other relevant information to refute the allegations against you. After consideration of all pertinent facts, the manager conducting the due process hearing will submit a recommendation to [APPOINTING AUTHORITY] for a final decision on my recommendation.

**OPTION 1**

If you wish to schedule a due process hearing, please contact [NAME/CONTACT INFORMATION] within 2 workdays from the receipt of this memorandum. If [NAME] has not heard from you in 2 workdays, we will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a final decision.

**OPTION 2**

A due process hearing is scheduled for [DATE, PLACE, AND TIME]\* with [NAME OF THE MANAGER CONDUCTING THE HEARING]. If you fail to contact [MANAGER/OTHER APPROPRIATE CONTACT] prior to this date or fail to appear at this scheduled hearing, we will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a final decision.

Please let me know if you have any questions.

\*An employee should be given a reasonable period of time to prepare to answer charges and present information which might influence the manager's decision. Five working days is a good rule of thumb, but circumstances might require a longer or shorter period.

**SAMPLE LETTER – RECOMMENDATION FOR DEMOTION**

**Letter or Memorandum**

**From the Appropriate Supervisor/Manager**

**Hand Delivered or Certified Mail**

**TO:** [EMPLOYEE]

**FROM:** [APPROPRIATE SUPERVISOR/MANAGER]

**DATE:**

**SUBJECT:** Recommendation for Demotion

This is to inform you of my intent to recommend your demotion from your classification of [CURRENT CLASSIFICATION] to [PROPOSED CLASSIFICATION] with this department.

**[DETAIL THE TIMES, PLACES, AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUE(S). INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THE ISSUE(S), ETC.]**

You may request a due process hearing prior to submission of this recommendation to [APPOINTING AUTHORITY]. At a due process hearing, you may present written statements of witnesses or other relevant information to refute the allegations against you. After consideration of all pertinent facts, the manager conducting the due process hearing will submit a recommendation to [APPOINTING AUTHORITY] for a final decision on my recommendation.

**OPTION 1**

If you wish to schedule a due process hearing, please contact [NAME/CONTACT INFORMATION] within 2 workdays from the receipt of this memorandum. If [NAME] has not heard from you in 2 workdays, we will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a final decision.

**OPTION 2**

A due process hearing is scheduled for [DATE, PLACE, AND TIME] with [NAME OF THE MANAGER CONDUCTING THE HEARING]. If you fail to contact [MANAGER/OTHER APPROPRIATE CONTACT] prior to this date or fail to appear at this scheduled hearing, we will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a final decision.

Please let me know if you have any questions.

\*An employee should be given a reasonable period of time to prepare to answer charges and present information which might influence the manager's decision. Five working days is a good rule of thumb, but circumstances might require a longer or shorter period.

Career employees on subsequent probation retain due process and grievance rights except when demoted to their former classification and salary. Rules of the Department of Human Resources, Rule 1120-02-.13, 1120-10-.02, and 1120-11-.07(17).

**SAMPLE LETTER – RECOMMENDATION FOR DISMISSAL**  
**Letter or Memorandum**  
**From the Appropriate Supervisor/Manager**  
**Hand Delivered or Certified Mail**

**TO:** [EMPLOYEE]  
**FROM:** [APPROPRIATE SUPERVISOR/MANAGER]  
**DATE:**  
**SUBJECT:** Recommendation for Dismissal

This is to inform you of my intent to recommend your dismissal from your position of [CURRENT CLASSIFICATION] with this department.

**[DETAIL THE TIMES, PLACES, AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUE(S). INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THE ISSUE(S), ETC.]**

You may request a due process hearing prior to submission of this recommendation to [APPOINTING AUTHORITY]. At a due process hearing, you may present written statements of witnesses or other relevant information to refute the allegations against you. After consideration of all pertinent facts, the manager conducting the due process hearing will submit a recommendation to [APPOINTING AUTHORITY] for a final decision on my recommendation.

**OPTION 1**

If you wish to schedule a due process hearing, please contact [NAME/CONTACT INFORMATION] within 2 workdays from the receipt of this memorandum. If [NAME] has not heard from you in 2 workdays, we will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a final decision.

**OPTION 2**

A due process hearing is scheduled for [DATE, PLACE, AND TIME]\* with [NAME OF THE MANAGER CONDUCTING THE HEARING]. If you fail to contact [MANAGER/OTHER APPROPRIATE CONTACT] prior to this date or fail to appear at this scheduled hearing, we will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a final decision.

Please let me know if you have any questions.

\*An employee should be given a reasonable period of time to prepare to answer charges and present information which might influence the manager's decision. Five working days is a good rule of thumb, but circumstances might require a longer or shorter period.

**SAMPLE LETTER – SUSPENSION LETTER**  
**Letter or Memorandum**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or Other Mail Tracking System**

[DATE]

[EMPLOYEE’S NAME  
ADDRESS]

Dear [EMPLOYEE’S NAME]:

This is to inform you of your suspension without pay for [NUMBER] workday(s). You will serve this suspension on [PROVIDE SUSPENSION DATES\*].

My decision to suspend you is on the basis of your [PROVIDE APPLICABLE SECTION(S) OF TENNESSEE CODE ANNOTATED, RULES OF THE DEPARTMENT OF HUMAN RESOURCES, AND/OR ANY INTERNAL AGENCY RULES OR POLICIES WHICH ARE THE BASIS FOR THE DISCIPLINE].

[DETAIL THE TIMES, PLACES, AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC., OR INCORPORATE BY REFERENCING THE RECOMMENDATION LETTER(S).]

**OPTION 1**

You received a recommendation for suspension from [NAME OF SUPERVISOR OR MANAGER THAT MADE THE RECOMMENDATION] on [DATE] with an offer of due process. As you requested a due process hearing, [NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS] conducted a hearing on [DATE] and forwarded a recommendation to me for a decision. Therefore, my decision to suspend you is on the basis of the recommendations of [NAME OF RECOMMENDING SUPERVISOR/MANAGER] and [NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS HEARING], a review of the information presented, and a review of your personnel file.

**OPTION 2**

You received a recommendation for suspension from [NAME OF SUPERVISOR OR MANAGER WHO MADE THE RECOMMENDATION] on [DATE] with an offer of due process. As you did not request a due process hearing, [NAME OF RECOMMENDING SUPERVISOR/MANAGER] forwarded the recommendation to me for a decision. Therefore, my decision to suspend you is based on the recommendation of [NAME OF RECOMMENDING SUPERVISOR/MANAGER] and a review of your personnel file.

\*To receive holiday pay, an employee must be in paid status .1 of an hour the workday immediately prior to a holiday. A suspension without pay on a workday immediately preceding a holiday will result in additional day(s) without pay.

As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process to **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additional information regarding the grievance procedure can be found at Rules of the Department of Human Resources, Chapter 1120-11.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

cc: Commissioner, Department of Human Resources

**SAMPLE LETTER – DEMOTION LETTER**  
**Letter or Memorandum**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or Other Mail Tracking System**

[DATE]

[EMPLOYEE’S NAME  
ADDRESS]

Dear [EMPLOYEE’S NAME]:

This is to inform you of your demotion from your current classification of **[PRESENT CLASS TITLE]** to the classification of **[LOWER CLASS TITLE]** effective **[DATE]** and at a salary of **[NEW SALARY BASED ON DEMOTION POLICY]** per month.

My decision to demote you is based on **[PROVIDE APPLICABLE SECTION(S) OF TENNESSEE CODE ANNOTATED, RULES OF THE DEPARTMENT OF HUMAN RESOURCES, AND/OR ANY INTERNAL AGENCY RULES OR POLICIES WHICH ARE THE BASIS FOR THE DISCIPLINE]**.

**[DETAIL THE TIMES, PLACES, AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC., OR INCORPORATE BY REFERENCING THE RECOMMENDATION LETTER.]**

**OPTION 1**

You received a recommendation for demotion from **[NAME OF SUPERVISOR OR MANAGER WHO MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you requested a due process hearing, **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS]** conducted a hearing on **[DATE]** and forwarded a recommendation to me for a decision. Therefore, my decision to demote you is based on the recommendations of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS HEARING]**, a review of the information presented, and a review of your personnel file.

**OPTION 2**

You received a recommendation for demotion from **[NAME OF SUPERVISOR OR MANAGER THAT MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you did not request a due process hearing, **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** forwarded the recommendation to me for a decision. Therefore, my decision to demote you is based on recommendation of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and a review of your personnel file.

NOTE: A demotion prior to the end of a subsequent probation is non-grievable when the demotion is to the job classification the employee held prior to the promotion and at a salary rate no lower than the salary rate had the promotion not occurred. Rules of the Department of Human Resources, Rule 1120-11-.07(17).

As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process to **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additional information regarding the grievance procedure can be found at Rules of the Department of Human Resources, Chapter 1120-11.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

cc: Commissioner, Department of Human Resources

SAMPLE

**SAMPLE LETTER – DISMISSAL LETTER**  
**Rehire Recommendation No for this Agency\***  
**Letter or Memorandum**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or other Mail Tracking System**

**[DATE]**

**[EMPLOYEE’S NAME  
ADDRESS]**

Dear **[EMPLOYEE’S NAME]**,

This is to inform you of your dismissal from the **[DEPARTMENT OR AGENCY NAME]** effective 10 calendar days from receipt of this letter.

My decision to dismiss you is based on **[PROVIDE APPLICABLE SECTION(S) OF TENNESSEE CODE ANNOTATED, RULES OF THE DEPARTMENT OF HUMAN RESOURCES, AND/OR ANY INTERNAL AGENCY RULES OR POLICIES WHICH ARE THE BASIS FOR THE DISCIPLINE]**.

**[DETAIL THE TIMES, PLACES, AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC., OR INCORPORATE BY REFERENCING RECOMMENDATION LETTER.]**

**OPTION 1**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER THAT MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you requested a due process hearing, **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS]** conducted a hearing on **[DATE]** and forwarded a recommendation to me for a decision. Therefore, my decision to dismiss you is based on the recommendations of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS HEARING]**, a review of the information presented, and a review of your personnel file.

**OPTION 2**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER WHO MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you did not request a due process hearing, **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** forwarded the recommendation to me for a decision. Therefore, my decision to dismiss you is based on the recommendation of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and a review of your personnel file.

\*A rehire recommendation for a specific agency is at the discretion of the appointing authority. See Department of Human Resources Policy 11-017 at <http://www.tn.gov/dohr/employees/policies/pdf/11-017.pdf>.

You will receive a 10 calendar day paid notice prior to the effective date of dismissal and will receive pay for the workdays that fall within that 10 calendar day period. In addition, you will receive a lump sum payment for any annual or compensatory leave to your credit. You will not be recommended for rehire with this agency. This recommendation applies only to this agency and does not preclude other state agencies from considering you and/or from hiring you.

As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process to **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additional information regarding the grievance procedure can be found at Rules of the Department of Human Resources, Chapter 1120-11.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

cc: Commissioner, Department of Human Resources

**SAMPLE LETTER – DISMISSAL LETTER FOR GROSS MISCONDUCT**  
**Rehire Recommendation No for State Government\***  
**Letter or Memorandum**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or Other Mail Tracking System**

**[DATE]**

**[EMPLOYEE’S NAME  
ADDRESS]**

Dear **[EMPLOYEE’S NAME]**:

This is to inform you of your dismissal from the **[DEPARTMENT OR AGENCY NAME]** for gross misconduct effective 10 calendar days from receipt of this notice.

My decision to dismiss you is based on **[DESCRIBE THE JOB RELATED MISCONDUCT AND PROVIDE APPLICABLE SECTION(S) OF TENNESSEE CODE ANNOTATED UNDER WHICH THE EMPLOYEE MAY BE CRIMINALLY PROSECUTED. ALSO, PROVIDE OTHER APPLICABLE SECTION(S) OF TENNESSEE CODE ANNOTATED, RULES OF THE DEPARTMENT OF HUMAN RESOURCES, AND/OR ANY INTERNAL AGENCY RULES OR POLICIES THAT ARE THE BASIS FOR THE DISCIPLINE].**

**[DETAIL THE TIMES, PLACES, AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC., OR INCORPORATE BY REFERENCING THE RECOMMENDATION LETTER.]**

**OPTION 1**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER THAT MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you requested a due process hearing, **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS]** conducted a hearing on **[DATE]** and forwarded a recommendation to me for a decision. Therefore, my decision to dismiss you is based on the recommendations of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS HEARING]**, a review of the information presented, and a review of your personnel file.

**OPTION 2**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER WHO MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you did not request a due process hearing, **[NAME OF RECOMMENDING**

\*A rehire recommendation for a specific agency is at the discretion of the appointing authority. To recommend no rehire with state government, the termination must be for job related misconduct for which the employee may be criminally prosecuted. See DOHR Policy 11-017 at <http://www.tn.gov/dohr/employees/policies/pdf/11-017.pdf>.

**SUPERVISOR/MANAGER]** forwarded the recommendation to me for a decision. Therefore, my decision to dismiss you is based on the recommendation of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and a review of your personnel file.

You will receive a 10 calendar day paid notice prior to the effective date of dismissal and will receive pay for the workdays that fall within that 10 calendar day period. As this dismissal is for gross misconduct, any annual leave to your credit will be used during this 10 calendar day paid notice. Pursuant to Tenn. Code Ann. § 8-50-807(d), and Rules of the Department of Human Resources, Rule 1120-6-.10(4), you are not eligible to collect any remaining annual leave balance. You will receive a lump sum payment for any compensatory leave to your credit.

Due to the seriousness of this situation, you will not be recommended for rehire with the State of Tennessee. This recommendation will result in the removal of your name from all eligible lists for a period of two [2] years from the date of this separation. Should you reapply for positions within state government after that two [2] year period, state agencies will not be required to notify or interview you when filling a position.

As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process to **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additional information regarding the grievance procedure can be found at Rules of the Department of Human Resources, Chapter 1120-11.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

cc: Commissioner, Department of Human Resources

**SAMPLE LETTER – DISMISSAL LETTER**  
**Rehire Recommendation Yes\***  
**Letter or Memorandum**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or other Mail Tracking System**

**[DATE]**

**[EMPLOYEE’S NAME  
ADDRESS]**

Dear **[EMPLOYEE’S NAME]**:

This is to inform you of your dismissal from the **[DEPARTMENT OR AGENCY NAME]** effective 10 calendar days from receipt of this letter.

My decision to dismiss you is based on **[PROVIDE APPLICABLE SECTION(S) OF TENNESSEE CODE ANNOTATED, RULES OF THE DEPARTMENT OF HUMAN RESOURCES, AND/OR ANY INTERNAL AGENCY RULES OR POLICIES WHICH ARE THE BASIS FOR THE DISCIPLINE]**.

**[DETAIL THE TIMES, PLACES, AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC., OR INCORPORATE BY REFERENCING THE RECOMMENDATION LETTER.]**

**OPTION 1**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER THAT MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you requested a due process hearing, **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS]** conducted a hearing on **[DATE]** and forwarded a recommendation to me for a decision. Therefore, my decision to dismiss you is based on the recommendations of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS HEARING]**, a review of the information presented, and a review of your personnel file.

**OPTION 2**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER WHO MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you did not request a due process hearing, **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** forwarded the recommendation to me for a decision. Therefore, my decision to dismiss you is based on the recommendation of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and a review of your personnel file.

\*A rehire recommendation for a specific agency is at the discretion of the appointing authority. See Department of Human Resources Policy 11-017 at <http://www.tn.gov/dohr/employees/policies/pdf/11-017.pdf>.

You will receive a 10 calendar day paid notice prior to the effective date of dismissal and will receive pay for the workdays that fall within that 10 calendar day period. In addition, you will receive a lump sum payment for any annual or compensatory leave to your credit. Due to the circumstances surrounding this dismissal, you are eligible for rehire with **[NAME OF DEPARTMENT OR AGENCY]**.

As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process to **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additional information regarding the grievance procedure can be found at Rules of the Department of Human Resources, Chapter 1120-11.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

cc: Commissioner, Department of Human Resources

**SAMPLE LETTER – JOB ABANDONMENT**  
**Rehire Recommendation No for this Agency\***  
**Letter or Memorandum**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or other Mail Tracking System**

[DATE]

[EMPLOYEE’S NAME  
ADDRESS]

Dear [EMPLOYEE’S NAME]:

This is to inform you of your separation from the [DEPARTMENT OR AGENCY NAME] effective [DATE] for job abandonment.

Tenn. Code Ann. § 8-30-326(c) states, “Any employee who is absent from duty for more than three (3) consecutive work days without giving notice to the appointing authority or appropriate manager to include the reason for such absence, and without securing permission to be on leave, or who fails to report for duty or to the immediate supervisor, or the appointing authority within two (2) work days after the expiration of any authorized leave of absence, is considered as having resigned not in good standing, absent existing circumstances causing the employee's absence or preventing the employee's return. A regular employee who is designated resigned in accordance with these circumstances shall have the right to appeal such action through the grievance procedure and to be reviewed by the commission.”

**[DETAIL THE PERTINENT FACTS CONCERNING THE CIRCUMSTANCES THAT RESULTED IN THE SEPARATION FOR JOB ABANDONMENT. INCLUDE ANY INFORMATION PROVIDED TO THE EMPLOYEE REGARDING LEAVE REQUESTS AND APPROVAL, CONTACTING THE SUPERVISOR WHEN ABSENT, ETC.]**

Based on the information outlined above, we consider you as having resigned not in good standing from your position with this department. You will receive a lump sum payment for any annual or compensatory leave to your credit. Because of your abandonment, you will not be recommended for rehire with this agency. This recommendation applies only to this agency and does not preclude other state agencies from considering you and/or from hiring you.

As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process to [AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER] or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additional information regarding the grievance procedure can be found at Rules of the Department of Human Resources, Chapter 1120-11.

Sincerely,

[AGENCY’S APPOINTING AUTHORITY]

cc: Commissioner, Department of Human Resources

\*A rehire recommendation for a specific agency is at the discretion of the appointing authority. See Department of Human Resources Policy 11-017 at <http://www.tn.gov/dohr/employees/policies/pdf/11-017.pdf>.

**SAMPLE LETTER – APPOINTING AUTHORITY’S 4<sup>th</sup> STEP DECISION**  
**Letter or Memorandum**  
**From the Agency Appointing Authority**  
**Certified Mail**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED - [#LABEL NUMBER]**

**[DATE]**

**[EMPLOYEE’S NAME  
ADDRESS]**

Dear **[EMPLOYEE’S NAME]**:

This is to inform you of my decision regarding your fourth step grievance hearing concerning your **[SUSPENSION, DEMOTION, DISMISSAL]**.

Upon your request, my designee, **[NAME]**, conducted a fourth step grievance hearing with you on **[DATE]**. Your supervisor, **[NAME]**, outlined the circumstances which led to your **[SUSPENSION, DEMOTION, OR DISMISSAL]**. In addition, you provided information regarding reasons why you felt this action was unwarranted.

**OPTION 1\***

After careful review of all the information presented at the grievance hearing, **[DESIGNEE’S NAME]** concurred with the decision to **[SUSPEND, DEMOTE, DISMISS]** you and forwarded a recommendation to me for a final decision. Based on a review of the attached information **[ATTACH THE ORIGINAL DISCIPLINARY LETTER, THE RECOMMENDATION LETTER FROM THE 4<sup>TH</sup> STEP HEARING, INTERNAL INVESTIGATION REPORT, ETC.]** and a review of your personnel file, I uphold my original decision to **[SUSPEND, DEMOTE, OR DISMISS]** you on the basis of **[PROVIDE APPLICABLE SECTION(S) OF TENNESSEE CODE ANNOTATED, RULES OF THE DEPARTMENT OF HUMAN RESOURCES, AND/OR ANY INTERNAL AGENCY RULES OR POLICIES FROM THE DISCIPLINARY LETTER]**.

**OPTION 2\***

After careful review of all the information presented, **[DESIGNEE’S NAME]** concurred with the decision to **[SUSPEND, DEMOTE, DISMISS]** you and forwarded a recommendation to me for a final decision. Based on a review of the information from the hearing, documentation of the disciplinary action, and a review of your personnel file, I uphold my original decision to

\*Rules of the Department of Human Resources, Chapter 1120-11-.04(4)(d) states, “The appointing authority shall have full authority to overturn, reduce, or alter any disciplinary action based on information gathered at the Step IV hearing, including reinstatement of leave and awards of back pay, if appropriate, which may be offset by income earned from alternative employment or unemployment insurance payments received.”

The 4<sup>th</sup> step decision letter must contain 5<sup>th</sup> step grievance rights when the 4<sup>th</sup> step grievance decision to alter a disciplinary action results in a continued loss of a property right, e.g., dismissal to a suspension, 5 day suspension to a 1 day suspension.

**[SUSPEND, DEMOTE, OR DISMISS] you on the basis of [PROVIDE APPLICABLE SECTION(S) OF TENNESSEE CODE ANNOTATED, RULES OF THE DEPARTMENT OF HUMAN RESOURCES, AND/OR ANY INTERNAL AGENCY RULES OR POLICIES FROM THE DISCIPLINARY LETTER].**

**[DETAIL THE TIMES, PLACES, AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC., OR INCORPORATE BY REFERENCING THE DISCIPLINARY LETTER.]**

If you wish to appeal this decision, you have 30 calendar days from receipt of this letter to file a written grievance with the Civil Service Commission at the following address: Secretary, Civil Service Commission, Department of Human Resources, First Floor, James K. Polk Building, Nashville, Tennessee 37243.

You may direct questions regarding the grievance process to **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additional information regarding the grievance procedure can be found at Rules of the Department of Human Resources, Chapter 1120-11.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

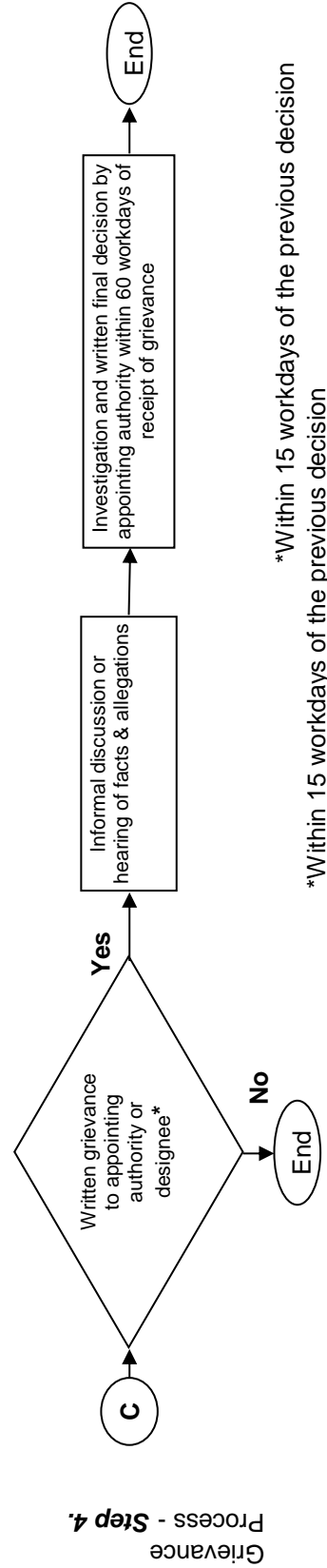
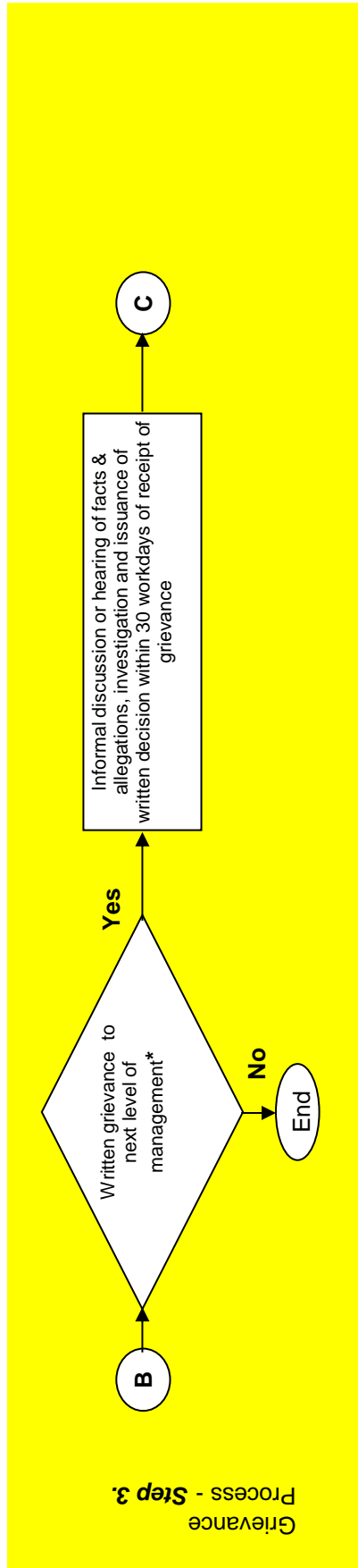
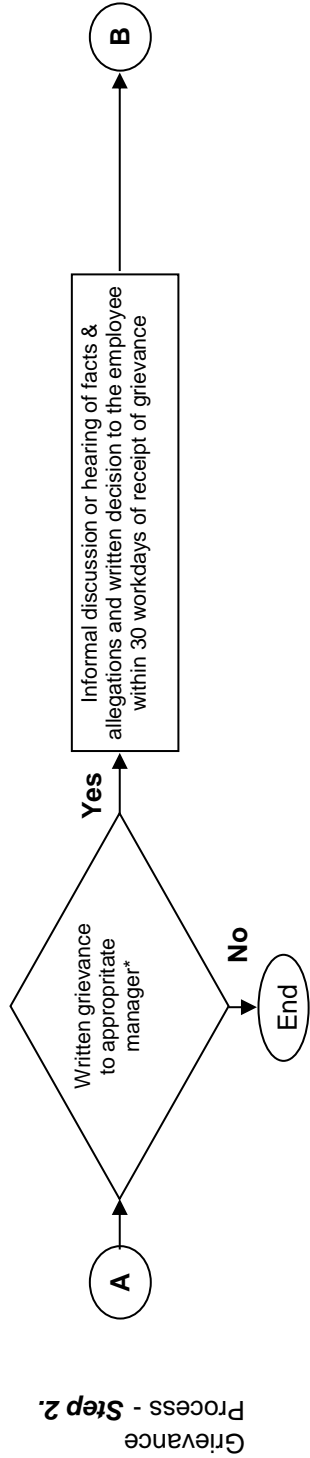
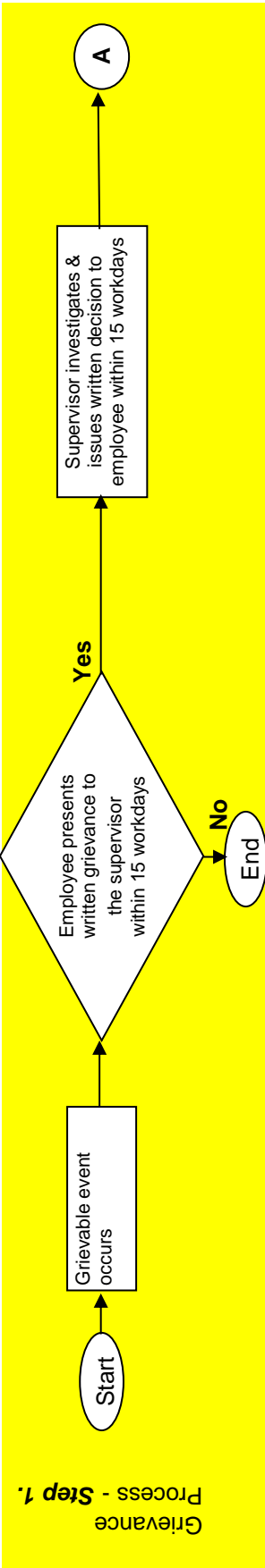
Attachments

cc: Commissioner, Department of Human Resources





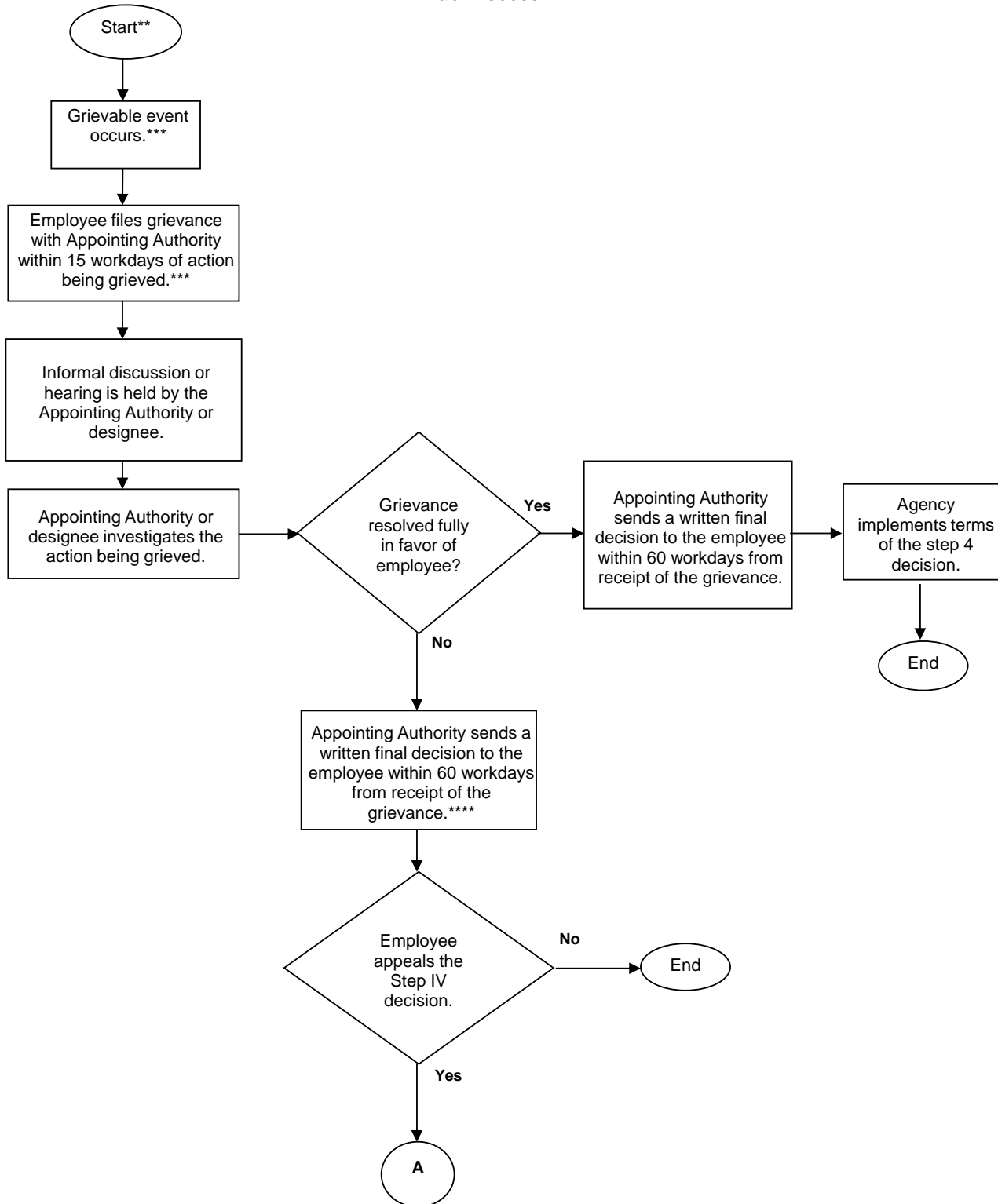
# Grievance Process Steps 1 - 4



\*Within 15 workdays of the previous decision

## Grievance Process - Step IV\*

***This Flowchart assumes a grievable event occurred after a career employee was offered Due Process.\****



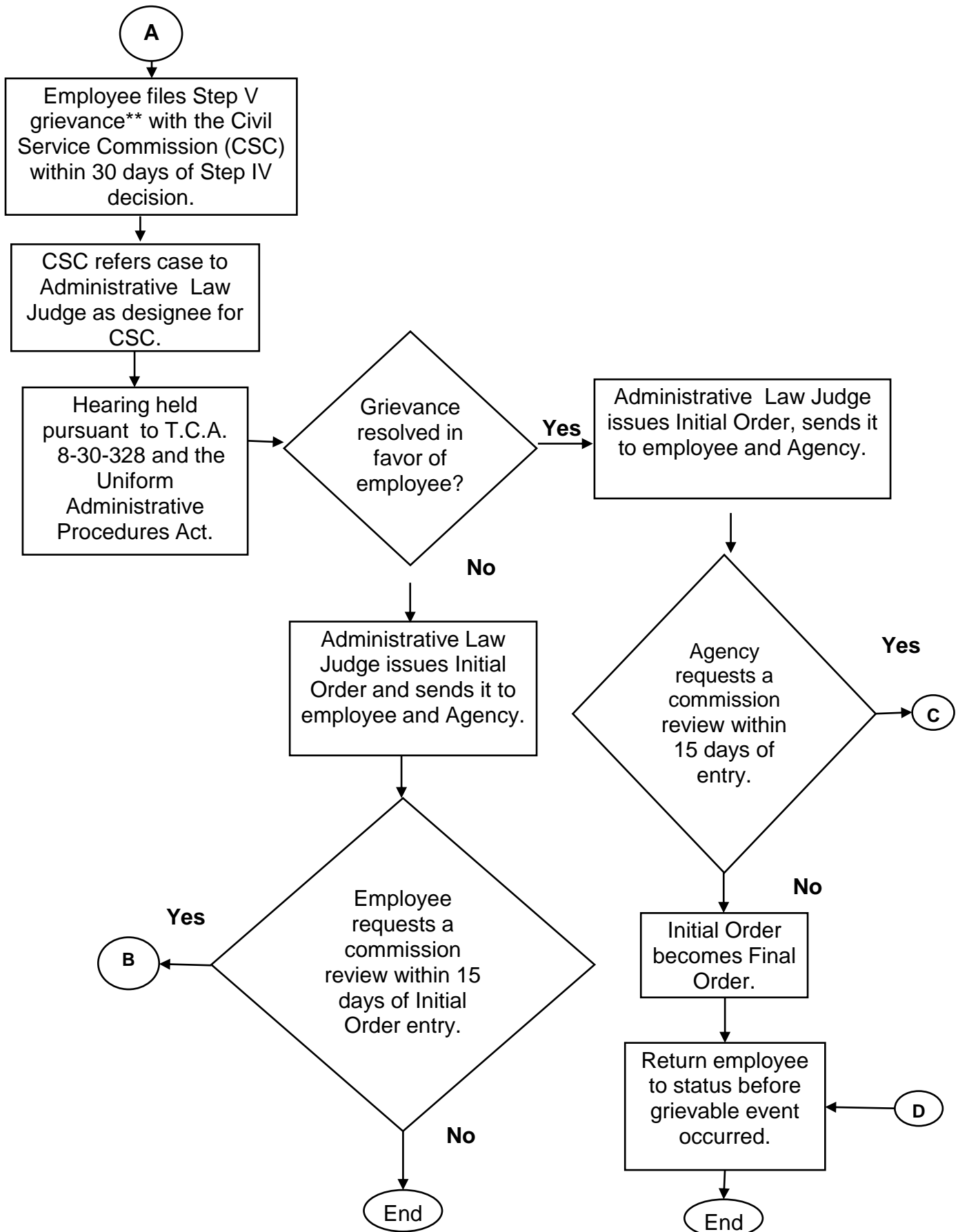
\*The above flowchart represents a grievance involving a property right (e.g. suspension, demotion, dismissal).

\*\*You may view the Grievance Chapter of the Rules of the Department of Human Resources at [www.tn.gov/sos/rules/1120/1120-11.20110531.pdf](http://www.tn.gov/sos/rules/1120/1120-11.20110531.pdf).

\*\*\*The Grievance Procedure involves five (5) steps with the appointing authority always being the fourth step. Step one begins with the first level supervisor and moves up through the supervisory chain with the fourth step being the appointing authority. However, a career employee who is suspended, demoted, or dismissed, enters the Grievance Procedure at the fourth step.

\*\*\*\*Written notice includes appeal rights of the employee.

## Grievance Process\* - Level V (Administrative Law Judge)

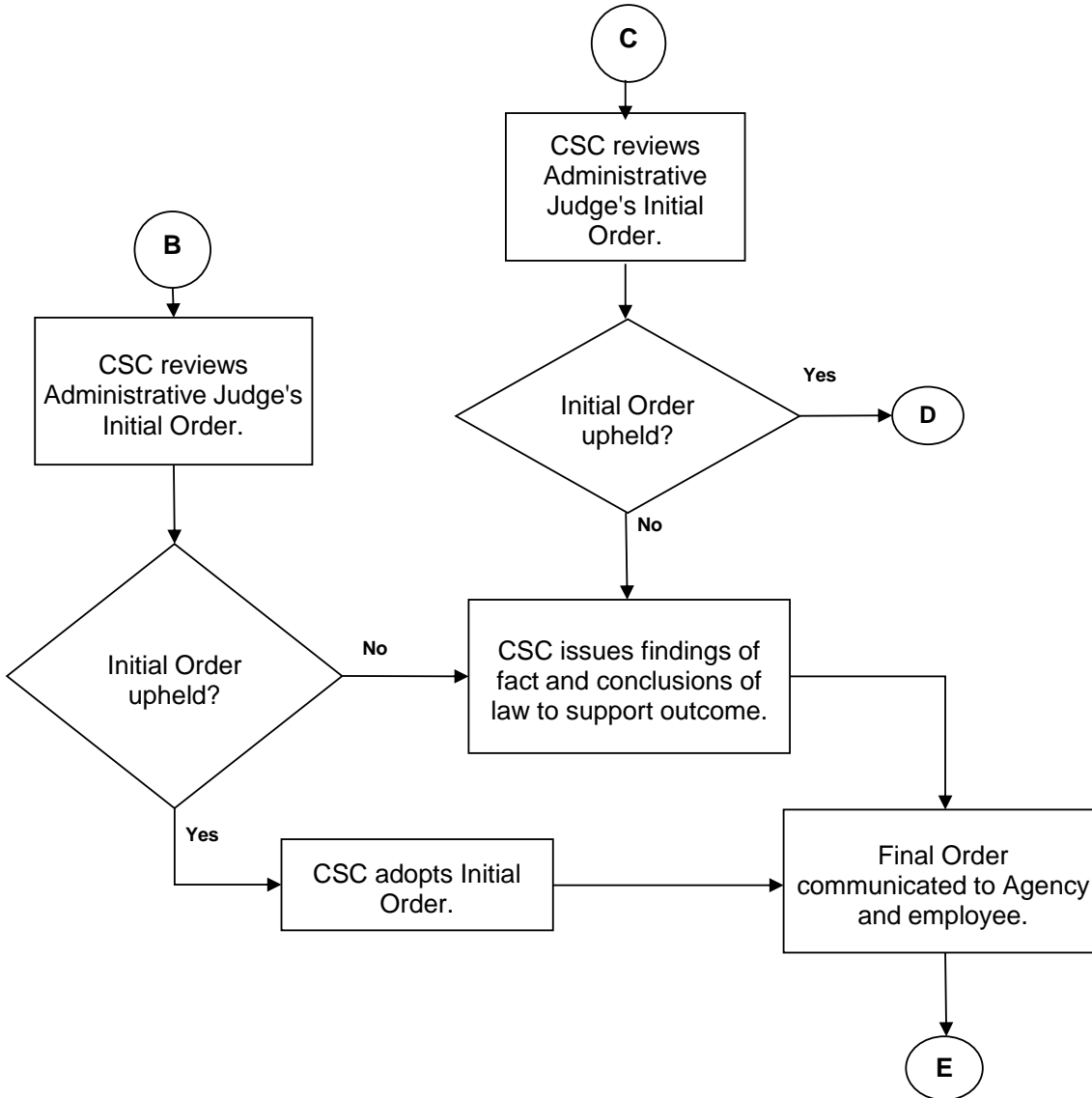


\*You may view the Grievance Procedure Chapter of the Rules of the Department of Personnel at [www.state.tn.us/sos/rules/1120/1120-11.pdf](http://www.state.tn.us/sos/rules/1120/1120-11.pdf).

\*\*Employee files a written grievance on Level IV decision and all relevant documentation with the Secretary, Civil Service Commission.

## Grievance Process\* - Step V (Civil Service Commission)

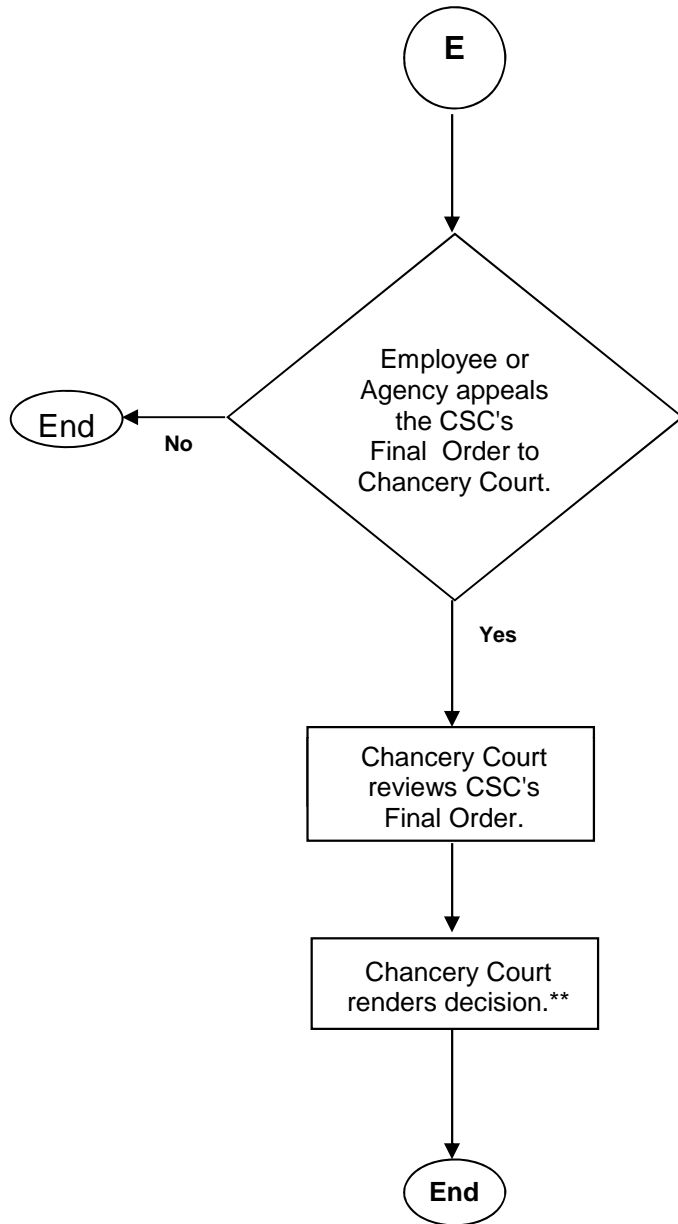
*This Flowchart is a continuation of the Grievance Process and is linked to Step IV (Administrative Judge).*



\*You may view the Grievance Chapter of the Rules of the Department of Human Resources at [www.tn.gov/sos/rules/1120/1120-11.20110531.pdf](http://www.tn.gov/sos/rules/1120/1120-11.20110531.pdf).

## Grievance Process\* - Chancery Review

*This Flowchart is a continuation of the Grievance Process and is linked to Step V (Civil Service Commission).*



\*You may view the Grievance Chapter of the Rules of the Department of Human Resources at [www.tn.gov/sos/rules/1120/1120-11.20110531.pdf](http://www.tn.gov/sos/rules/1120/1120-11.20110531.pdf).

\*\*Further appellate review is available.

## **Grievance Process (Level 1-4)**

March 28, 2008

The listed handouts have been used for training in the Tennessee Department of Mental Health and Developmental Disabilities. Other departments may need to modify any or all to suit their organizational structures or managerial values.

- I. Hints on Preparing for Disciplinary Actions**
- II. Hints on Preparing for Grievance Presentation**
- III. Points to Ponder—Disciplinary/Grievance Actions**

## I. Hints on Preparing for Disciplinary Actions for HR Directors

### A. Most Important!!

1. Never approach a disciplinary action as a routine function. Make each one a special project requiring your personal attention.
2. Do your homework BEFORE writing the letter of intent to take disciplinary action (or other “property-taking” action.)
3. Lead the supervisor or manager through the process to assess proper charge(s); advise them on reasonable sanctions; **diffuse the situation, if necessary.**
4. Require PROOF of what the employee did or didn’t do:
  - a. Testimony—First-hand knowledge is generally credible.
  - b. Documentary Evidence—Timesheets, logs, unit notes, computer records, etc.
  - c. Witnesses—get written statements as soon as possible.

**Note: Guard against language in letters that imply misconduct or inadequate performance if that is not the focus of the case.**

5. DON’T RELY ON POLICIES NOT UNIFORMLY ENFORCED!!
6. Brief your attorney before presenting a letter of intent to the employee.

### B. Best Check: Make the other side’s case.

1. Attack your own case as though you’re trying to kill it!
2. Identify every weakness you can find.
3. BACK OFF IF YOU DON’T HAVE A CASE!!!!

## II. Hints on Preparing for Grievance Presentation for HR Directors and Grievance Presenters

A. Prepare a written presentation plan.

Use the old training devise in the organization plan:

1. Tell the hearing officer what you're going to tell him/her.
2. Tell him/her, with appropriate testimony and documentation.
3. Following the grievant's presentation, and in closing, tell him/her what you've demonstrated.

B. Base your presentation on the letter of intent and the decision letter.

C. Make an outline of your expected presentation. Be careful not to confuse conclusions with proof!

1. **List charges separately.** Be prepared to demonstrate how the action/inaction is an offense worthy of disciplinary action.
2. **List the specific points you plan to prove.** Under each point, list the witnesses and documentary evidence you plan to submit, including any policies relevant to the charges, and witness statements, or other records, such as logs, assignment sheets, attendance records, prior disciplinary records (relevant written warnings, prior suspensions, etc.)
3. **Summarize on your plan what you expect from your witnesses.** (You should have gone over the testimony BEFORE the hearing so you'll not have any surprises, but insist the witnesses tell the truth about their knowledge or involvement in the case.) Have any documentation related to their testimony ready to submit as the testimony is given.
4. **Make three copies of every piece of documentary evidence and witness statements.** Have them organized to follow your presentation. As you submit the evidence, give one copy to the hearing officer and one copy to the grievant or the grievant's representative.
5. **Have that documentation ready for presentation if needed.** Since you've already anticipated any weakness in your case, you should already have explanatory documentation to counter those weaknesses. Have it organized with three copies, as above. (If you haven't prepared for weaknesses in your case, or have no answers for those, maybe you shouldn't be here anyway!)

### **III. Points to Ponder—Disciplinary Actions and Grievance Hearings**

(For any contemplated employee disciplinary action, please consider the following general thoughts and guidelines.)

- A. Presume that all disciplinary actions will be appealed.
  - 1. Make the other side's case.
  - 2. Look for any possible weaknesses in your own case.
  - 3. Anticipate what the other side will try to do to your case.
  
- B. Keep anger and frustration out of your deliberations and out of your decisions.
  
- C. In ALL cases, look for management/supervisory glitches, failures, or simple gaps that could have contributed to the events you're dealing with.
  
- D. When relying on policies or procedures as the guideline for the action you contemplate, ensure three things:
  - 1. Policies and procedures have been announced/distributed
  - 2. Review whether it has been used haphazardly
  - 3. Make sure there is a record of applying policy uniformly.

\*Remember that it is better to not have a policy than to have one you don't follow. Your "real" policy is what you do—not what you say you do or should do. If you can't rigorously follow your own policy, GET RID OF IT.
  
- E. Find ways to actively demonstrate that you've tried to help the employee succeed.
  - 1. Positive steps, at least on the front end, work best, both from the perspective of improving performance AND from the perspective of justifying subsequent negative sanctions.
  
- F. Be careful with Performance Evaluations.
  - 1. Don't try to charge someone for incompetence or poor job performance if they've got 3s, 4s, or 5s on an official PE.

G. Rifle Shot or Kitchen Sink

1. You may feel that you are more likely to win support for your action if you can point to multiple offenses. In some cases that is true, but there are great dangers in that approach.
2. The level and quality of proof you need does not lessen as you add more charges. It's easy to fool yourself that you've got a case if you rely on quantity rather than quality.
3. If there is any loose thread in your case, it will come unraveled, and all the other things you have "proved" will be forgotten!

H. Don't try to hide weaknesses in your case from the hearing officer.

1. Step III and Step IV are times to make the best efforts to determine the right thing to do. These are not formal hearings where the department has made a determination it wants to "win."
2. You can lose your credibility in a hurry by trying to hide things or make them out to be something they're not.
3. When the case hinges on conflicting testimony or evidence, your credibility can make or break your case.





**LEVEL V HEARINGS BEFORE THE  
TENNESSEE CIVIL SERVICE COMMISSION**

Thomas G. Stovall, Director  
Chief Administrative Judge  
Administrative Procedures Division

**I. IMPORTANCE OF CIVIL SERVICE COMMISSION CASES**

- A. Job security for career state employee
- B. Cases can be as difficult as any cases tried by ALJs
  - 1. Difficult facts--who is telling truth?
  - 2. Emotional
  - 3. Difficult social issues: discrimination, sexual harassment, ADA
- C. Volume: 120 filed in APD in 2007

**II. PROCEDURE UPON REFERRAL TO APD**

- A. Civil Service Commission referral to APD
- B. ALJ assigned
- C. ALJ contact with parties (mediation offered)
- D. Hearing scheduled and conducted
- E. Initial Order may be reviewed by Civil Service Commission

**III. MEDIATION**

- A. Informal
- B. Opportunity to fashion outcome acceptable to all involved
- C. Take seriously and approach with open mind
- D. Attitude of Agencies
  - 1. Agencies often decline
  - 2. Sending representative without authority to negotiate

- E. Importance of Mediaton
  - 1. Freedom to fashion result you can live with
  - 2. Office climate if/when employee returns to work

#### **IV. COMMON ISSUES**

- A Job Performance and Misconduct
- B. Progressive Discipline
- C. Evidence limited to allegations in documentation imposing discipline
  - 1. Jones v. State (No. 07-22-III, Davidson Chancery 11/5/07)
- D. Termination for good of the service
  - 1. Reece v. Tenn. Civil Service Commission 669 S.W. 2d 808 (Tenn. Ct. App. 1985)
  - 2. Articulate specific reasons: Tenn. Code. Ann. §8-30-326(b)
- E. Grievable Issues

#### **V. DISCRETION OF ALJs AND CIVIL SERVICE COMMISSION**

- A. Discipline
  - 1. Tenn. Dept. of Mental Health and Mental Retardation v. Allison 833 S.W. 2d 82 (Tenn. Ct. App. 1992 )
  - 2. State of Tennessee, Dept. of Safety v. Randy J. Elmore (No. 00-2323-III, Davidson Chancery 4/17/01)
- B. Back Pay and Attorneys Fees
  - 1. Jones v. State (No. 07-22-III, Davidson Chancery 11/5/07)
  - 2. Qualls v. Camp WL 2198334 (Tenn. Ct. App. 2007)

## **VI. HOW TO PREVENT--HOW TO PREVAIL**

- A. Job Performance and Misconduct
  - 1. Document
  - 2. Evaluations
- B. Performance Evaluations
  - 1. Important tools in employee relations if used properly
    - a. Improve performance
    - b. Document non-performance
  - 2. Problems from litigation perspective
    - a. Discipline for job performance or pattern of misconduct if not noted in past evaluations
    - b. Solid proof if evaluations document past problem
      - 1. Proves misconduct or non-performance of duties occurred
      - 2. Good faith effort to work with employee
- C. Progressive Discipline
  - 1. Use if possible--penalty often reduced by ALJ if too harsh
  - 2. Document prior actions
  - 3. Prior discipline
    - a. Cannot be used to prove charge
    - b. Can be used to show employee knowledge of problem
    - c. Justify discipline





## **OVERVIEW OF THE CIVIL SERVICE COMMISSION**

The Civil Service Commission, composed of nine board members, serves as an appeals body for state civil service employees through the state's fifth step grievance procedure. Board members are appointed by the governor for six-year terms. The Commission reviews employee appeals and makes decisions based in the evidence presented at the hearings and examinations of employees' work records. The Department of Personnel coordinates these meetings and the Commissioner of Personnel serves as secretary.

The Commission represent the public interest in the improvement of personnel administration in state service and has jurisdiction to hear civil service appeals in the final step of the grievance procedures for regular employees.

The members must be citizens of the State of Tennessee from the public at large. No member shall be a member of any state or national committee of a political party or shall hold or be a candidate for any paid public office.

An appealing employee must file a written request for a 5th step hearing with the Commission within 30 calendar days from receipt of the appointing authority's (4th step) response. If an appeal is accepted at the 5th step, it is assigned to 2 administrative law judges from the Administrative Procedures Division in the Secretary of State's office who preside over the matter for the Commission.

One administrative law judge serves as a mediation judge and assists the parties in mediating a settlement in the matter. The second judge presides at the formal fifth-step hearing, if one is necessary, and after hearing proof issues an Initial Order which becomes final and binding unless appealed by either party.

The Initial Order can be appealed within 15 days for review by a quorum (3 members) of the Civil Service Commission. The Commission meets quarterly for approximately two (2) to four (4) hours per meeting to review and make decisions on appeals. The Final Order of the Commission can be appealed to Davidson County Chancery Court within 60 days of the date of issuance.

The Commission retains jurisdiction, for purposes of interpretation and enforcement, over a final order until such time as the provisions of the order are carried out and all claims for penalties or interest, or both, are settled.

# The Tennessee Civil Service Commission

Maximizing the Appeals Process

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## Big Picture Statistics



- 43,000 State Employees
- # Grievances Filed Annually—  
Not tracked statewide
- Active Level 5 cases as of 1/29/08: 117
  - FY 04-3, FY 05-2, FY 06-9
  - FY 07 -39
  - FY 08 to date: 64
- 120 docketed Level 5 cases in 07
- 15 Appeals to Civil Service Commission in FY 07
- 3 Reversals of the ALJ decision by the Civil Service Commission

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## 1/08 CSC Quarterly Report Analysis

- 117 current cases
- Gender split about 50-50
- Cases by Agency
  - 20-30 cases: Correction, DCS, Safety
  - 12 cases: MHDD, Probations & Parole
  - 7 cases: TDOT
  - 2-3 cases: DHS, Labor, TDEC, TRICOR
  - 1 case: Revenue, MR, Commerce

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## Civil Service Commission: Who?

- 9 volunteer members
- Appointed by Governor
- 6 year terms
- Demographic balance
- Occupational diversity
- In-service training
- Like a jury
- DOHR & Admin Procedures Div support



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## The Appeals Process

- Department reviews; if not resolved, then
- Level 5 hearing with Admin Law Judge
- If either party files an appeal, case goes to the Civil Service Commission
- Commission members prepare to consider it at a quarterly meeting by reviewing:
  - ALJ initial order
  - appeal briefs from both sides
  - hearing transcript

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## What Happens At Meetings



- Open & on the record
- Roll Call for Quorum
- Counsel summarizes first case
- Chair leads discussion
- Chair facilitates vote
- If decision is to reverse ALJ, chair facilitates crafting of decision statement
- Repeat for all cases

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## Appeals Process Goal: Avoid Injustice



Injustice to Employee [-----**JUSTICE**-----] Injustice to Agency & Citizens

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## What Can the Commission Do?

- Uphold
- Reverse
- Revise



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## Factors Affecting Outcomes



- Facts of the case
- Civil Service Rules
- Commission members' understanding of case issues
- Quality of the hearing evidence
- Quality of the appeal briefs

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## Facts & Civil Service System Rules

- Make sure your department supervisors and HR staff clearly understand civil service & discipline rules.
- Assure that bad behavior is documented and addressed.
- Assess your agency's risks and take action to minimize or control.



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## Commission Members' Understanding



- Recognize that all we usually see is paper, no people.
- For credibility judgments, we generally rely on ALJ.
- Write in plain English for non-lawyers.
- Write for people who are not state employees (avoid acronyms).
- Limited by "4 corners of the record."

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## The Hearing Record

- Make your case—with logic and strong evidence
- Refute the other side
- Show patterns, if possible
- Explain context that makes behavior more or less egregious
- Overcome "he said, she said" stalemates



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## Appeal Briefs



- Make your case
- Support assertions with evidence from the record
- Refute the arguments of the opposition
- Provide strong "Findings of Fact" and "Conclusions of Law" that the commission could use in its decision

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## Questions? Myths to Test?



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# GRIEVANCE PROCESS A TO Z: CHANCERY REVIEW AND BEYOND

Presented by:  
Kae Carpenter, Deputy Commissioner/General Counsel  
Department of Human Resources  
March 28, 2008

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## APPEALING AN ORDER

TCA § 4-5-322 (a) & (b)

- A petition for review must be filed in chancery court in Davidson Co.
- A grievant may file directly in chancery court.
- An agency that wishes to appeal must receive approval from the Office of the Attorney General.
- An appeal must be filed within 60 days after the entry of the agency's final order.

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## STAYING THE ORDER

TCA § 4-5-322 (c)

- Filing of a petition does not stay the Civil Service Commission's order.
- To obtain a stay, a party must:
  - File with the Civil Service Commission; if the Commission cannot grant a stay within a reasonable time, the party may request a stay in the chancery court;
  - Give notice of the request to the Office of the Attorney General.

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### IN CHANCERY COURT

TCA § 4-5-322 (f) & (g)

- A party may apply to the court for leave to present additional evidence;
- The court may grant leave to present additional evidence if the party shows to the satisfaction of the court that
  - the additional evidence is material; and
  - there were good reasons for failing to present the evidence in the prior proceeding.

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### REVIEW OF THE ORDER

TCA § 4-5-322 (h)

- The court may affirm the decision of the agency or remand the case for further proceedings.

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### OVERTURNING THE ORDER

TCA § 4-5-322 (h)

- The court may reverse or modify the decision if the order is:
  - In violation of constitutional or statutory provisions;
  - In excess of the statutory authority of the agency;
  - Made upon unlawful procedure;
  - Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
  - Unsupported by evidence that is both substantial and material in the light of the entire record.

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## OVERTURNING THE ORDER

TCA § 4-5-322 (h)(5)(B)

- In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

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## AND BEYOND

TCA § 4-5-323

- An aggrieved party may obtain a review of any final judgment of the chancery court by appeal to the court of appeals of Tennessee.
- The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure.

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