

DES MOINES CIVIL SERVICE COMMISSION

RULES AND REGULATIONS

**Des Moines Civil Service Commission
City Of Des Moines
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RULES AND REGULATIONS DES MOINES CIVIL SERVICE COMMISSION

Rule I. Definition of Terms

Sec. 1.01. Academy Graduate Entry. Academy Graduate Entry means and refers to the employment of an applicant who has successfully completed the Washington State Criminal Justice Training Academy (WSCJT) and who holds a current and valid certification through the Washington State Criminal Justice Commission as of the date of their employment.

Sec. 1.02. Academy Graduate Entry Eligibility List. Academy Graduate Entry Eligibility List means and refers to a list consisting of applicants who are either a) graduates of the WSCJT Academy; or b) trainees attending the WSCJT Academy who have successfully completed the Academy mid-term examination and are scheduled for graduation from the Academy within sixty (60) days of applying to be placed on the Academy Graduate Entry Eligibility List.

Sec. 1.1. Applicant. Anyone who has filed an application to take a Civil Service examination.

Sec. 1.2. Appointee. Appointee means an individual in the Classified Service serving his probationary period. (Same as “probationer”).

Sec. 1.3. Appointing Authority. Appointing Authority means the City Manager of the City of Des Moines or the City Manager’s authorized agent.

Sec. 1.4. Background Investigation. Background investigation means and includes, but is not limited to, a credit and reference check, a review of driving record, a record check of local, county, state, and federal agencies, and work history with prior employers or agencies where the applicant performed voluntary services.

Sec. 1.5. Candidate. An applicant who has completed, or is in the process of completing, a Civil Service examination.

Sec. 1.6. Class. Class means a group of positions sufficiently similar with respect to duties and responsibilities so that the same title may reasonably be used for each, the same qualifications may be required, and the same salary range may be applied with equity.

Sec. 1.7. Classified Service. Classified Service means all positions in the City service which are subject to the provisions of these rules and regulations as defined by state law and including all full-paid members of the Police Department.

Sec. 1.8. Commission. Commission means the Civil Service Commission for the Police Department of the City of Des Moines.

Sec. 1.9. Compensation. Compensation means any allowance, fee, salary, wage or fringe benefits paid to an employee for performing the duties and responsibilities of his position.

Sec. 1.10. Demotion. Demotion means a reduction in employment status to a class having a lower maximum rate of compensation.

Sec. 1.11. Discharge. Discharge means the separation of a regular employee from the Classified Service for cause.

Sec. 1.12. Eligible. Eligible means the meeting of all standards set for qualification for a position in the Classified Service.

Sec. 1.13. Eligibility List. A list of successful examinees for a given class from which certification may be made to fill vacancies in such class.

Sec. 1.14. Emergency Appointment. Emergency appointment means the appointment to a position in the Classified Service made by the Appointing Authority under conditions which threaten life or property, limited to the duration of the emergency period but not to exceed sixty (60) days, and made without reference to the requirements of Civil Service law or these Rules and Regulations.

Sec. 1.15. Examination. Examination means and includes, but not limited to, written, oral, and physical agility tests where the type of examination is not specified.

Sec. 1.16. Full-paid. Full-paid means the employees in the Classified Service who are paid regularly by the City and who devote their full time to police duty.

Sec. 1.17. Gender, Number, and Tenses. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular. The present tense includes the past and future tenses, and the future tense includes the present tense.

Sec. 1.18. Lay-off. Lay-off means the termination of employment because of the lack of funds, lack of work, or because of material change in the organization of the Classified Service.

Sec. 1.18.5. (a) Lateral Entry – Police Officer. Lateral entry for Police Officer means the employment of a commissioned law enforcement officer who has been employed on a full-time basis for a period of time exceeding twelve (12) consecutive months and not had a lapse of employment as a full-time commissioned law enforcement officer for a period exceeding the previous twelve (12) months, calculated from the day of appointment.

(b) **Lateral Entry – Records Specialist.** Lateral entry for Records Specialist means the employment of a Records Specialist who has been employed on a full-time basis for a period of time exceeding twelve (12) consecutive months and not had a lapse of employment as a Records Specialist for a period exceeding the previous twelve (12) months, calculated from the day of appointment.

Sec. 1.19. [Reserved].

Sec. 1.20. [Reserved].

Sec. 1.21. Position. Position means any employment or office in the Classified Service.

Sec. 1.22. Probationary Period. Probationary period means that trial service time prior to attaining regular status during which an employee is subject to rejection without a hearing.

Sec. 1.23. Promotion. Promotion means a change in rank to a position with a higher maximum rate of pay. It does not include a change of title or assignment, such as detective, master patrol officer, or command ranks higher than lieutenant which is purely discretionary with the Chief of Police.

Sec. 1.24. Provisional Appointment. Provisional appointment means a non-competitive appointment to a position in the Classified Service made in the absence of an Eligibility List, pending the establishment of an Eligibility List for the class and not to exceed four (4) months in duration.

Sec. 1.25. Public Notice. Public notice means, at a minimum, giving notice by posting three (3) public buildings and by publication in a newspaper of general circulation in the City.

Sec. 1.25.1. Regular Employee. Regular employee means an employee who has attained regular status.

Sec. 1.25.2. Regular Status. Regular status means the status of an employee who has acquired rights to a hearing upon discharge by reason of the successful completion of his probationary period.

Sec. 1.26. Relative. Relative means father, mother, spouse, brother or sister (full, half, or in-law), son or daughter (blood, foster, step, adopted, or in-law), aunt, uncle, niece, nephew, or first cousin.

Sec. 1.27. Suspension. Suspension means the temporary separation of an employee from the Classified Service with or without pay for investigative or disciplinary purposes.

Sec. 1.28. Temporary Appointment. Temporary appointment means an appointment to the Classified Service not to exceed nine (9) months in duration and as extended by the Civil Service Commission.

Sec. 1.29. Written Notice. Written notice, as required under these rules, means the service of a notice in writing either to the person directly or by certified mail, return receipt requested. If by mail, the service shall be deemed completed at the time of deposit with the Post Office.

Rule II. The Civil Service Commission

Sec. 2.1. Organization. The three Commissioners shall be appointed by the Appointing Authority for staggered six (6) year terms. Each Commissioner shall be given a position designation; that is position No. 1, No. 2, or No. 3. Each position shall have a termination date, and termination dates shall be separated by two (2) year increments. A Chair shall be selected upon appointment of a new member or reappointment of a member. All meetings of the Commission shall be conducted in compliance with the “Open Public Meetings Act of 1971”, RCW Chapter 42.30. Two (2) members shall constitute a quorum and all action of the Commission shall be by majority vote. The Commission shall keep record of all proceedings and such minutes shall become a part of the permanent files of the Commission. *Robert’s Rules of Order Newly Revised* shall be the final authority on all questions of procedure and parliamentary law not otherwise provided by these *Rules*.

Sec. 2.2. Removal. Members of the Civil Service Commission may be removed from office for the following reasons: incompetency, dereliction of duty, or malfeasance. The Appointing Authority shall have the power to remove the member, subject to the right of the member to a public hearing before the City Council. Such public hearing before the City Council shall be in the nature of an appeal from the decision of the Appointing Authority and the request shall be filed in writing within ten (10) days after receipt of the notice of removal by the Commissioner. The City Council by majority vote shall have the authority to affirm or reverse the decision of the Appointing Authority.

Sec. 2.3. Powers and Duties. The Civil Service Commission shall:

(1) Adopt rules for the regulation of personnel matters within the Classified Service.

(2) Appoint a Secretary and Chief Examiner based on the result of a competitive examination open to employees of the City. The position of Secretary and Chief Examiner shall be held by one person, henceforth referred to as “Secretary.” The Commission shall appoint one member of the Commission the Chief Hearing Officer, and appoint another Commissioner to be responsible for drafting amendments to *Rules and Regulations* for the consideration of the Commission.

(3) Approve the minutes of its meetings and maintain records of Commission business.

(4) Provide for the holding of competitive tests under the supervision of the Secretary and act as a committee of the whole to determine the relative qualifications of persons for employment in the Classified Service.

(5) Begin and conduct all civil suits that may be necessary for the proper enforcement of actions within its authority and the *Rules* of the Commission. The Commission shall be represented in such suits by the Chief Legal Officer of the City, or the Commission may in any case be represented by special counsel appointed by it.

(6) Hear and decide appeals arising from the administration of the Civil Services Acts and these *Rules*.

(7) Investigate and report on all matters touching the enforcement and effect of matters within its authority and these *Rules* and have such powers as will facilitate such investigations, including subpoena power, the power to administer oaths, and the power to take depositions.

(8) Ensure that all appointments to and promotions in the Classified Service shall be made solely on the basis of merit, efficiency, and fitness, which shall be ascertained by open, competitive examination and impartial investigation.

(9) Ensure that no person shall be discharged, demoted, suspended, reinstated, or transferred from any position contrary to these *Rules*.

(10) Make available to the members of the Classified Service copies of its *Rules and Regulations* and amendments thereto.

Sec. 2.4. Meetings. The regular meeting of the Commission shall be held on the first Wednesday of each month, unless canceled by motion of the Commission at an earlier date. If the first Wednesday is a holiday, then the regular meeting shall be held on the day following in accordance with state law.

Rule III. The Secretary/Chief Examiner

Sec. 3.1. Qualifications. The Secretary/Chief Examiner of the Commission shall be an employee of the City of Des Moines.

Sec. 3.2. Term of Office. The Secretary/Chief Examiner shall serve indefinitely at the pleasure of the Commission.

Sec. 3.3. Duties. The Secretary/Chief Examiner shall:

(1) Provide proper notice of regular and special meetings of the Civil Service Commission.

- (2) Schedule hearings and notify all parties of hearing schedules.
- (3) Attend all meetings of the Civil Service Commission and take minutes of all Commission actions.
- (4) Schedule Civil Service examinations.
- (5) Keep all records for the Commission.
- (6) Preserve reports made to the Commission.
- (7) Superintend and keep all records of Commission examinations.
- (8) Perform other duties that are assigned by the Commission.

Rule IV. Hearings and Investigations

Sec. 4.1. Hearing Authority. Hearings and investigations that the Commission is authorized to conduct may be conducted by the Commission as a whole, or may be delegated to a single member, but no official decision of the Commission shall be rendered until at least two members have reviewed the evidence and concurred in an opinion. Any hearing resulting from a request by a regular employee must be conducted by the Commission as a whole.

Sec. 4.2. Procedure. The procedure of a hearing or investigation shall not be restricted so as to deny the introduction of evidence that the Commission deems pertinent. The rules of privilege and of official or judicial notice shall be effective to the same extent as in civil actions. Oral evidence shall be taken under oath or affirmation. Only the evidence presented during the hearing or investigation shall be considered. A person pressing a claim or defending a privilege before the Commission shall appear for all sessions and shall not be excused from answering questions and supplying information except upon claim of privilege. The Washington Rules of Civil Procedure shall apply when an individual pressing a claim or defending a privilege is incapacitated. Parties are entitled to be heard personally and be represented by counsel. No evidence introduced before the Commission shall be used to establish liability in a civil action or criminal prosecution.

Sec. 4.3. Rights of Parties. Whenever a hearing is granted, all parties shall be entitled to:

- (1) Testify under oath or affirmation.
- (2) Subpoena witnesses to testify in his behalf.
- (3) Cross-examine all witnesses testifying against him.
- (4) Present such affidavits, exhibits, and other evidence as is deemed pertinent.

(5) Argue his case.

Sec. 4.4. Burden of Proof. The Appointing Authority shall have the burden of showing by material and substantial evidence that the action taken was done in good faith for cause.

Sec. 4.5. Petition for Rehearing. In an appeal heard by less than a quorum of the Commission, any person aggrieved by any resultant decision of the Commission may file a petition for reconsideration with the Commission. Such petition shall be filed within fifteen (15) calendar days of the date of issuance of the Commission decision and shall be accompanied by a transcript of the hearing, which shall be furnished by the petitioner at his sole cost and expense. The petition shall contain all the petitioner's arguments for reconsideration, and copies of the petition shall be served by certified mail, return receipt requested, upon all parties to the hearing. Upon receipt of the petition and transcript, the Commission shall, upon ten (10) days notice to the petitioner and all parties to the appeal, hold a regular or special meeting at which the Commission shall consider the petition and written arguments of all parties submitting the same to the Commission and shall determine whether to reconsider its decision. If the Commission determines not to reconsider its decision, that decision shall be deemed its final decision for the purposes of judicial review. If the Commission decides to reconsider its decision, it shall at the meeting enter findings of fact, conclusions, and its final decision, which for purposes of judicial review shall be deemed the final decision of the Commission.

Sec. 4.6. Report of Commission. All decisions, opinions, and recommendations arising from a hearing or investigation by the Commission shall be written and subscribed to by the members concurring and shall be filed as a permanent record. Any member may submit a minority or supplemental decision or report, which shall be filed as a matter of record.

Sec. 4.7. Judicial Review. Any person aggrieved by a final decision of the Commission may file for review in an appropriate court of law. Such petition shall be filed within thirty (30) days of the date of issuance of the Commission's final decision.

Rule V. Classification

Sec. 5.1. Procedure and Effect. The Appointing Authority shall classify all positions in the Classified Service. The classification plan so developed shall be transmitted to the Commission. Additional classes may be established and existing classes may be divided, combined, or abolished in the same manner as originally adopted. No reclassification of an existing class to a class having either a greater or lower maximum salary range shall be effective unless recommended by the Appointing Authority and unanimously approved by the Commission. Reclassification shall not be used for the purpose of avoiding demotions or promotions.

Rule VI.

[RESERVED]

Rule VII. Employment Applications

Sec. 7.1. Announcement of Vacancy. Whenever there is need, the Commission shall give public notice inviting qualified persons to apply for appointment in the Classified Service and for admission to the examination scheduled to select the most competent. Public notice of the examination shall specify the title and salary range of the position, a brief outline of the requirements of the position, the minimum qualifications, and the final date upon which applications will be received. Persons desiring to compete for positions in the Classified Service shall file applications on forms supplied by the Commission.

Sec. 7.2. Candidates: Minimum Qualifications.

(1) In order to file an application for examination, the applicant must:

(a) Meet the requirements specified in these *Rules* and in the official examination bulletin as of the closing day of the official filing period and

(b) Produce evidence of education, training, experience, or other lawful requirements for a class, as directed by the Secretary.

(2) Time for filing applications. Applications for examination shall be filed with the Secretary during office hours and within the time limit fixed in the official announcement of the examination. Applications received by mail in the Office of the Commission must be postmarked on or before the closing date.

Sec. 7.3. Rejection of Applications. If the Secretary determines that an applicant does not meet the minimum qualifications agreed to by the Appointing Authority and the Commission, or if he concludes that the applicant should not be allowed to compete in the examination for some other appropriate reason, the applicant shall be notified promptly, in writing, sufficiently prior to the scheduled examination so the applicant may attempt to supply additional information to the Secretary prior to the examination. If the matter cannot be settled prior to the examination, the applicant shall be allowed to compete in the examination and the Commission shall make the final decision as to whether or not his name shall be included on the Eligibility List at the time the Commission approves the establishment of the Eligibility List.

Sec. 7.4. Regional Testing. Sections 7.1, 7.2, and 7.3 need not be exercised if the Commission elects to participate in a Regional Testing Program.

Rule VIII. Examinations

Sec. 8.1. Conduct May Be Delegated. The Secretary shall arrange for the use of public buildings and equipment for the conducting of examinations. The Commission may conduct and score the examination or any part thereof, or may name any qualified person or agency to do so. All tests, including tests of physical fitness, shall be practical and shall consist only of subjects that will fairly determine the capacity of applicants to perform the duties of the position to which appointment is to be made. All examinations shall be proctored by at least one member of the Commission.

Sec. 8.2. Qualifying Grade and Lateral Entry Screening/Scoring. In all physical agility tests, all portions must be passed. In all written examinations, the minimum grade or standing for which eligibility may be earned shall be 70%. In all oral examinations, the minimum grade or standing for which eligibility may be earned shall be 50%. The cut off point may be established at a higher score to meet other criteria. Failure in one part of the examination shall be grounds for declaring the applicant as failing the entire examination. Lateral entry candidates shall be screened in accordance with Appendix A for Police Officers, or with Appendix E for Records Specialists, which are attached to these *Rules* and incorporated by reference. Notice of results of screening and acceptance or rejection for placement on the Lateral Entry Eligibility List shall be sent to applicants.

Sec. 8.3. Written Examination Procedure. The identity of persons taking competitive written tests shall be concealed from the examiners by the use of an identification number, which shall be used on all test papers. Any test paper having the name of the applicant or any identifying mark other than the official identification number shall be rejected and the applicant so notified.

Sec. 8.4. Oral Examination Procedure. Entry level applicants obtaining a qualifying grade on the written examination and lateral entry applicants who are placed on the Lateral Entry Eligibility List may be notified to appear before an Oral Examination Board selected by the Commission.

Sec. 8.5. Physical Agility Tests. RCW 41.12.040(2) provides that tests to fill positions may include tests of physical fitness and/or manual skill. If such tests are to be used to determine fitness for the position, the Commission must be involved in the makeup, administration, and scoring of such examinations.

Sec. 8.6. Preparation of an Eligibility List. The names of persons successful in the examination shall be arranged in order of their earned ratings.

Sec. 8.7. Preference for Veterans. A preference status shall be accorded to veterans by adding to the veteran's final cumulative score a percentage of such score in accordance with the requirements of RCW 41.04.010. The term veteran means any person who satisfies the definition in RCW 41.04.005.

Sec. 8.8. Preference for Service as Police Reserve. In an open graded examination for police officer, candidates who receive a passing grade and who have served satisfactorily at least two (2) consecutive years as a police reserve in the Des Moines Police Department shall have five percent (5%) of their final examination grade added to their final cumulative score.

Sec. 8.9 Notification of Results. Each applicant shall be notified of the results of the examination, his final earned rating, and the relative position on the Eligibility List.

Sec. 8.10. Review of Examination Papers and Challenges. Within seven (7) working days after notice of his final score has been mailed, any applicant may review his examination papers and have his score reviewed and corrected if an error is identified. Should an applicant wish to challenge any part of the examination, he shall submit to the Secretary, within fifteen (15) days after notice of his final score has been mailed, authoritative written proof of the validity of his claim. All such challenges shall be considered by the Commission. If the Commission is satisfied as to the validity of any such challenges, it shall order an appropriate revision of the examination scores, a restructuring of the Eligibility List, and the mailing of notices to candidates on the Eligibility List indicating the action ordered and its effect on their individual standing.

Sec. 8.11. Promotional Examinations. Promotions shall be made solely on merit, efficiency, and fitness, which shall be ascertained by competitive examination and impartial investigation. All applicants for promotion must be regular employees in the Classified Service of the City of Des Moines (except as provided otherwise in this section) and must possess the minimum qualifications or other specifications of the class to which promotion is sought. The selection process shall conform to Rule X, and the probationary period contained in Rule XI shall apply. Provided, that should the Commission certify, in accordance with Rule XI, fewer than five (5) eligible individuals, the Appointing Authority shall have the option of selecting from among those certified or requesting the Commission to conduct another examination, either (1) among those individuals who did not attain the minimum score or (2) among any and all individuals who possess the minimum qualifications. In any event, those persons previously certified shall remain on the Eligibility List. A promotion Eligibility List shall remain in effect one (1) year.

Sec. 8.12. Non-Commissioned Examinations. All applicants for non-commissioned positions must be tested as provided by Civil Service *Rules and Regulations*. The selection process shall conform to Rule X, and the probationary period contained in Rule XI shall apply. Provided that should the Commission certify, in accordance with Rule XI, fewer than five eligible individuals, the Appointing Authority shall have the option of selection from among those certified or requesting an open competitive examination. An appointment to a non-commissioned position Eligibility List shall remain in effect for one year.

Rule IX. Eligibility Lists

Sec. 9.1. Order of names on a List. Names on the Eligibility Lists shall be in order of preference according to the final earned ratings of the examination, including veterans' preference and Des Moines Police Department Reserve credits, except that employees laid off from a position in that class shall be given preference over new applicants in inverse order of lay-off. When two or more persons have equal claim to a position on an Eligibility List, except for laid-off candidates whose position on an Eligibility List is governed by Sec. 12.2, their names shall be arranged according to the time and date of receipt of application. Candidates certified to the Appointing Authority under the Rule of Five, and not selected for appointment, shall remain on the Eligibility List in the order of their earned points.

Sec. 9.2. Effective Life of an Eligibility List. Eligibility lists shall become effective upon attestation thereof by the Secretary that the list was legally prepared and represents the relative ratings of the names appearing thereon. Entry Level Eligibility lists shall remain in effect for one (1) year. Lateral Entry Eligibility Lists and Academy Graduate Entry Eligibility Lists shall remain in effect for six (6) months. Provided that any list may expire:

(1) When the number of persons thereon still available for appointment is less than five (5); or,

(2) When such list is revoked pursuant to Section 9.3. A new Entry Level Eligibility List with more than five (5) names may be extended by action of the Commission for not more than one (1) additional year. Names appearing on either list by virtue of lay-off shall remain effective for two (2) years.

Sec. 9.3. Revocation of a List. Eligibility lists may be revoked and another examination ordered, only upon approval of the Commission, when such action is deemed advisable on account of fraud, errors, or for obviously inappropriate standards prescribed in connection with the examination or the plainly inadequate results obtained therefrom, or due to the opening of an application period for the purpose of creating a new list. No lists shall be altered or revoked except upon written notice to all persons whose standing may be affected and upon entry of the reasons therefore in the minutes of a regular or special Commission meeting.

Sec. 9.4. Removal of names from a List. The Commission may remove a candidate's name from an Eligibility List for the following reasons:

(1) The Commission shall make an availability inquiry of candidates on a regular basis but not later than six (6) months following the last Commission action affecting the Eligibility List. Candidates responding negatively to an availability inquiry, or failing to respond within ten (10) days of the mailing of such inquiry, or responding but subsequently failing to comply with background investigations and further hiring procedures, shall be removed from the Eligibility List.

(2) The Commission may remove a candidate's name from an Eligibility List if at any stage of the hiring procedure he fails to meet the criteria for appointment set forth under Rule X. In this instance, the Appointing Authority shall provide the Commission with written request for the removal of a candidate's name from a list and the reasons for such request.

When a candidate's name is removed from a list, the Commission shall cause a written notice to be sent to the candidate advising the action that has been taken and the reasons for such action. The written notice shall be sent by certified mail, return receipt requested, to the candidate's last known address. The candidate shall have the right to file a petition for reinstatement to the list by sending written request to the Civil Service Secretary within ten (10) working days of receiving the written notice. The name of the candidate so removed may be reinstated only if satisfactory explanation of the circumstances is made to the Commission. If the reinstatement occurs after another person has been hired, the reinstated name shall be placed in an appropriate position on the Eligibility List based on his earned ratings, but shall not affect the appointment.

Rule X. Appointments

Sec. 10.1. Basis for Appointments. All appointments within the Classified Service shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation.

Sec. 10.2. Hiring Procedure. Whenever a vacancy exists, the Appointing Authority may 1) request the names of the top five (5) candidates on the Entry Level Eligibility List; 2) request the names from the Lateral Entry Eligibility List; 3) request the names from the Academy Graduate Entry Eligibility List; and/or 4) request any combination of all of the above lists.

When the request is for the Entry Level Eligibility List, the top five (5) candidates will be certified to the Appointing Authority in accordance with the Rule of Five. The Commission shall thereupon certify the names of such persons highest on the Entry Level Eligibility List who are willing to accept employment.

When the request is for the Lateral Entry Eligibility List, the entire list will be certified to the Appointing Authority.

When the request is for the Academy Graduate Entry Eligibility List, the entire list of applicants satisfying the definition of such term will be certified to the Appointing Authority.

In all circumstances, the Appointing Authority shall conduct an appropriate background investigation and consider the experience, training, education, and other relevant criteria regarding the various candidates.

It shall be a mandatory prerequisite for employment for an applicant to:

(1) Meet the LEOFF minimum medical health standards if the applicant is eligible for LEOFF I; or

(2) Meet the Medical Selection Standards & Guidelines, developed by the Systems Design Group for the Washington State Criminal Justice Training Commission, which are adopted by reference; and

(3) Meet the Pre-employment Physical Fitness Screening Test Standards, which are adopted by reference; and

(4) Such other minimum requirements as stated in Section 7.2. Failure to meet such standards prior to an offer of appointment shall result in removal from the applicable Eligibility List. The Appointing Authority is further empowered to by-pass the Rule of Five and may select anyone on the applicable Eligibility List to comply with the provisions of the City's Affirmative Action Policy.

Sec. 10.2.1. Background Investigation Criteria. A candidate's name may be removed from an Eligibility List if it is determined through the background investigation that a candidate possesses or has demonstrated any of the following qualities or tendencies during prior employments or in his personal life:

(1) Incompetency, inefficiency, or inattention to or dereliction of duty;

(2) Insubordination; discourteous treatment of the public, or a fellow employee, or any other act of omission or commission that would tend to injure the public service; or any other willful failure on the part of the candidate to properly conduct himself;

(3) Mental or physical unfitness for the position;

(4) Dishonest, disgraceful, immoral, or prejudicial conduct;

(5) Use of narcotics or drugs not prescribed by a licensed medical practitioner; or drunkenness;

(6) Conviction of a felony; or conviction of a misdemeanor involving moral turpitude; or

(7) Any other act or failure to act which, in the judgment of the Civil Service Commissioners, is sufficient to show the candidate to be an unsuitable, undesirable, or unfit person to be employed in the Classified Service.

Sec. 10.3. Failure to Respond. Candidates failing to comply with pre-appointment investigations as requested by the Appointing Authority, or failing to answer a notification of appointment within five (5) days, or failing without due cause to accept appointment when offered, excluding a provisional, emergency, or temporary appointment,

shall be deemed to have declined appointment. If a candidate accepts appointment within the period outlined above and then fails without due cause to report for duty within one (1) day of the reporting date specified in the notice, he shall be deemed to have declined appointment. Any person so declining appointment shall also be permanently dropped from the Eligibility List on which his name appears unless he presents satisfactory cause to the Commission for his action or failure to act.

Sec. 10.4. Provisional Appointment. The Appointing Authority may make provisional appointments. As soon as possible following a provisional appointment, the Commission shall announce and conduct an examination and shall certify the five (5) highest eligible names for regular appointment. No provisional appointment shall be continued for longer than four (4) months and no provisional appointee shall be appointed more than twice in the same year unless he qualifies by competitive examination and is appointed in the regular manner. Time spent as a provisional appointee shall not be credited to the probationary period or be utilized for computing any privilege accruing under Civil Service law or these regulations.

Sec. 10.5. Emergency Appointment. To meet the immediate requirements of an emergency condition that threatens life or property, the Appointing Authority may employ any person or persons whom he may be legally empowered to appoint without restriction of Civil Service law and these regulations. Such employment shall be limited to the duration of the emergency period and is not to exceed sixty (60) days under any circumstances. Time spent as an emergency appointee shall not be credited to any probationary period or be utilized for computing any privilege accruing under Civil Service law or these regulations.

Sec. 10.6. Appointment to Fill a Temporary Vacancy. A temporary vacancy exists when a member of the Classified Service is granted a leave of absence or is temporarily assigned to duties with another agency or is on an extended sick or disability leave, and the Appointing Authority has reasonable grounds to believe the member will return to service. The Appointing Authority is authorized to make an appointment to fill a temporary vacancy under the following conditions:

- (1) The appointee shall be certified as having successfully completed the Basic Law Enforcement Academy of the Washington State Criminal Justice Training Commission.
- (2) The appointment shall be for a term not to exceed nine (9) months.
- (3) The nine-month appointment may be extended in additional increments, each increment not to exceed six (6) months, with the approval of the Civil Service Commission.
- (4) Time spent as a temporary appointee shall not be credited to any probationary period or be utilized for computing any privilege accruing under Civil Service law or these regulations.

Rule XI. Probationary Period

Sec. 11.1. Length of Period. No entry level or lateral appointee shall attain regular status in a position until they have satisfactorily completed a probationary period with the City of Des Moines of twelve (12) months following certification by the State of Washington Criminal Justice Training Commission. Re-employed persons who have formerly acquired regular status in the class shall not be subject to probation unless two (2) years have elapsed since their former employment with the City of Des Moines Police Department.

Sec. 11.2. Termination of a Probationer. During the probationary period the Appointing Authority, at his discretion, may terminate the employment of a probationary employee. Written notice of such termination shall be given the probationer and a copy shall be forwarded to the Commission.

Sec. 11.3. Attainment of Permanent Status. The Commission shall notify the Appointing Authority fourteen (14) days prior to the completion of the probationary period. At the end of the probationary period, the Appointing Authority shall report to the Commission on the probationer's service and efficiency. No salary or other compensation shall be paid for the services of any probationer following expiration of the probationary period until the Appointing Authority has filed a written statement with the Commission that the performance of the probationary employee is satisfactory and that his retention in the service is desired.

Sec. 11.4. Cancellation of Promotion During Probationary Period. An appointee who has his promotion canceled during the probationary period shall be restored to the position from which he was promoted.

Rule XII. Lay-Offs and Furloughs

Sec. 12.1.1.

[RESERVED]

Sec. 12.2. Lay-Off. Whenever the Appointing Authority contemplates a reduction of staff because of a shortage of funds, lack of work, or material reorganization of the Classified Service, notice thereof shall be sent by the Appointing Authority to the Commission. When the Appointing Authority determines which position or positions are to be abandoned, employees holding positions within a class shall be laid off in inverse order of their lengths of service. Any complaint by a regular employee that the lay-off was in bad faith shall be investigated by the Commission. If the Commission finds that the lay-off was not made in good faith in accordance with these *Rules and Regulations*, it may order the reinstatement of the regular employee or employees.

Notice of lay-off shall be given to the affected employees and the Commission at least fourteen (14) days before the effective date thereof. Rights of rehire for a laid-off

employee shall depend on whether an Eligibility List exists on the rehire date. If such a list exists, the laid-off employee shall automatically become one of the candidates certified to the Appointing Authority under Rule IX for a period of two (2) years following lay-off, providing the laid-off employee is qualified for the announced position. If such a list does not exist, the Appointing Authority shall have two options in his sole discretion: (a) summarily reinstate the employee if the rehire date is within two (2) years of lay-off, or (b) request the Commission to provide a new Eligibility List, in which event the laid-off employee shall automatically become one of the candidates certified to the Appointing Authority under Rule IX if the projected hire date is within two (2) years of lay-off.

Sec. 12.3. Furloughs. The Appointing authority may from time to time furlough an employee or employees for up to sixty (60) days due to projected budgetary deficits. In developing furlough policy, the Appointing Authority shall exercise good faith and best efforts to minimize furlough impact on any one individual, and may elect to spread the furlough impact among more than one employee without regard to hire dates. No benefits, except salary and salary-related benefits, shall be lost during the furlough period.

Rule XIII. Suspensions, Demotions, Discharge

Sec. 13.1. Requirement of Cause. No person in the Classified Service who has attained regular status in the Classified Service shall be suspended or demoted, or discharged except for cause.

Sec. 13.2. Suspension. The Appointing Authority may suspend a regular employee without pay for a period not to exceed thirty (30) days or may revoke earned vacation leave not to exceed twenty (20) days in any twelve (12) month period for disciplinary purposes. Notification of such disciplinary action shall be communicated to the employee in writing stating the charges and shall be delivered to the employee by the Appointing Authority. Such action shall be immediately reported to the Commission. Such an employee may, within ten (10) days of the date of receipt of such notification, file with the Commission a written request for an investigation and hearing, which request, shall provide for holding a hearing at which the employee and the Appointing Authority shall have the right to be heard. Within ten (10) days of the conclusion of the hearing, the Commission shall render its decision. If the decision orders a modification of the disciplinary action, it shall be accompanied by a supporting statement detailing where the Commission believes prejudice was practiced, poor faith exemplified, or cause was lacking.

Sec. 13.3. Demotion and Discharge. The Appointing Authority may demote or discharge a regular employee for inefficiency or other just cause. In all such cases, written reasons shall be furnished the employee and such action shall be immediately reported to the Commission. Within ten (10) days after the date of the notice of demotion or discharge, the employee may file a written request for an investigation and hearing before the Commission. The Commission, within fifteen (15) days of the receipt of such request, shall provide for holding a hearing at which the employee and the Appointing Authority shall have the right to be heard. Within ten (10) days of the conclusion of the hearing, the Commission shall render its decision. If the Commission finds that the demotion or discharge was not made in good

faith for cause, it shall order the reinstatement of such individual and may order such other provisions as the Commission deems necessary and fair. The Commission shall file a report of the Commission's findings and orders.

Sec. 13.4. Cause for Discharge or Demotion. The following may be declared cause for discharge from or demotion in the Classified Service, although such action may be based on causes other than those specifically enumerated here:

- (1) Incompetency, inefficiency, inattention to or dereliction of duty;
- (2) Dishonesty, intemperance, insubordination, or discourteous treatment of the public or fellow employees; or any other act of commission or omission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself; or failure to obey any lawful or reasonable direction when such failure or violation amounts to a serious breach of discipline; or any willful violation of these *Rule and Regulations*, other official order, state law, or City ordinance;
- (3) Mental or physical unfitness for the position that the employee holds;
- (4) Drunkenness, or use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid, or preparation to such an extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of his position under Civil Service;
- (5) Conviction of a violation of the Uniform Controlled Substances Act;
- (6) Conviction of a crime involving moral turpitude;
- (7) Acceptance for personal use of anything of value in the course of work when given in the expectation of receiving a better treatment than that accorded the public generally;
- (8) Failure to pay just debts if scandal is caused the service as a result thereof;
- (9) Conduct subversive to public order and sustained conduct detrimental to the efficiency or morale of the service; and
- (10) Any other act, or failure to act, which in the judgment of the Commission is sufficient to show the employee to be unsuitable for the position held in the Classified Service.

Rule XIV. Leaves and Resignations

Sec. 14.1. Leaves of Absence without Pay. The Appointing Authority, subject to the approval of the Commission, may grant a regular employee a leave of absence without pay for a period not to exceed the time permitted for a temporary appointment as provided in

Section 10.6. No leave without pay shall be granted except upon written request by the Appointing Authority, and a copy shall be filed with the Commission. Upon the expiration of a regularly approved leave without pay, the employee shall be reinstated to the position held at the time leave was granted.

An employee on approved leave of absence shall notify the Appointing Authority, fourteen (14) days prior to the expiration of his leave, of his intention to return to duty. Failure to so notify the Appointing authority may be cause for discharge.

Sec. 14.3. Resignations. An employee desiring to leave the Classified Service of the City in good standing shall file with the Appointing Authority, at least fourteen (14) days before leaving, a written resignation stating the effective date and the reason for leaving. The resignation shall be forwarded to the Commission, with a statement by the Appointing Authority commenting on the resigned employee's service, performance, and any pertinent information concerning the cause for resignation. Failure to comply with this rule shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give proper notice thereof shall be immediately reported to the Commission by the Appointing Authority.

Sec. 14.4. Reinstatement. Within two (2) years from resignation, a resigned regular employee, with the approval of the Appointing Authority and the consent of the Commission, may be reinstated in the position of the same or comparable class, or with the approval of the Commission, may be placed among the highest five (5) on the Eligibility List for the class to which his former position was allocated. In the event the resigned employee is so placed on the Eligibility List, the name previously fifth on such list shall drop to sixth. No person resigning during his probationary period may be reinstated, but with the approval of the Commission, may be placed on the list from which he was certified and appointed, provided such Eligibility List is in effect. Time of service shall determine order of an Eligibility List for employees who have resigned.

Rule XV. Records and Reports

Sec. 15.1. Personnel Files. The Commission shall maintain or have access to a personnel file for each employee in the Classified Service showing the name, position held, division, assignment, salary, employment status, leaves, and all other pertinent information. Access to these files shall be restricted to the Appointing Authority, department head, Secretary, and the Commission, except in accordance with the Open Public Records Act, RCW 42.17.240 et. seq.

Sec. 15.2. Examination Records. The Civil Service Commission shall maintain an examination record for every applicant, giving the name, address, date, and title of the examination, ratings earned, and the grade obtained.

Sec. 15.3. Access to Public Records. The minutes of all Commission meetings shall be open to the public during City office hours and may be inspected upon application to the Secretary of the Commission.

Sec. 15.4. Destruction of Records. Examination records and roster or payroll cards and the minutes of the Commission meetings shall be kept permanently. All other records pertaining to applicants not employed, including applications, correspondence, examinations, and records may be destroyed in the manner provided by law.

Sec. 15.5. Reports. The Appointing Authority shall report to the Commission in writing and upon forms prescribed by the Commission all employments and all changes in the status of personnel, supplying the name of the new appointee, the title of the position, date of commencement of service, and any change recommended or made therein and shall report from time to time as may be required by the Commission on additional data covering the Classified Service, including reports of employee performance. Any performance report or rating shall be available for inspection by the employee concerned, who may discuss it with the official making the report or rating and may file with the Commission a statement in explanation of any adverse report or rating. Such an employee's statement shall be made part of the employee's record.

Sec. 15.6. Annual Report. The Commission shall prepare an annual report of the Commission activities for the year for submission to the Appointing Authority upon request.

Rule XVI. Complaints

Sec. 16.1. Procedure. Any person may file a complaint with the Commission protesting any action involving the Classified Service. Any person may file a petition of support for any privilege or right of the Classified Service. The Commission may investigate, hold a hearing on the matter, and may issue a recommendation or directing order thereon.

Rule XVII. Amendments

Sec. 17.1. Procedure. After adoption, these rules may be amended by submission and reading of the proposed amendment at any meeting of the Commission. Notice of the proposal shall be given to the Appointing Authority and a vote thereon shall be taken at the next meeting. If approved by at least two (2) members of the Commission, the amendment shall be adopted and shall be in immediate effect. A copy of the amended regulation shall be provided the Appointing Authority and all members of the Classified Service.

**POLICE PATROL OFFICER/LATERAL ENTRY
SCREENING CHECK-OFF LIST**

- | | | | | | |
|-----|--------------------------|----|--------------------------|----|---|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | 1. | Application Form |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | 2. | Application Questionnaire |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | 3. | Personal History Statement |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | 4. | Minimum Qualifications |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | a. | 21 Years of Age |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | b. | High School Diploma or GED |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | c. | Academy Graduate w/Current Certification |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | d. | Washington State Driver's License |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | 5. | Commissioned Police Officer who has been employed on a full-time basis by a law enforcement agency for a period of time exceeding twelve consecutive months and not had a lapse of employment as a full-time commissioned law enforcement officer for a period exceeding the previous twelve months, calculated from the date of appointment. |

MINIMUM QUALIFICATIONS – SERGEANT CANDIDATES

I. Candidates for the position of Police Sergeant must:

- (a) Be currently certified by the Washington State Law Enforcement Officers Training Commission; or
- (b) Be currently certified in a law enforcement program for which recognition and certification can be granted, or be accredited by the Washington State Law Enforcement Officers Training Commission.

II. Candidates for the position of Sergeant must also:

- (a) Be a certified law enforcement officer in the State of Washington for five (5) continuous years with a minimum of three (3) years as police officer or investigator; or
- (b) Have a two-year degree in police administration or a four-year degree in public administration and have served four (4) continuous years as a certified law enforcement officer in the position of police officer or investigator; or
- (c) Have held the rank of Sergeant, or higher, a minimum of one (1) continuous year and have been certified law enforcement officer for a minimum of four (4) continuous years.

MINIMUM QUALIFICATIONS – LIEUTENANT CANDIDATES

I. Candidates for the position of Police Lieutenant must:

- (a) Be currently certified by the Washington State Law Enforcement Officers Training Commission; or
- (b) Be currently certified in a law enforcement program for which recognition and certification can be granted, or be accredited by the Washington State Law Enforcement Officers Training Commission.

II. Candidates for the position of Lieutenant must also:

- (a) Have been a certified law enforcement officer for the State of Washington for five (5) continuous years, with a minimum of two (2) years as Sergeant; or
- (b) Have a two-year degree in police administration, or a four-year degree in public administration and have served two (2) continuous years as a certified law enforcement officer in the position of Sergeant; or
- (c) Have held the rank of Lieutenant, or higher, a minimum of one (1) continuous year and have been a certified law enforcement officer in the position of Sergeant a minimum of two continuous years.

HOW TO PREPARE FOR THE TESTS

The following guidelines are presented based on a twelve (12) week period preceding prescreening.

- Preparing for the **MUSCULAR ENDURANCE** test:

The progressive routine is to do as many bent-leg sit-ups (hands behind the head or hands on ears with someone holding your feet – **NOTE:** Must use same hand placement throughout test) as possible in one minute. At least three times per week do three sets (three groups of the number of repetitions you did in one minute).
- Preparing for the **FLEXIBILITY** test:

Performing sitting types of stretching exercises daily will increase this area. There are two recommended exercises:

Sit-and-reach. Do five repetitions of the exercise. Sit on the ground with legs straight. Slowly extend forward at the waist and extend the fingertips toward the toes while keeping the legs straight. Hold for ten seconds.

Towel stretch. Sit on the ground with the legs straight. Wrap a towel around the feet holding the ends with each hand. Lean forward and pull gently on the towel extending the torso toward the toes.
- Preparing for the **MUSCULAR ENDURANCE OF THE UPPER BODY** test:

Determine how many push-ups you can do in one minutes. At least three times per week do three sets of the amount you can do in one minute.
- Preparing for the **CARDIOVASCULAR CAPACITY** test:

Below is a gradual schedule that would enable you to perform a maximum effort for the 1.5 mile run. If you can advance the schedule on a weekly basis, then proceed to the next level. If you can do the distance in less time, then that is encouraged.

WEEK	ACTIVITY	DISTANCE (Miles)	TIME (Minutes)	FREQUENCY (Week)
1	Walk	1	17-20	5
2	Walk	1.5	25-29	5
3	Walk	2	32-35	5
4	Walk	2	28-30	5
5	Walk/Jog	2	27	5
6	Walk/Jog	2	26	5
7	Walk/Jog	2	25	5
8	Walk/Jog	2	24	4
9	Jog	2	23	4
10	Jog	2	22	4
11	Jog	2	21	4
12	Jog	2	20	4

APPENDIX C

PRE-EMPLOYMENT PHYSICAL FITNESS TEST BATTERY

Minimum Scores for Employment as Police Officer
(Scores Indicate 40th Percentile of Fitness)

SIT-UP MUSCULAR ENDURANCE. The score is the number of bent-leg sit-ups performed in one minute.

FLEX FLEXIBILITY. The “sit-and-reach” test measures the flexibility of the lower back and hamstrings. The test involves stretching out to touch the toes and beyond with extended arms from the sitting position. The score is in inches reached in a yardstick with the 15-inch mark being at the toes.

PUSH-UP MUSCULAR ENDURANCE OF UPPER BODY.
(1) Subject’s hands are placed about shoulder width apart on the floor.
(2) Start from the up position (elbows fully extended), the subject must keep the back straight at all times and lower the upper body until chest touches the floor. Subject then returns to the up position. This is one repetition. The modified push-up (for females) is performed on the hands and knees with the back straight and hands slightly ahead of the shoulders in the up position.
(3) The total number of correct push-ups in one minute is recorded as the subject’s score.

1.5 MI. RUN CARDIOVASCULAR CAPACITY. 1.5 MILE RUN. The score is in minutes:seconds.

TEST

AGE/SEX:

MALE	SIT-UP	FLEX	PUSH-UP	1.5 MI. RUN
20-29	38	16.5	29	12:51
30-39	35	15.5	24	13:36
40-49	29	14.3	18	14:29
50-59	24	13.3	13	15:26

FEMALE	SIT-UP	FLEX	PUSH-UP	1.5 MI. RUN
20-29	32	19.3	23	15:26
30-39	25	18.3	19	15:57
40-49	20	17.3	13	16:58
50-59	14	16.8	12	17:55

DOCTOR'S CERTIFICATION OF FITNESS TO PERFORM AGILITY TEST

I have reviewed the four elements of the Washington State Criminal Justice Training Commission Physical Agility Test (see the reverse side of this form) and find that the candidate identified below can / cannot (circle one) perform the elements of the test safely.

Candidate's Name: _____

Agency to Which
Application Is Made: City of Des Moines Police Department _____

Date of Examination: _____

Doctor's Signature: _____

Doctor's Printed Name: _____

**THIS "DOCTOR'S CERTIFICATION OF FITNESS TO PERFORM AGILITY TEST"
MUST BE RETURNED NO LATER THAN _____ P.M., _____.
FAILURE TO DO SO WILL EXCLUDE YOU FROM THE TESTING PROCESS.**

CS:DRCERTIF

**CIVIL SERVICE COMMISSION
RULES AND REGULATIONS**

**APPENDIX D
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**APPENDIX D
TO
DES MOINES CIVIL SERVICE COMMISSION
RULES AND REGULATIONS**

Sec. D.1. Purpose and application of Appendix D.

(1) Appendix D shall apply to adjudicative proceedings authorized to be conducted under the authority of the Commission.

(2) Appendix D applies to adjudicative proceedings begun on or after the effective date of Appendix D in investigations and hearings administered by the Commission. For purposes of this section, "begun" shall mean the receipt by the appropriate office of an application for an adjudicative proceeding, including investigations and hearings. These rules shall be the exclusive rules governing adjudicative proceedings under the jurisdiction of the Commission.

(3) Where a provision of Appendix D conflicts with another chapter of the Civil Service Commission *Rules and Regulations*, the provision of Appendix D shall prevail.

(4) Where a provision of Appendix D conflicts with a provision of the Revised Code of Washington, the statute shall prevail.

(5) For purposes of this Appendix, the phrase "investigations and hearing" as used in sections 13.2 and 13.3 of the Commission *Rules and Regulations* may be referenced as "adjudicative proceeding" or "appeal" and shall have the same intent and meanings.

Sec. D.2. Definitions. As used in these rules of practice and procedure, the following terms shall have the meaning set forth in this section unless the context clearly indicates otherwise. Other terms shall have their ordinary meaning unless defined elsewhere in Appendix D.

"Adjudicative proceeding" or "hearing" shall mean a proceeding required by statute or Civil Service Rules which provides an opportunity to be heard by the Commission prior to the entry of a final order under this Appendix.

"Appellant" shall mean an aggrieved party under the jurisdiction of the Civil Service Commission who is named in an initiating document.

“Brief adjudicative proceeding” shall mean an adjudicative proceeding or hearing, the scope or conduct of which is limited as provided in Appendix D.

“Commission” shall mean the Des Moines Civil Service Commission or the Commission’s designee.

“Docket” or “docketing” shall mean the list or calendar of causes set to be heard at a specified time, prepared by the Civil Service Secretary/Chief Examiner for the use of the Commission.

“Filing” shall mean receipt by the Des Moines Civil Service Commission Secretary/Chief Examiner.

“Initiating document” shall mean a written appeal which initiates an investigation or hearing on a matter subject to the jurisdiction of the Civil Service Commission.

“Presiding Officer” shall mean the person who is assigned to conduct an adjudicative proceeding and who may either be a member of the Commission or an individual appointed by the Commission pursuant to this Appendix.

“Protective order” shall mean an order issued under Appendix D which limits the use of, access to, or disclosure of information or evidence.

“Secretary” shall mean the Civil Service Commission Secretary/Chief Examiner.

“Summary action” shall mean a Commission action to address an immediate danger to the public health, safety, or welfare and shall include, but not be limited to, a cease and desist order, an order of summary suspension, and an order of summary restriction of duties for any member of the Civil Service system.

Sec. D.3. Signature authority.

(1) A person designated by the Commission shall sign all initiating documents issued under Appendix D.

(2) All final orders shall be signed by a member of the panel of Commission members who heard the matter.

(3) All other orders shall be signed by the Presiding Officer conducting the proceeding.

(4) Authority to sign shall be indicated by designation of the title of the person signing and shall not require any other affirmation, affidavit, or allegation.

Sec. D.4. Appearance of parties. If an Appellant requests an adjudicative proceeding to contest the action, that party shall appear at all stages of the proceeding except as otherwise provided in this section.

(1) If the Appellant is represented as provided in Appendix D, the Appellant shall appear personally at the hearing and at any scheduled settlement conference but need not appear at the prehearing conference or at presentation of motions.

(2) Parties may be represented by counsel at all proceedings.

(3) The Appellant may appear by telephone at any portion of the proceedings conducted by telephone, in the discretion of the Presiding Officer following reasonable advance notice to the Presiding Officer and to the opposing party.

(4) The requirement of personal appearance may be waived for good cause in the discretion of the Presiding Officer.

(5) Failure to appear as provided in Appendix D shall be grounds for taking final action by default.

Sec. D.5. Computation of time.

(1) When computing a period of time prescribed or allowed by an applicable statute or rule, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

(2) The last day of the computed period shall be included unless the last day is a Saturday, Sunday, or legal holiday.

(3) When the last day is a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(4) When the period of time prescribed or allowed is seven days or less, any intermediate Saturday, Sunday, and legal holiday shall be excluded from the computation.

Sec. D.6. Notarization, certification, and authentication.

(1) A person's sworn written statement, declaration, verification, certificate, oath, or affidavit may be authenticated by an unsworn written statement which is executed in substantially the following form:

I, [insert name of declarant], under penalty of perjury under the laws of the State of Washington, declare that the foregoing/following is true.

Dated this _____ day of _____, _____, at _____, ____.

(2) Documents or records may be authenticated by a certification, as provided in subsection (1) of this section, from the custodian of the records or other qualified person that the documents or records are what they purport to be.

(3) Signature of any attorney shall be accompanied by and authenticated by that attorney's Washington State Bar Association number.

(4) Documents prepared and submitted by a party who is not represented by an attorney shall be signed and dated by that party and shall include that party's current address.

(5) Signature by a party or an attorney on a document shall constitute a certificate by the party or attorney that he/she has read the document, believes there are grounds to support it, and has not submitted the document for the purpose of delay, harassment, or needless increase in the cost of a proceeding.

(6) Compliance with certification requirements of subsections (1) and (2) of this section creates a rebuttable presumption that a document is authentic.

Sec. D.7. Current address. Each respondent or aggrieved party shall provide a current mailing address and all subsequent address changes to the Commission. Whenever service upon any such person is required by these rules, the most recent address provided may be used unless the Commission has actual knowledge that the person resides at a different address.

Sec. D.8. Representation. An Appellant and/or respondent may be represented subject to the following conditions:

(a) A party in an adjudicative hearing may represent himself/herself or may be represented by an attorney who has complied with the admission to practice rules of the supreme court of the state of Washington;

(b) Every attorney representing a party in a hearing shall file a notice of appearance with the Commission Secretary upon commencing representation, and shall file a notice of withdrawal of counsel with the Commission Secretary upon terminating representation.

Sec. D.9. Service and filing.

(1) A party filing a pleading, brief, or paper other than an initiating document or application for an adjudicative proceeding as required or permitted by these rules, shall serve a copy of the paper upon the opposing party or any designated representative of the opposing party prior to or simultaneous with filing.

(2) Unless otherwise provided by law, filing and service shall be made by personal service; first class, registered, or certified mail.

(3) Filing shall be complete upon actual receipt during normal business hours at the Commission Secretary's office, unless filing is directed in writing to be made to another address.

(4) Electronic telefacsimile transmissions shall not be accepted as filing unless acceptance is pre-authorized in writing by a recipient. In the case of a pre-authorized telephonic telefacsimile transmission, the following shall apply:

(a) The maximum length of papers acceptable for submission is ten (10) pages;

(b) The party sending papers by electronic telefacsimile transmission is responsible for confirming the material was complete and legible when received by the Commission Secretary; and

(c) The Commission Secretary may require mailing of the original papers to the Commission.

(5) Service shall be complete when personal service is made; mail is properly stamped, addressed, and deposited in the United States mail. Service must include a Declaration or Return of Service as provided in the following subsection.

(6) Proof of service shall consist of filing as required by these rules, together with a certificate of service including the date the papers were served, the parties upon whom served, the signature of the serving party, and a statement that service was completed by:

(i) Personal service; or

(ii) Mailing in the United States mail a copy properly addressed with postage and fees prepaid to each party and each designated representative.

Sec. D.10. Service of process—Continuances.

(1) Postponements, continuances, extension of time, and adjournments may be ordered by the Presiding Officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, showing good and sufficient cause therefor.

(2) A request for a continuance made prior to the hearing date may be oral or written and shall state that the party seeking the continuance has notified all other parties of the request and that either all other parties agree to the continuance or that all parties do not agree to the continuance. If all parties do not agree to the continuance, the Presiding Officer shall promptly schedule a prehearing conference to receive argument and to rule on the request.

Sec. D.11. Jurisdiction. The Commission has jurisdiction to investigate and hear matters as provided in Chapter 41.12 RCW and Chapter 4.32_ DMMC.

Sec. D.12. Telephone proceedings.

(1) The Presiding Officer may conduct all or part of the proceedings or permit a party or witness to appear by telephone or other electronic means if each participant in the proceedings has an opportunity to participate in, hear, and, if technically and economically feasible, see the entire proceeding while it is taking place. Cost of such appearance may be assessed to the party so appearing or on whose behalf the witness appears.

(2) If all or part of the proceedings is conducted as provided in subsection (1) of this section, the parties shall file and serve copies of all documentary evidence no less than three days prior to the proceeding. The Presiding Officer may, for good cause, allow exceptions to this requirement.

Sec. D.13. Hearing location. The Presiding Officer shall designate sites for the conduct of proceedings taking into account accessibility, efficiency, and economy.

Sec. D.14. Good faith requirement. Good faith shall be the standard for compliance with these rules. Failure to make a good faith effort to comply with these rules shall be grounds for sanctions as provided in this Appendix.

Sec. D.15. Expenses and witness fees.

(1) Fees and expenses shall be paid at the following rates to witnesses appearing under subpoena by the party requesting the appearance:

(a) Fees shall be paid at the daily rate established for jurors in district court of King County; and

(b) Expenses shall be paid subject to prior written approval of the Commission, or as otherwise required by law.

(2) Fees for an expert witness shall be negotiated by and paid by the party requesting services of the expert.

(3) All expenses incurred in connection with proceedings under Appendix D shall be paid by the party incurring the expense.

(4) The Commission shall pay expenses associated with:

(a) The facility in which proceedings are conducted; and

(b) Recording of the proceedings which shall be by electronic audio or video equipment, unless a party files a written request to have the proceedings recorded by a certified court reporter, in which case the Commission may require the requesting part to pay the costs of such court reporter.

(5) Expenses related to preparation and distribution of the transcript of proceedings shall be paid by the party filing a motion or request for review of an initial order or petition for reconsideration, appealing a final order, or otherwise requesting the transcript.

Sec. D.16. Sanctions.

(1) Orders may include sanctions against either party.

(2) Grounds for sanctions may include, without limitation:

(a) Failure to comply with these rules or orders of the Presiding Officer;
and

(b) Willful interference with the progress of proceedings.

(3) Sanctions may include:

(a) Dismissal of the matter;

(b) Proceeding in default; and

(c) Other sanctions as appropriate.

- (4) The order shall state the grounds upon which any sanctions are imposed.

Sec. D.17. Form of pleadings and orders.

(1) Pleadings, orders, and other papers filed, served, or entered under Appendix D shall be:

(a) Captioned with the name of the Des Moines Civil Service Commission and the title and cause number, if any, of the proceeding; and

(b) Signed by the person filing, serving, or entering the document. When that person is an attorney representing a party, the signature block shall include the attorney's Washington State Bar Association number.

(2) All orders shall comply with RCW 34.05.461 and the requirements of Appendix D.

Sec. D.18. Notice to limited-English-speaking parties. When the Commission or the Secretary is notified or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, shall either be in the primary language of the party or shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and, if necessary, responding to the notice.

Sec. D.19. Interpreters.

(1) A "hearing impaired person" means a person who, because of a hearing impairment or speech defect cannot readily understand or communicate in spoken language. A "hearing impaired person" includes a person who is deaf, deaf and blind, or hard of hearing.

(2) A "limited-English-speaking person" means a person who because of a non-English speaking cultural background cannot readily speak or understand the English language.

(3) If a hearing impaired person or a limited-English-speaking person is involved in an adjudicative proceeding and a need for an interpreter is made known to the Commission Secretary, the Presiding Officer shall appoint an interpreter who is acceptable to the parties or, if the parties are unable to agree on an interpreter, the Presiding Officer shall select and appoint an interpreter.

(4) Before beginning to interpret, an interpreter shall take an oath or make affirmation that:

(a) A true interpretation shall be made to the impaired person of all the proceedings in a language or in a manner the impaired person understands; and

(b) The interpreter shall repeat the statements of the impaired person to the Presiding Officer, in the English language, to the best of the interpreter's skill and judgment.

(5) When an interpreter is used in a proceeding:

(a) The interpreter shall translate all statements made by other participants in the proceeding;

(b) The Presiding Officer shall ensure sufficient extra time is provided to permit translation; and

(c) The Presiding Officer shall ensure that the interpreter translates the entire proceeding to the hearing impaired person or limited-English-speaking person to the extent that the person has the same opportunity to understand the statements made as would a person not requiring an interpreter.

(6) An interpreter appointed under this section shall be entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The Commission shall pay the interpreter fee and expenses incurred for interpreters for license holders, applicants, or recipients of benefits. The party on whose behalf a witness requiring an interpreter appears shall pay for interpreter services for that witness.

(7) All proceedings shall be conducted consistent with chapters 2.42 and 2.43 RCW.

Sec. D.20. Subpoenas.

(1) The Commission, through the Presiding Officer, or other designated person, and attorneys for parties may issue subpoenas to residents of the state of Washington, to relevant witnesses, and to other persons or entities subject to the jurisdiction of the Commission.

(2) The Presiding Officer shall issue subpoenas pursuant to RCW 34.05.446(1) for parties not represented by counsel upon request of the party and upon a showing of relevance and reasonable scope of the testimony or evidence sought. Requests for issuance of subpoenas must be made in writing to the Presiding Officer stating the relevance and the scope of testimony or evidence sought.

(3) The person on whose behalf the subpoena is issued shall pay any witness fees and expenses as provided in WAC 246-11-140 or costs for interpreters for such witnesses as provided in WAC 246-11-210.

(4) Attendance of persons subpoenaed and production of evidence may be required at any designated place in the state of Washington.

(5) Every subpoena shall:

(a) Comply with WAC 246-11-190;

(b) Identify the party causing issuance of the subpoena;

(c) State the title of the proceeding; and

(d) Command the person to whom the subpoena is directed to attend and give testimony and/or produce designated items under the person's control at a specified time and place.

(6) A subpoena may be served by any suitable person eighteen years of age or older by:

(a) Giving a copy to the person to whom the subpoena is addressed;

(b) Leaving a copy at the residence of the person to whom the subpoena is addressed with a person of suitable age and discretion;

(c) Sending a copy by mail to the current address on file with the Commission if the person is a member of the Civil Service; or

(d) Sending a copy by certified mail with proof of receipt if the person is not a member of the Civil Service System.

(7) Proof of service may be made by:

(a) Affidavit of personal service;

(b) Certification by the person mailing the subpoena; or

(c) Return or acknowledgment showing receipt by the person subpoenaed or his/her representative. Any person accepting certified or registered mail at the last known address of the person subpoenaed shall be considered an authorized representative.

(8) The Presiding Officer, upon motion made promptly and before the time specified for compliance in the subpoena, may:

(a) Quash or modify the subpoena if the subpoena is unreasonable or requires evidence not relevant to any matter at issue; or

(b) Condition denial of the motion upon just and reasonable conditions, including advancement of the reasonable cost by the person on whose behalf the subpoena is issued of producing the books, documents, or tangible things; or

(c) Issue a protective order under RCW 34.05.446.

(9) The Commission may seek enforcement of a subpoena under RCW 34.05.588(1) or proceed in default pursuant to WAC 246-11-280.

Sec. D.21. Presiding officer and panel members.

(1) The Commission may appoint one or more persons as Presiding Officer for brief adjudicative proceedings as provided in WAC 246-11-430(1).

(2) The Commission shall authorize one of the following to serve as Presiding Officer for adjudicative proceedings:

(a) A Commission member; or

(b) An individual nominated by the City Attorney and confirmed by the Commission.

The compensation for a Commission-appointed Presiding Officer shall be the same as that provided for pro tem judges in Des Moines Municipal Court.

(3) The Commission may designate certain of its members to hear a matter as a hearing panel as provided by law.

(4) Any party may file a written petition with the Secretary to disqualify the Presiding Officer, or a member of the Commission hearing the matter, based upon specific, written allegation(s) of bias, prejudice, interest, or any other cause for which a judge may be disqualified from hearing a matter.

(5) When the individual whose disqualification is requested is a member of the Commission, the individual member shall determine whether to grant the petition, stating facts and reasons for their determination. In the case of a Presiding Officer designated by the Commission, the full Commission shall determine whether to grant a petition to disqualify, stating facts and reasons for the Commission's determination.

Sec. D.22. Form and content of initiating documents. As provided in Civil Service Rules 13.2 and 13.3, an aggrieved employee may, within ten (10) days of the date of receipt of notification of a disciplinary suspension, demotion or discharge, file with the Commission a written request for an investigation and hearing appealing the disciplinary decision.

The Commission may reject or dismiss any appeal (1) sought by a person not given the right to file an appeal with the Commission; (2) pertaining to a subject or subjects outside the Commission's jurisdiction; (3) any untimely appeal; or (4) any incomplete appeal.

An appeal will be considered incomplete if it fails to provide the following:

- (1) The Appellant's name, address, telephone number and fax line, and other information which would facilitate prompt communications with the Appellant;
- (2) A copy of the administrative decision that is the subject of the appeal;
- (3) A detailed statement identifying specifically the error of fact, law or procedure made by the administrative decision-maker, and the effect(s) of the alleged error(s) on the decision that is the subject of the appeal; and
- (4) A statement of the redress sought by the Appellant.

Sec. D.23. Default.

(1) If a party requests an adjudicative proceeding but fails to appear, without leave to do so, at a scheduled prehearing conference, the Presiding Officer may issue an order of default. The order shall include notice of opportunity to request that the default order be vacated within the time period and under the process provided in RCW 34.05.440(3). Unless vacated, a default order under this subsection shall be grounds for the Commission to proceed to decide the matter in the absence of the respondent and without additional notice to the respondent and to issue a final order.

(2) If a party requests an adjudicative proceeding but fails to appear at the hearing, the Presiding Officer may issue an order of default in the same manner as subsection (1) of this section, or may proceed to hear the matter in the absence of the party and issue a final order.

(3) Final orders entered under this section shall contain:

- (a) Findings of fact and conclusions of law based upon prima facie proof of the allegations contained in the initiating documents;
- (b) Proof of service of or a good faith attempt to serve hearing notice or similar documents and other appropriate notices;

(c) A finding that there is no reason to believe that the party in default is in active military service;

(d) The penalties or conditions imposed by the order; and

(e) Notice of the opportunity to request reconsideration pursuant to RCW 34.05.470.

(4) Final and default orders entered under this section shall be served upon the parties in accordance with WAC 246-11-080.

Sec. D.24. Scheduling orders.

(1) Within fifteen (15) days, or the next regularly-scheduled meeting of the Commission, whichever is longer, after receipt of the application for adjudicative proceeding, the Commission or designee thereof, shall:

(a) Approve the application for full adjudicative procedure and issue and serve on the parties a scheduling order or other scheduling mechanism establishing timelines for discovery, settlement, and scheduled hearings; or

(b) Approve the application for a brief adjudicative procedure and issue and serve a notice of the date by which any additional written materials are to be submitted for consideration; or

(c) Deny the application according to RCW 34.05.416.

(2) If a scheduling order is issued:

(a) The scheduling order shall specify:

(i) The date, time, and place of a settlement conference, a prehearing conference, and the hearing;

(ii) The deadlines for completion of discovery and submission of prehearing motions; and

(iii) The name, address, and telephone number of the Civil Service Commission or other representative who will represent the Commission in the matter.

(b) The scheduling order may be modified by order of the Presiding Officer upon his/her own initiative or upon motion of a party. Any request for change of the scheduling mechanism or order shall be made by motion as provided in WAC 246-11-380.

(c) The Presiding Officer may waive establishing dates for the settlement conference, completion of discovery, submission of prehearing motions, and the prehearing conference, if, in the discretion of the Presiding Officer, those proceedings are not necessary or appropriate in a particular matter or type of case. However, either party may request by motion to the Presiding Officer that any or all of the dates be set.

(d) Dates contained in the scheduling order may be changed by the Commission Secretary upon written request of either party made within fifteen days of issuance of the first scheduling order. All other changes must be made by motion pursuant to WAC 246-11-380.

Sec. D.25. Discovery. The parties are encouraged to exchange information and documents related to the case prior to the adjudicative proceeding. Formal discovery is obtained as follows:

(1) Methods, scope and limits:

(a) Parties may obtain discovery by production of records or things; deposition upon oral examination; requests for admission; or, if ordered by the Presiding Officer, written interrogatories.

(b) Unless otherwise limited by order of the Presiding Officer in accord with these rules, the scope of discovery shall be as follows:

(i) Parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter in the pending action. It is not grounds for objection that the information sought will be inadmissible at the adjudicative proceeding if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(ii) The frequency or extent of use of the discovery methods set forth in these rules shall be limited by the Presiding Officer if the Presiding Officer determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive; or

(B) The party seeking discovery has had an ample opportunity by discovery to obtain the information sought; or

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, limitations of the parties' resources, and the importance of the issues at stake.

(iii) The Presiding Officer may limit discovery upon his or her own initiative after reasonable notice or pursuant to a motion submitted by a party.

(2) Production of records, documents, or things:

(a) Upon written request of a party the opposing party shall identify experts and other witnesses to be called at the hearing and shall provide other information necessary to enable the party to conduct depositions of the witnesses.

(b) Any party may serve on any other party a request, which must be signed by the party or designated representative:

(i) To produce and permit the party making the request or designee to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of discovery and which are in the possession, custody or control of the party upon whom the request is served; or

(ii) To permit entry onto designated land or other property which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing or sampling the property or designated object or operation thereon which is within the scope of discovery.

(c) Any party who produces documents for inspection shall produce them as they are kept in the usual course of business or may, if the parties agree, organize and label them to correspond with the categories in the request.

(d) The party upon whom a request is made may, by motion to the Presiding Officer, move for an order denying the request to produce or modify the conditions of the request. Denial of the request of change in the conditions of the request shall be within the discretion of the Presiding Officer and shall be made by written order.

(3) Depositions may be taken subject to the following conditions:

(a) Within the United States or a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the state of Washington or of the place where the examination is held. A Presiding Officer may, in his or her discretion or following motion of a party, preside at the deposition. Within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice-consul or consular agent of the United States, or a person designated by the Presiding Officer or agreed upon by the parties by stipulation in writing filed with the Presiding Officer, if any, and otherwise with the disciplining authority. Except by stipulation, no deposition shall be taken before any person who is a party or a privy of a party, or a privy of a representative of a party, or who is financially interested in the proceeding.

(b) A party desiring to take the deposition of a person upon oral examination shall give reasonable notice of not less than five days in writing to the person to be deposed and to the opposing party. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a description sufficient to identify the person to be examined or the particular class or group to which the person to be examined belongs. On motion of a party upon whom the notice is served, the Presiding Officer may for cause shown, lengthen or shorten the time.

(c) After notice is served for taking a deposition, or upon motion of the Presiding Officer, or upon motion reasonably made by any party or by the person to be examined, and upon notice and for good cause, the Presiding Officer may issue an order that the deposition shall not be taken or that it be taken subject to specified restrictions, conditions, or limitations.

(d) Depositions shall be recorded.

(i) The officer before whom the deposition is taken shall put the witness on oath or affirmation and shall personally or by someone acting under the officer's direction and in the officer's presence, record the testimony.

(ii) The officer or person acting under the officer's direction shall transcribe the testimony at the request of any party, provided that any expenses shall be paid by the requesting party.

(iii) The transcribed testimony shall be submitted to the person deposed for review and signature, unless review and signature are waived by that person. The officer shall append to the transcript any changes in form or substance that may be submitted by the parties.

(iv) Copies of the transcribed and, unless review and signature has been waived, signed testimony shall be served upon the person deposed and upon the parties.

(e) If the parties so stipulate in writing or on the record, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken, may be used as any other deposition.

(4) Following motion of a party and opportunity for response by the opposing party, the Presiding Officer may order a party to respond to written interrogatories and may order that the interrogatories be subject to specified restriction, condition, or limitation.

Sec. D.26. Motions.

(1) The Presiding Officer shall rule on motions. The Presiding Officer may rule on motions without oral argument or may request or permit the parties to argue the motion in

person or by telephone. Oral argument may be limited in time at the discretion of the Presiding Officer.

(2) All prehearing motions, including discovery and evidentiary motions, shall be made in writing and filed prior to the dates set in the scheduling order. Filing shall be at the Commission Secretary, unless filing is directed in writing to be made at another address.

(3) Motions for continuance must be made in writing and filed prior to the dates set in the scheduling order. If the adjudicative proceeding is scheduled to take place fewer than twenty days from service of the scheduling order, motions for continuance must be made within ten days of service of the scheduling order, but in no event fewer than five days prior to the hearing. Continuances may be granted by the Presiding Officer for good cause.

(4) The Presiding Officer may grant a continuance when a motion for continuance is not submitted within the time limits contained in subsection (3) of this section for good cause.

(5) The following is the recommended format for motions:

(a) A succinct statement of the facts contended to be material;

(b) A concise statement of the issue, issues or law upon which the Presiding Officer is requested to rule;

(c) The specific relief requested by the moving party;

(d) If the motion requires the consideration of facts or evidence not appearing on the record, the moving party shall also serve and file copies of all affidavits and photographic or documentary evidence presented in support of the motion;

(e) The legal authority upon which the motion is based; and

(f) A proposed order may accompany the motion, and should contain findings of fact and conclusions of law.

(6) The moving party shall file the motion, and the accompanying affidavits and photographic or documentary evidence when necessary, with the Commission's office and with the Presiding Officer, and shall serve the motion, and the accompanying affidavits and photographic or documentary evidence when necessary, on all other parties.

(7) The opposing party shall file with the Commission Secretary, and serve upon the moving party, a responsive memorandum, and accompanying affidavits and photographic or documentary evidence when necessary, no later than eleven days following service of the motion, unless otherwise ordered by the Presiding Officer.

(8) The moving party may file with the Commission Secretary, and serve upon the opposing party, a reply memorandum no later than five days following service of the responsive memorandum, unless otherwise ordered by the Presiding Officer.

(9) Unless otherwise ordered by the Presiding Officer, all motions shall be decided without oral argument. A party requesting oral argument on a motion shall so indicate by typing "ORAL ARGUMENT REQUESTED" in the caption of the motion or the responsive memorandum. If a request for oral argument is granted, the Presiding Officer shall notify the parties of the date and time of the argument and whether the argument will be in person or by telephone conference.

(10) Motions to shorten time or emergency motions shall be exceptions to the rule, and a party may only make such motions in exigent or exceptional circumstances. When making such a motion, the moving party shall:

(a) Suggest a date and time when the moving party seeks to have the Presiding Officer hear the motion to shorten time, which should be at least forty-eight hours after filing;

(b) Suggest a date and time when the moving party seeks to have the Presiding Officer consider the merits of the underlying motion;

(c) Describe the exigent or exceptional circumstances justifying shortening of time in an affidavit or a memorandum accompanying the motion;

(d) Certify that the motion to shorten time and the underlying motion have been served on all other parties prior to the filing of the motion with the Presiding Officer. Any opposition to the motion to shorten time must be served and filed within twenty-four hours of the service of the motion. If the Presiding Officer grants the motion to shorten time, the Presiding Officer shall notify the parties of the date by which the responsive memorandum to the underlying motion shall be served and filed.

(11) All motions will be decided as soon as practical, but not more than thirty days following the filing of the motion. If the Presiding Officer will not decide the motion within this time, the Presiding Officer shall notify the parties in writing of the date by which the motion will be decided.

(12) If a party serves a motion or responsive memorandum by mail, pursuant to WAC 246-11-080, then three days shall be added to the time within which the opposing party must file and serve the responsive or reply memorandum. Service by electronic telefacsimile transmission (FAX) shall not be accepted unless acceptance is pre-authorized in writing by the recipient, with proof of confirmation of service by electronic telefacsimile transmission to be filed with the Presiding Officer. In the case where a telefacsimile transmission filing is pre-authorized, section D.9(4), (5) and (6) of this Appendix shall apply.

(13) All computations of time shall be calculated pursuant to WAC 246-11-040.

(14) Commission motions for summary actions are exempted from all requirements of this section.

Sec. D.27. Prehearing conference.

(1) If a scheduling order is issued, the parties shall be notified of the time and place of the first prehearing conference in the scheduling order. If another scheduling mechanism is issued, a prehearing conference will be held upon motion of either party, unless Commission policy provides otherwise.

(2) The Presiding Officer shall determine whether the prehearing conferences will be conducted in person or by telephone conference call.

(3) The Presiding Officer shall conduct the prehearing conference and shall issue rulings related to prehearing motions and evidentiary issues. The rulings shall govern the conduct of subsequent proceedings.

(4) The prehearing conference may be recorded as ordered by the Presiding Officer. All offers of proof and objections concerning matters raised at the prehearing conference must be made on the record at the prehearing conference.

(5) Following the final prehearing conference, the Presiding Officer shall issue a written prehearing order which will:

(a) Identify the issues to be considered at the hearing and indicate which party has the burden of proof on these issues;

(b) Specify the facts which are admitted or not contested by the parties;

(c) Identify those documents and exhibits that will be admitted at hearing and those which may be distributed prior to hearing;

(d) Identify expert and lay witnesses that may be called at hearing and the issues to which those witnesses may testify;

(e) Rule on motions;

(f) Accept amendments to the pleadings;

(g) Address such other issues or matters as may be reasonably anticipated to arise and which may aid in the disposition of the proceedings; and

(h) Rule on objections made in any preserved testimony.

(6) Following the prehearing conference, the Presiding Officer may issue an order directing that the matter be heard as a brief adjudicative proceeding, pursuant to WAC 246-11-420 through 246-11-450.

(7) Documentary evidence not offered in the prehearing conference shall not be received into evidence at the adjudicative proceeding in the absence of a clear showing that the offering party had good cause for failing to produce the evidence at the prehearing conference.

(8) Witnesses not identified during the prehearing conference shall not be allowed to testify at the adjudicative proceeding in the absence of a clear showing that the party offering the testimony of such witness had good cause for failing to identify the witness at the prehearing conference.

(9) If the authenticity of documents submitted at the prehearing conference is not challenged at the prehearing conference, the documents shall be deemed authentic. However, a party shall be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to object at the prehearing conference.

(10) Nothing in these rules shall prohibit the Presiding Officer from conducting a conference at any time, including during the hearing. The Presiding Officer shall state on the record the results of such conference.

(11) A party bound by a stipulation or admission of record may withdraw it in whole or in part only upon a determination by the Presiding Officer or hearing officer that:

(a) The stipulation or admission was made inadvertently or as a bona fide mistake of fact or law; and

(b) The withdrawal will not unjustly prejudice the rights of the other parties.

(12) In an appeal to superior court involving issues addressed in the prehearing order, the record of the prehearing conference, written motions and responses the prehearing order and any orders issued by the Presiding Officer pursuant to WAC 246-11-380, shall be the record.

Sec. D.28. Protective orders. The Presiding Officer may issue a protective order at his or her discretion:

(1) To protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense;

(2) To preserve confidentiality related to health care records or provider-client information;

(3) To protect examination processes;

(4) To protect the identity of a person supplying information to the Commission where the person indicates a desire for nondisclosure unless that person testifies or has been called to testify at an adjudicative proceeding; or

(5) To comply with applicable state or federal law.

Sec. D.29. Notice of adjudicative proceeding. Notice of an adjudicative proceeding shall be issued in a timely manner and shall provide information as directed by the Commission. The content of such notice shall substantially comply with RCW 34.05.434.

Sec. D.30. Conduct of adjudicative proceeding.

(1) The adjudicative proceeding shall be conducted as provided in RCW 34.05.449 through 34.05.455.

(2) The Presiding Officer may take the following actions to the extent not already determined in a prehearing order:

(a) Conduct the hearing de novo;

(b) Determine the order of presentation of evidence;

(c) Administer oaths and affirmations;

(d) Issue subpoenas;

(e) Rule on procedural matters, objections, motions, and offers of proof;

(f) Receive relevant evidence;

(g) Interrogate witnesses called by the parties in an impartial manner to develop any facts necessary to fairly and adequately decide the matter;

(h) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(i) Take any appropriate action necessary to maintain order during the adjudicative proceeding;

(j) Determine whether to permit or require oral argument or briefs and determine the time limits for submission thereof;

(k) Permit photographic and recording equipment at hearing subject to conditions necessary to preserve confidentiality and prevent disruption;

(l) Permit a person to waive any right conferred upon that person by chapter 34.05 RCW or Appendix D, except as precluded by law; and

(m) Take any other action necessary and authorized by applicable law or rule.

(3) On procedural matters, the Presiding Officer shall:

(a) Apply as the first source of law governing an issue those statutes and rules deemed applicable to the issue;

(b) If there is no statute or rule governing the issue, resolve the issue on the basis of the best legal authority and reasoning available, including that found in federal and Washington Constitutions, statutes, rules, and court decisions; and

(c) Not declare any statute or rule invalid.

(4) If the validity of any statute or rule is raised as an issue, the Presiding Officer may permit arguments to be made on the record concerning the issue for the purpose of subsequent review.

(5) Members of the Commission hearing the matter may ask questions of any witness and may call additional witnesses.

(6) A party may move to disqualify the Presiding Officer or any member of the Commission pursuant to Sec. D.21(4) and (5).

Sec. D.31. Evidence.

(1) The Presiding Officer shall rule on objections to the admissibility of evidence pursuant to RCW 34.05.452 unless those objections have been addressed in the prehearing order.

(2) The refusal of a witness to answer any question ruled proper shall be grounds for the Presiding Officer, at his/her discretion, to strike some or all prior testimony by that witness on related matters or to grant a continuance to allow a party to seek a court order to compel the witness to answer.

(3) Each person called as a witness in an adjudicative proceeding shall swear or affirm that the evidence about to be given in the adjudicative proceeding shall be the truth under the provisions of RCW 5.28.020 through 5.28.060.

Sec. D.32. Proposed order. At the conclusion of the hearing or by a date specified by the Presiding Officer, the Presiding Officer may require each party to submit to the Presiding Officer proposed findings of fact and conclusions of law and a proposed order.

Sec. D.33. Issuance of final order. If the adjudicative proceeding is heard by the Commission or a panel of the Commission the Presiding Officer and Commission or panel of the Commission shall:

(1) Issue a final order containing findings of fact and conclusions of law and an order; and

(2) Cause the Commission Secretary to serve a copy of the order on each party and any designated representative of the party.

Sec. D.34. Standard of proof. The appointing authority shall have the burden of showing by material and substantial evidence that the action taken was done in good faith for cause.

Sec. D.35. Consolidated proceedings.

(1) When two or more applications for adjudicative proceeding involve a similar issue, the applications may be consolidated by the Presiding Officer and the hearings conducted together. The Presiding Officer or hearings officer may consolidate on his/her own motion or upon the request of a party.

(2) A party scheduled for a consolidated proceeding may request to withdraw from the consolidated proceeding in favor of an individual proceeding. The Presiding Officer may grant a motion to withdraw from a consolidated proceeding at any time when good cause is shown.

(3) Each respondent in a consolidated proceeding shall retain the right to representation.

Sec. D.36. Initial order.

(1) If the adjudicative proceeding is not heard by the Commission or panel of the Commission the Presiding Officer shall:

(a) Issue an initial order containing proposed findings of fact, conclusions of law, and a proposed order;

(b) Cause the Commission Secretary to serve a copy of the initial order on each party and any designated representative of a party; and

(c) Forward the initial order and record of the adjudicative proceeding to the Commission Secretary.

(2) Initial orders on brief adjudicative proceedings shall become final orders as provided in WAC 246-11-540.

(3) Following receipt of initial orders in matters other than brief adjudicative proceedings, the Commission shall review the initial order and the record as provided in RCW 34.05.464, and issue a final order as provided in WAC 246-11-560.

Sec. D.37. Appeal from initial order.

(1) Any party may file a written petition for administrative review of an initial order issued under WAC 246-11-430 or WAC 246-11-540 stating the specific grounds upon which exception is taken and the relief requested.

(2) Petitions for administrative review must be served upon the opposing party and filed with the Commission Secretary within twenty-one days of service of the initial order.

(3) The opposing party may file a response to a petition for administrative review as provided in this section. The response shall be filed at the place specified in subsection (2) of this section. The party filing the response shall serve a copy of the response upon the party requesting administrative review. If the initial order was entered pursuant to WAC 246-11-430, the response will be filed within ten days of service of the petition. In all other matters, the response will be filed within twenty days of service of the petition.

Sec. D.38. Final orders.

(1) The form and content of final orders shall be as follows:

(a) Final orders shall contain findings of fact, conclusions of law, and an order. All final orders shall be signed by a member of the panel of Commission members who heard the matter.

(b) Final orders may adopt by reference the initial order in whole or in part.

(c) Final orders may modify or revise the initial order in whole or in part.

(2) Final orders shall be served upon the parties and their representatives as provided in WAC 246-11-080.

(3) Final orders shall be issued following:

(a) A review of the record;

(b) A review of the initial order, if any;

(c) A review of any request for review of the initial order and any response thereto; and

(d) Consideration of protection of the public health and welfare.

(4) Unless a later date is stated in the final order, final orders shall be effective when entered but a party shall not be required to comply with a final order until the order is served upon that party.

(5) Final orders may contain orders that specified portions of the agency record shall not be disclosed as public records if necessary to protect privacy interests, the public welfare, or vital governmental functions. Such orders shall include but are not limited to protective orders issued during the proceeding or pursuant to WAC 246-11-400.

Sec. D.39. Stay of final orders. No final order will be stayed except by its own terms or by order of a court of competent jurisdiction.

Sec. D.40. Reconsideration of final orders.

(1) Within ten days of service of a final order, either party may file a petition for reconsideration, stating the specific grounds upon which reconsideration is requested and the relief requested.

(2) Grounds for reconsideration shall be limited to:

(a) Specific errors of fact or law; or

(b) Implementation of the final order would require Commission activities inconsistent with current Civil Service practice; or

(c) Specific circumstances render the person requesting the reconsideration unable to comply with the terms of the order.

(3) Petitions for reconsideration must be served upon the opposing party and filed with the Commission Secretary within ten days of service of the final order.

(4) If reconsideration is requested based on an error of fact, the request for reconsideration shall contain specific reference to the record. If reconsideration is requested based on testimony of record, the request for reconsideration shall contain specific reference to the testimony. The Presiding Officer may require that the party requesting reconsideration submit a copy of the transcript of the adjudicative proceeding and provide specific reference to the transcript.

(5) The petition for reconsideration is denied if, within twenty days of the date the petition is filed, the Presiding Officer:

- (a) Denies the petition;
- (b) Does not act upon the petition; or
- (c) Does not serve the parties with notice of the date by which he/she will act on the petition.

(6) If the Presiding Officer determines to act upon the petition, the opposing party shall be provided at least ten days in which to file a response to the petition.

(7) Disposition of petitions for reconsideration shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings.

Sec. D.41. Agency record of adjudicative proceedings.

(1) The Commission shall maintain an official record of each adjudicative proceeding.

(2) The record shall include:

- (a) Notices of all proceedings;
- (b) Any prehearing order;
- (c) Any motions, pleadings, briefs, petitions, and requests filed, and rulings thereon;
- (d) Evidence received or considered;
- (e) A statement of matters officially noted;

- (f) Offers of proof and objections and rulings thereon;
- (g) Any proposed findings, requested orders, and exceptions;
- (h) Any recording of the adjudicative proceeding and any transcript of all or part of the adjudicative proceeding considered before final disposition of the matter;
- (i) Any final order, initial order, or order on reconsideration; and
- (j) Matters placed on the record following an ex parte communication, if any.

(3) The record shall be subject to disclosure as provided by RCW 42.17.250 through 42.17.340, and by WAC 246-11-130, except as limited by protective orders and provisions contained in the final order.

(4) The cost of transcribing any portion of a record shall be borne by the individual seeking such record.

Sec. D.42. Judicial review.

(1) Any person aggrieved by a final decision of the Commission may file for review in an appropriate court of law. Such petition shall be filed within thirty (30) days of the date of issuance of the Commission's final decision.

(2) Notice of the opportunity for judicial review shall be provided in all final orders.

(3) Following a request for judicial review, the record forwarded to the reviewing court shall be those portions of the agency record designated by the parties within the time period set by the Commission.

(4) A party seeking judicial review of a Commission decision shall not be permitted to prepare a transcript of any portion of a record that is at issue. Transcripts of Commission proceedings shall be prepared and certified by the Secretary or designee, who shall be a person or firm commonly employed for the transcription and preparation of recorded evidence and testimony. The cost of preparing any transcript of Commission proceedings shall be borne by the party requesting such record and payment must be made to the Commission before a transcript will be forwarded to a reviewing court.

Sec. D.43. Vacating an order for reason of default or withdrawal.

(1) A party may petition to vacate a default order entered against that party for failing to attend an adjudicative proceeding requested by that party by:

(a) Specifying the grounds relied upon in the petition; and

(b) Filing the petition at the Commission Secretary within seven days of service of the default order.

(2) The Presiding Officer shall consider the petition and shall:

(a) Grant the motion to vacate and reinstate the application for adjudicative proceeding, and may impose conditions on aggrieved party pending final adjudication; or

(b) Deny the motion to vacate the default order.

Sec. D.44. Election of remedies. Under no circumstances will the Commission proceed with any appeal filed by an employee who also files a grievance on the same subject or matter under the terms of an applicable collective bargaining agreement. An appeal shall be dismissed by motion of the Commission at its next regular meeting following initial notice that a grievance is also being pursued on behalf of the same employee on the same subject or matter.

Sec. D.45. Effect of delays or continuances caused by an appellant. In an adjudicative hearing process conducted by the Civil Service Commission or designee, the Commission or designee shall have discretion to reduce or eliminate the amount of any backpay or other monetary sum awarded to an Appellant who might prevail in a Civil Service proceeding challenging a disciplinary action or other management decision that is alleged to have had a financial impact on the Appellant, where 1) a delay is caused by an Appellant and is without reasonable excuse or could have been avoided; or 2) a continuance is granted upon request by an Appellant.

Sec. D.46. Savings clause, severability, construction. If a section, subsection, paragraph, sentence, clause, or phrase of this Appendix is declared unconstitutional, unlawful or invalid for any reason by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions. If the provisions of this Appendix are found to be inconsistent with other provisions of the Des Moines Civil Service Rules, this Appendix is deemed to control.

**RECORDS SPECIALIST/LATERAL ENTRY
SCREENING CHECK-OFF LIST**

- | | | | | | |
|------------|--------------------------|-----------|--------------------------|----|---|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | 1. | Application Form |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | 2. | Minimum Qualifications |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | a. | 18 Years of Age |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | b. | High School Diploma or GED |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | c. | Ability to type a minimum of
45 words per minute |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | d. | Washington State Driver's
License |
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | 3. | Records Specialist who has been
employed on a full-time basis by
a law enforcement agency for a
period of time exceeding twelve
consecutive months and not had
a lapse of employment as a
Records Specialist for a period
exceeding the previous twelve
months, calculated from the date
of appointment. |