

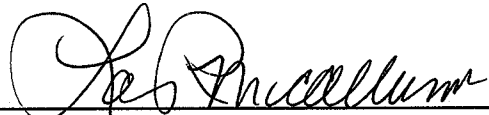
Clearinghouse Rule 95-176

STATE OF WISCONSIN)
)
WISCONSIN STATE PERSONNEL COMMISSION)

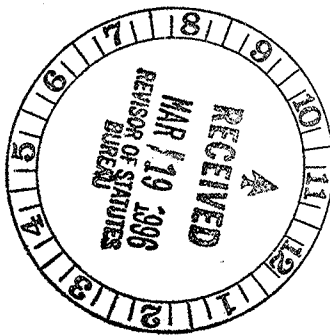
I, Laurie R. McCallum, Chairperson of the Wisconsin State Personnel Commission and custodian of the official records, certify that the annexed rules, relating to fee payments for certain appeals (Clearinghouse Rule 95-176), were duly approved and adopted by this Commission on January 5, 1996.

I further certify that this copy has been compared by me with the original on file in this Commission and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I
have hereunto set my hand at the
Commission's offices located at Room
1004, 131 West Wilson Street, in the city
of Madison, this 19th day of March,
1996.



Laurie R. McCallum
Chairperson
Wisconsin State Personnel Commission



6-1-96

ORDER of the Wisconsin State Personnel Commission

INTRODUCTORY CLAUSE. The Wisconsin State Personnel Commission proposes an order to renumber PC 3.02, 3.03 and 3.04; to amend PC 1.01, and to create PC 3.02 (1) to (8), relating to fee payments for appeals.

Analysis prepared by: Wisconsin State Personnel Commission.

PLAIN LANGUAGE ANALYSIS.

Statutory authority: s. 230.45 (3), Stats.
Statutes interpreted: s. 230.45 (3), Stats.

This rule establishes the fee schedule applicable to certain appeals.

TEXT OF THE RULE.

SECTION 1. *PC 1.01 is amended to read:*

PC 1.01 Authorization. The rules in chs. PC 1 to 6 are adopted by the commission pursuant to ss. 230.45 (1) (i) and (3) and 230.89 (1), Stats., and relate to the commission's jurisdiction under s. 230.45, Stats.

SECTION 2. *PC 3.02 is renumbered PC 3.03, PC 3.03 is renumbered PC 3.04, and PC 3.04 is renumbered PC 3.05.*

SECTION 3. *PC 3.02 is created to read:*

PC 3.02 FEES FOR FILING APPEALS.

(1) Notwithstanding s. 230.44 (3), Stats., and s. PC 3.01, payment of a fee or filing of a hardship affidavit in lieu of fee payment is required for appeals subject to the fee payment of s. 230.45 (3), Stats.

NOTE: Appeals subject to the fee payment of s. 230.45 (3), Stats., include appeals filed under:

- 1) s. 230.44 (1) (a), Stats. (relating to personnel decisions made or delegated by the administrator of the Division of Merit Recruitment and Selection),
- 2) s. 230.44 (1) (b), Stats. (relating to personnel decisions made or delegated by the Secretary of the Department of Employment Relations - including classification decisions),
- 3) s. 230.45 (1) (c), Stats. (relating to final step arbitration under s. 230.04 (14), Stats.), or
- 4) s. 230.45 (1) (e), Stats. (relating to the county merit system rules under s. 49.50, Stats.)

(2) Except as provided under sub. (6), the commission may take no action to resolve an appeal for which the payment of a fee is required until the commission receives the fee or hardship affidavit as required under this section.



(3) PAYMENT OF FEES. (a) Fee amount. Except as provided for hardship cases in subs. (4) and (5), the fee for filing an appeal with the commission is \$50.00.

(b) How fees are paid. Fees shall be paid by money order, certified check, cashier's check or bank check made payable to the "State Treasurer of Wisconsin" and must be received, whether in person or by mail, at the commission's offices. Fees may not be paid in cash, by personal check or in installments.

NOTE: The fee requirements of this section apply to each appellant who submits an appeal, whether such submission is alone or in conjunction with other appellants.

(4) EXCEPTIONS FOR HARDSHIP CASES. (a) Income definition. "Income" means total annual cash receipts before taxes from all sources, including but not limited to: money wages before any deductions; net receipts from self-employment; regular payments from social security, retirement, unemployment compensation, workers' compensation, veterans' payments, and public assistance; alimony; child support; college or university scholarships, grants, fellowships and assistantships; and net rental income. Excluded are noncash benefits such as the employer-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, and such noncash federal benefit programs as food stamps, school lunches and housing assistance.

(b) The hardship exception. An appellant may qualify for a hardship exception if either of the following conditions are met:

1. The appellant's income is at or lower than the federal poverty level as defined by the federal department of labor under 42 USC 9902 (2), and where the appellant has cash resources totalling exactly or less than one month's rent and food for appellant's family.

2. Similar circumstances exist which demonstrate that appellant is unable to pay the filing fee without suffering severe financial hardship.

Note: The 1995 poverty guidelines were published in the Federal Register, Vol. 60, #27, Thursday, February 9, 1995. The poverty level for a family unit of one was set at \$7,470, with an additional \$2,560 added for each additional family member.

(c) Entitlement to the hardship exception. An appellant may demonstrate entitlement to the hardship exception by completing and timely filing a notarized affidavit stating that the appellant meets one of the conditions set forth in par. (b).

(d) Penalty for affidavit made in bad faith. The Commission may dismiss an appeal on the merits if it determines that the appellant falsified a hardship affidavit to avoid payment of the filing fee.

Note: Falsification of a hardship affidavit also might be considered as a Class D felony, under s. 946.31(1)(e), Stats.

(5) TIME LIMITS FOR PAYING FEES. (a) Requirements at time of filing. Except as provided under par. (b), the fee or the hardship

affidavit for filing an appeal shall be received by the commission at the time the appeal is filed.

(b) Exceptions: time limits.

1. If an appeal is filed without each appellant enclosing either the fee payment or hardship affidavit, the commission shall send each remiss appellant a letter advising of the requirement to either pay the fee or to submit a hardship affidavit.

2. A fee payment meeting the requirements of sub. (3) (a) and (b), received by the commission within 30 days of the date appearing on the commission's letter mailed under subd. 1, will be considered a timely paid fee. Alternatively, a hardship affidavit meeting the requirements of sub. (4) (b) and (c) received by the commission within 30 days of the date appearing on the commission's letter will be considered to meet the requirements of this section.

(c) Exceptions: defective hardship affidavit.

1. An appellant whose initial hardship affidavit does not meet the requirements of this section shall be sent a letter from the commission which provides an opportunity to resubmit.

2. A hardship affidavit meeting the requirements of sub. (4) (b) and (c) received by the commission within 30 days of the date appearing on the commission's letter mailed under subd. 1, shall be considered to meet the requirements of this section. Alternatively, a fee payment meeting the requirements of sub. (3) (a) and (b), which is received by the commission within 30 days of the date appearing on the commission's letter shall be considered to meet the requirements of this section.

(6) **EFFECT OF FAILING TO TIMELY FILE FEE PAYMENT OR HARDSHIP AFFIDAVIT.** The commission shall dismiss without prejudice the appeal of any appellant who has failed to submit the required fee payment or hardship affidavit within the time limits under sub. (5).

(7) **REFILED APPEALS.** The filing date for an appeal which is refiled after dismissal under sub. (6), shall be determined by the date upon which the commission receives the refiled action rather than the filing date of the initial appeal.

NOTE: For example, where an initial appeal was filed on January 7, 1995, and was later dismissed by the commission for nonpayment of fees, the filing date for the refiled appeal would be the date the commission receives the refiled appeal, rather than January 7, 1995.

EFFECTIVE DATES: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

APPLICABILITY: The fee requirements shall apply to new appeals filed on or after the effective date.

FINAL REGULATORY FLEXIBILITY ANALYSIS. This rule will have no effect on small businesses.

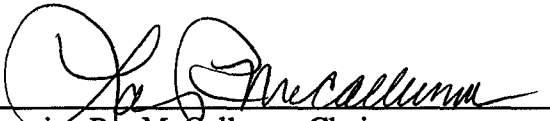
FISCAL ESTIMATES. The proposed rule does not create a revenue source for the Commission's operations because the fees must be paid to the state treasurer. It is anticipated, however, that the fee requirement may have a practical effect on the number of cases filed with the Commission.

Over the course of the previous five fiscal years (1990-91 through 1994-95), the number of new appeals filed with the Commission ranged from a low of 237 (1992-93) to a high of 975 (1994-95), and averaged 545 each year. It is estimated that approximately 80% of new appeals would be subject to the filing fee. Using the 545 figure, it is estimated that the filing fee would generate \$21,800 ($545 \times .8 \times \50) each year for the state treasury.

It is anticipated that the filing fee will result in a reduction in the number of new appeals filed with the Commission. Although the Commission estimates that this reduction would be approximately 20%, it is not possible to base this estimate on any hard numbers or any comparable experience in other agencies (because none exist). Application of this 20% estimate results in a reduction of an average of 109 new appeals each year.

This caseload reduction will not translate into a corresponding reduction in the need for staff resources. The Commission's appeals caseload averaged 221 per year over the 1985-1990 biennia. Despite the fact that this increased to an average of 545 over the most recent 5 biennia, the Commission received no additional staff resources to handle this increase. A reduction of 109 appeals due to the new filing fee will result in a caseload which remains twice what it was in the prior 5 biennia.

Dated: March 19, 1996


Laurie R. McCallum, Chairperson
Wisconsin State Personnel Commission



State of Wisconsin

PERSONNEL COMMISSION

131 West Wilson Street
Suite 1004
Madison, Wisconsin 53702
(608) 266-1995

March 19, 1996

Laurie R McCallum
Chairperson

Donald R Murphy
Commissioner

Judy M Rogers
Commissioner

Gary L. Poulson
Deputy Revisor
Revisor of Statutes Bureau
131 W. Wilson St., Rm. 800
Madison, WI 53703-3233

Re: Request for publication in end-of-May administrative register.
Re: Fee payments for certain appeals (Clearinghouse rule #95-176)

Dear Mr. Poulson:

The Commission requests publication of its new administrative rule regarding fee payments for certain appeals in the administrative register issued at the end of May 1996. The rule in proposed form was submitted to the presiding officer of each house on January 8, 1996. The rule was referred to the Senate Committee on Human Resources, Labor, Tourism, Veterans and Military Affairs on January 9, 1996, where no action was taken. No action was taken at the Assembly level either. Accordingly, it appears that the rule is ready for final publication.

Enclosed are copies of the required order and certificate. The same documents were filed with the Secretary of State's office today. The Commission is unable to provide your agency with the text on a double-density disk because our software is not formatted for WordPerfect 5.1 or ASCII.

Please call if you have any questions.

Sincerely,

Judy M. Rogers,
Commissioner
(608) 266-9764

