

**West Virginia State Police
Title 81
Series 8
West Virginia State Police Grievance Procedure**

Summary of Proposed Rule

This rule as proposed serves to eliminate time delays and added costs to the State associated with the filing and resolution of member grievances. These modifications will allow for a more expedited hearing on grievance issues at a reduced cost to the State. The use of members, as opposed to civilian hearing examiners, provides for little to no cost to the Department and allows for a more expedited resolution of issues intricate to the State Police organization and its members.

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Circumstances Requiring Filing of Rule

The Superintendent of the West Virginia State Police is required to promulgate the above rule pursuant to W.Va. Code § 15-2-6 (a). The proposed amendments are necessary in order to improve the current procedures by eliminating several steps which tend to delay resolution of the grievances and which elimination would prove more cost efficient for the Department by reducing outside costs from hearing examiners.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia State Police Grievance Procedure

Type of Rule: XX Legislative _____ Interpretive _____ Procedural

Agency: West Virginia State Police

Address: 725 Jefferson Road

South Charleston, WV 25309

ATTN: Major Gary McGraw (304) 746-2110

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	10,000	(10,000)	(10,000)	same
PERSONAL SERVICES	0	10,000	(10,000)	same	same
CURRENT EXPENSE	0	500	(500)	same	same
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

Savings of payment to hearing examiners fees and travel expenses if the State Police can utilize manpower on its current payroll, thus no additional expenses or fees are incurred.

3. Objectives of These Rules:

This rule is promulgated to provide for a more expedient and cost saving grievance system.

Rule Title: West Virginia State Police Grievance Procedure

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Lower costs and fees incurred from paid hearing examiners

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

None

C. Economic Impact on Citizens/Public at Large.

None

Date: July 02, 2003

Signature of Agency Head or Authorized Representative:



TITLE 81
LEGISLATIVE RULE
WEST VIRGINIA STATE POLICE

FILED

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SERIES 8
WEST VIRGINIA STATE POLICE GRIEVANCE PROCEDURE
OFFICE WEST VIRGINIA
SECRETARY OF STATE

'81-8-1. General.

1.1. Scope. -- This rule governs and specifies a grievance procedure for sworn members of the State Police.

1.2. Authority. -- W. Va. Code '15-2-6(a).

1.3. Filing Date. -- _____, 2003.

1.4. Effective Date. -- _____, 2003.

1.5. Supersedes W. Va. Code '15-2-6(b) and all previous versions of this rule.

'81-8-2. Purpose.

2.1. The purpose of this rule is to provide a procedure for the equitable and consistent resolution of employment grievances raised by West Virginia State Police non-probationary members.

'81-8-3. Definitions.

3.1. For the purpose of this rule:

3.1.1 "Board" means panel of State Police members selected pursuant section **** of this rule to hear and render decisions regarding grievances of other State Police members.

3.1.2. "Days" means working days exclusive of Saturday, Sunday or official holidays.

3.1.2. "Discrimination" means any difference in the treatment of members unless such differences are related to the actual job responsibilities of the members or agreed to in writing by the members.

3.1.3. "Favoritism" means unfair treatment of a member as demonstrated by preferential, exceptional or advantageous treatment of another or other members.

3.1.4.3. "Grievance" means any claim by one or more affected State Police members alleging a violation, a misapplication or a misinterpretation of the statutes, written policies, rules, regulations or written agreements pertaining to the enumerated issues provided in section 4.1.1 below under which such members work. Any pension matter or other issue relating to public employees insurance, retirement, or any other matter in which the authority to act is not vested with the State Police shall not be the subject of any grievance filed under this policy and procedure. Management reserves the exclusive right to manage the affairs and operations of the State Police.

~~3.1.5. "Grievance coordinator" means that individual designated by the Superintendent to oversee and coordinate the administration of employee grievances.~~

~~3.1.6. "Grievance Evaluator" means that individual authorized to render a decision on a grievance under procedural levels one, two and three as set out in section four.~~

~~3.1.7.~~**4.** "Grievant" means any member or group of named members filing a grievance as defined in subsection (3.1.5) of this section.

~~3.1.8. "Harassment" means repeated or continual disturbance, irritation or annoyance of a member which would be contrary to the demeanor expected by law, policy and profession.~~

~~3.1.9. "Hearing examiner" means individuals employed by the State Police in accordance with section five of this rule.~~

~~3.1.10. "Immediate supervisor" means that person next in the chain of command of the grievant possessing a degree of administrative authority and designated as such.~~

~~3.1.11.~~**5.** "Member" means any non-probationary sworn member employed by the State Police.

3.1.6 "Professional Standards Section (PSS)" means the unit of the West Virginia State Police in charge of investigating complaints and charges of misconduct levied against employees to determine the validity of said complaints and charges. The PSS is also in charge of coordinating all grievances of members to insure that the grievance is provided with an opportunity to be addressed pursuant to these rules.

~~3.1.12. "Representative" means any person or persons designated by the grievant to represent him or her in the processing and litigation of a grievance through this procedure, or both.~~

~~3.1.13. "Reprisal" means retaliation by the Superintendent or his or her designee toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.~~

~~3.1.14.~~**7.** "Superintendent" is the executive officer-in-charge and chief administrator of the State Police.

'81-8-4. Grievance Procedure Generally.

4.1. A grievance must be filed **and scheduled for hearing** within the times specified in section four **and six** of this rule and shall be processed as rapidly as possible. ~~The number of days indicated at each level specified in section four of this rule shall be considered as the maximum number of days allowed and, if a decision is not rendered at any level within the prescribed time limits, the grievant may appeal to the next level:~~ Provided, that the specified time limits shall be extended **or tolled** whenever a grievant or **other necessary party is not available working for justifiable cause or upon the agreement of the parties.** ~~because of accident, sickness, death in the immediate family or other cause necessitating the grievant to take personal leave from his or her employment, or by agreement of all parties.~~

4.2 Grievances can be filed by members regarding the following matters.

- a. Termination**
- b. Suspensions**

c. Demotions resulting from discipline**d. Permanent Involuntary Transfers**

4.2. ~~If the Superintendent or his or her designee or the grievant intends to assert the application of any federal statute, administrative rule, federal regulation or written agreement or submits any written response to the filed grievance at any level, the citation thereof shall be forwarded to the grievant and any representative of the grievant named in the filed grievance or the Superintendent. Any documents submitted and the grievant's response thereto, if any, shall become part of the record. Failure to assert such statute, policy, rule, regulation or written agreement at any level shall not prevent the subsequent submission thereof in accordance with the provisions of this subsection.~~

4.3. ~~The grievant may file the grievance at the level vested with authority to grant the requested relief if each lower administrative level agrees in writing thereto. In the event a grievance is filed at a higher level, the State Police shall provide copies to each lower administrative level~~

The Grievant shall file his or her original grievance with the Professional Standards Section (PSS) within 14 days of the date of the order to be grieved

4.4. A member may withdraw a grievance at any time by notice, in writing, to PSS ~~the level wherein the grievance is then current~~. If more than one member is named as grievant in a particular grievance, the withdrawal of one member shall not prejudice the rights of any other member named in the grievance. In the event a grievance is withdrawn or a member withdraws from a grievance, the Superintendent or his or her designee shall notify in writing all involved parties. ~~each lower administrative level.~~

4.5. Grievances may be consolidated ~~at any level~~ by agreement of all parties or by order of the Grievance Board.

4.6. A grievant may be represented by legal counsel or any person ~~or persons~~ designated by the grievant. **The Superintendent may be represented by legal counsel or any person designated by the Superintendent.** ~~At the request of the grievant, such person or persons may be present, starting at levels three and four of the procedure: Provided, that at levels one and two of such grievance, as set forth in section 5.1 of this rule, a grievant may have no such representative. Employer may, likewise, only be represented at levels three and four.~~

4.7. ~~If a grievance is filed which cannot be resolved within the time limits set forth in section four of this rule prior to the end of the grievant's employment term, the time limit set forth in said section shall be reduced as agreed to in writing by both parties so that the grievance procedure may be concluded within ten days following the end of the employment term or an otherwise reasonable time.~~

4.8. ~~No reprisals of any kind shall be taken by the Superintendent or his or her designee against any interested party, or any other participant in the grievance procedure by reason of such participation. A reprisal constitutes a grievance, and any person held to be responsible for reprisal action shall be subject to disciplinary action.~~

4.9.7. ~~Written decisions rendered at all levels of the grievance procedure shall be dated, shall set forth the decision or decisions and the reasons therefor, and shall be transmitted to the grievant and any representative at levels 3 or 4 named in the grievance within the time prescribed.~~

4.10.8. ~~Once a grievance has been filed, any change which supportive or corroborative evidence may be presented at any conference or hearing conducted pursuant to the provisions of this rule. Whether evidence~~

substantially alters the original grievance and renders it a different grievance is within the discretion of the grievance evaluator at the level wherein the new evidence is presented. If the grievance evaluator rules that the evidence renders it a different grievance, the party offering the evidence may withdraw same, the parties may consent to such evidence, or the grievance evaluator may decide to hear the evidence or rule that the grievant must file a new grievance. The time limitation for filing the new grievance shall be measured from the date of such ruling. **or substantially alters the relief sought, must be amended by either consent of the opposing party or by motion to the Board.**

4.11. ~~Any change in the relief sought by the grievant shall be consented to by all parties or may be granted at level four within the discretion of the hearing examiner.~~

4.12. ~~9.~~ Forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary documents shall be made available by the immediate supervisor to any member upon request. Such forms shall include information as prescribed by the Superintendent. The grievant shall have **reasonable** access to State Police **computers, copiers and printers equipment** for purposes of preparing grievance documents. subject to the reasonable rules of the employer governing the use of such equipment.

4.13. ~~10.~~ Notwithstanding the provisions of W. Va. Code 6-9A-3, or any other provision relating to open proceedings, all conferences and hearings pursuant to this rule shall be conducted in private except that **either party can make a motion that the proceedings be open to other members and/or the public.** upon the grievant's request, conferences and hearings at levels two and three shall be open to employees of the grievant's immediate office or work area. Within the discretion of the hearing examiner, conferences and hearings may be public at level four.

4.14. ~~11.~~ No person shall confer or correspond with a **Board Member hearing examiner** regarding the merits of the grievance unless all parties to the grievance are notified and agree thereto.

4.15. ~~12.~~ Grievances shall be processed during regular working hours. Attempts shall be made to process the grievance in a manner which does not interfere with the normal operation of the State Police.

4.16. ~~13.~~ The grievant or the member selected by a grievant to represent him or her in the processing of a grievance through this procedure, or both, shall be granted necessary time off during working hours for the grievance procedure without loss of pay and without charge to annual or compensatory leave credits. In addition to actual time spent in grievance conferences and hearings, the grievant or the grievant's representative, or both, shall be granted time off during working hours, not to exceed four hours per grievance, for the preparation of such grievance without loss of pay and without charge to annual or compensatory leave credits. However, it shall be understood by all parties that the first responsibility of any member is the work assigned by the State Police to the member. Grievance preparation and representation activities by a member shall not seriously affect the overall productivity of the member. Members and other employees submitting complaints or grievances, who are involved in complaint and grievance investigations, and who are participating in complaint and grievance meetings and proceedings may do so during working hours without loss of pay and without charge to accumulated leave, after requesting permission from their immediate supervisor to do so, which permission shall not be unreasonably withheld.

4.17. ~~The aggrieved member, the State Police and representatives of both shall have the right to call, examine and cross-examine witnesses who are employees of the State Police against which the grievance is lodged and who have knowledge of the facts at issue.~~

4.18. ~~14.~~ Both parties may produce witnesses other than employees of the State Police against which the grievance is lodged, and such witnesses shall be subject to examination and cross-examination.

Subpoenas and subpoenas duces tecum. -- Parties who wish to obtain subpoenas to require the attendance and testimony of witnesses, or subpoenas requiring the production of documents, must file a written motion or request for subpoenas with the Board. The written request should be submitted as soon as possible, so that the subpoena can be served at least five (5) days before to the scheduled hearing. Subpoenas and subpoenas duces tecum will be issued in the discretion of the Board. The written request shall include the full name and address of each person to be subpoenaed (and for subpoenas duces tecum, a complete description of the document or item to be produced), together with a statement accepting responsibility for service, and for witness and mileage fees, if any. Witness and mileage fees shall be the same as are paid witnesses in the courts of this state. Employees of the State Police shall not be paid witness fees and mileage fees. Reasonable mileage fees for traveling greater than ** miles from their residence or place of employment to the location of the hearing, whichever is the shortest, may be paid to State Police employees if the individual has to use their personal vehicle for transportation to the hearing and a department owned vehicle is not available. Any party requesting a subpoena or subpoena duces tecum must advise all other parties of the request at the time it is made. The parties are required to exchange a list of witnesses five days prior to the hearing before the Board. The Board shall prohibit the testimony of any witnesses, other than those called for rebuttal, whom are not disclosed to the opposing party within the allotted time frame unless the party provides good cause for failing to disclose or if the opposing party does not object to the appearance of the witness. Subpoenas and subpoenas duces tecum may be enforced as provided by law.

Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, the Board may quash or modify a subpoena or subpoena duces tecum if it is unreasonable and oppressive, or requires disclosure of privileged or otherwise irrelevant information. The Board may require the advance payment, by the requesting party, of the reasonable cost of producing the books, papers, documents, or tangible things prior to issuing the subpoena duces tecum.

4.19.15. Should the Superintendent or his or her designee cause a conference or hearing to be postponed without adequate notice to members and/or other employees who are scheduled to appear during their normal work day, they will not suffer any loss in pay for work time lost.

4.20. ~~Any grievance evaluator may be excused from participation in the grievance process for reasonable cause, including, but not limited to, conflict of interest or incapacitation, and in such case the grievance evaluator at the next higher level shall designate an alternative grievance evaluator if such is deemed reasonable and necessary.~~

4.21. ~~No less than one year following resolution of a grievance at any level, the grievant may request in writing to have removed any record of the grievant's identity from any file kept by the State Police.~~

4.22.16. Procedures:

4.22.16.1. ~~The State Police grievance coordinator~~ The PSS shall be responsible for the coordination of grievance procedures. Such coordination shall can include the training of supervisors in grievance procedures, providing notification to the Superintendent of filed grievances and their progression and other grievance management functions as required to ensure administrative compliance with this rule.

4.22.16.2. ~~The grievance coordinator~~ The PSS shall maintain and control finalized grievance records within the security of its files and will take necessary precautions to ensure controlled access to sensitive grievance records and documents.

4.22.3. ~~First level supervisors receiving a grievance form shall acknowledge receipt by noting the~~

~~time, date and name of the person receiving the grievance and shall immediately forward a copy of the grievance to the grievance coordinator.~~

~~4.22.4. The supervisor responsible for administering the grievance procedure at each level shall furnish the original grievance form and the original copy of the written decision to the member and will forward a copy of the grievance form and decision to the grievance coordinator. The supervisor administering the grievance procedure shall NOT retain a record of the grievance or the decision.~~

~~4.23-17. The number of grievances filed against the Superintendent or his or her designee, or by an employee shall not, per se, be an indication of the Superintendent's or his or her designee's or such employee's job performance.~~

~~4.24. The Superintendent may appeal a level four decision on the grounds that the decision (1) was contrary to law or lawfully adopted rule or written policy of the employer, (2) exceeded the hearing examiner's statutory authority, (3) was the result of fraud or deceit, (4) was clearly wrong in view of the reliable, probative and substantial evidence on the whole record, or (5) was arbitrary or capricious or characterized by abuse of discretion.~~

~~81-8-5. Procedural Levels and Procedure at Each Level.~~

~~5.1. Level one.~~

~~5.1.1. The member shall identify the grievance verbally to the immediate supervisor in an informal meeting within fourteen days after the event or action or the discovery of the event or action which is the basis for the grievance.~~

~~5.1.2. The immediate supervisor shall give a verbal response to the member within seven days following the meeting.~~

~~5.1.3. If a resolution is not reached at this point, the member shall submit to the immediate supervisor on a prescribed form the nature of the grievance and the specific relief requested within seven days following the date of receipt of the verbal response.~~

~~5.1.4. The supervisor, in turn, shall give written response on a prescribed form within seven days of receipt of the prescribed form.~~

~~5.2. Level two.~~

~~5.2.1. Within seven days of receiving the written decision of the immediate supervisor the grievant or Superintendent may file a written appeal to the appropriate State Police supervisor. The supervisor shall hold a conference within seven days of the receipt of the appeal and issue a written decision upon the appeal within seven days of the conference.~~

~~5.3. Level three.~~

~~5.3.1. Within seven days of receiving the decision of the appropriate State Police supervisor the grievant or Superintendent may file a written appeal of the decision with the Superintendent. The Superintendent or his or her designee shall hold a hearing in accordance with section 6.1 of this rule within ten days of receiving the appeal. The Superintendent or his or her designee shall issue a written decision affirming, modifying or reversing the level two decision within seven days of such hearing.~~

~~5.4. Level four.~~

~~5.4.1. If either the grievant or the Superintendent are not satisfied with the action taken by the grievance evaluator, within fourteen days of receiving the written decision the grievant or Superintendent may request, in writing, on a form furnished by the State Police, that the grievance be submitted to a hearing examiner. Within seven days after receipt of the notice of appeal from the grievant, the Superintendent or his or her designee shall mail to the grievant a strike list of names of hearing examiners. A hearing examiner selection committee consisting of one person designated by the Superintendent, one person by the trade or professional organization which has the largest number of members of the State Police within its membership, and one acting or senior status circuit judge agreed upon by the Superintendent's designee and the trade or professional organization's designee, shall compile the strike list. The strike list shall consist of attorneys licensed to practice in West Virginia. The hearing shall be conducted in accordance with section six of this rule within thirty days following the request. The hearing may be held within sixty days following the request, or within such time as is mutually agreed upon by the parties.~~

~~5.4.2. Within thirty days following the hearing, the hearing examiner shall render a decision in writing to all parties setting forth findings and conclusions on the issues submitted. Subject to the provisions of section seven of this rule, the decision of the hearing examiner shall be final upon the parties and shall be enforceable in circuit court.~~

~~5.5. Expedited grievance process.~~

~~5.5.1. A member may grieve a final action of the Superintendent involving a dismissal, demotion, transfer, or suspension exceeding twenty days directly to the hearing examiner. The expedited grievance shall be in writing and must be filed within ten days of the date of the final action by the Superintendent.~~

81-8-5. Selection of the Board.

5.1 The Board shall be made up of three members of the State police which shall consist of one member each from the ranks of 1st Lieutenant, 1st Sergeant and Sergeant.

5.2 The Superintendent shall nominate four members from each rank of 1st Lieutenant, 1st Sergeant and Sergeant. The Membership shall vote for one member from each rank to sit on the Board. The member from each rank receiving the highest number of votes shall be elected to the Board. The member from each rank receiving the second highest number of votes shall be deemed an alternate in the case that the Board member from that rank is unable to serve due to conflict or other unavoidable reason. Promotion of a Board member during his/her term on the Board shall not affect his/her eligibility to remain on the Board for the remainder of its term.

5.3 The Superintendent shall forward a ballot containing the nominees to all members on or before May 15 of each year. Ballots shall be returned to the Superintendent by close of business June 1 (or next business day if June 1st falls on a weekend). Ballots will be placed in a sealed envelope with the members name and permanent identification number written on the outside. Upon receipt, ballots shall be removed from the envelope and place in a locked box for subsequent tallying. Ballot envelopes shall be retained for the purpose of election verification and to prevent unauthorized voting. Ballots shall be tallied after June 1st but no later than June 10. Election results will then be forwarded to the membership.

5.4 The Board will receive training as designated by the Superintendent and can develop written

guidelines to provide orderly application of their duties consistent with the rules set forth in 81 C.S.R. 8 et al.

'81-8-6. Hearings Generally.

6.1. ~~The Superintendent or his or her designee acting as a grievance evaluator or the hearing examiner~~ **The Board** shall conduct all hearings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process. All parties shall have an opportunity to present evidence and argument with respect to the matters and issues involved, to cross-examine and to rebut evidence. **All Hearings shall be scheduled by the Board within 60 days of the filing of the grievance.** Reasonable notice of a hearing shall be sent prior to the hearing to all parties and their named representative and shall include the date, time and place of the hearing. All such hearings shall be held at **Department Headquarters unless an alternate location is selected by the Superintendent.** ~~a location selected by the Superintendent~~ and Hearings shall be held within regular working hours, however they ~~—Hearings~~ may continue beyond normal working hours **with the consent of the Board and agreement of the parties.**

6.2. ~~Upon written request, the grievant or Superintendent shall produce prior to such hearing any documents, not privileged which are relevant to the subject matter involved in the pending grievance.~~

6.3.2. ~~At levels 3 or 4 the Superintendent or his or her designee or the hearing examiner~~ **The Board** shall have the power to (1) administer oaths and affirmations, (2) subpoena witnesses, (3) regulate the course of the hearing, (4) hold conferences for the settlement or simplification of the issues by consent of the parties, (5) exclude immaterial, irrelevant or repetitious evidence, (6) sequester witnesses, (7) restrict the number of advocates, and take any other action not inconsistent with the provisions of this rule.

6.4.3. All the testimony and evidence ~~at any level three or level four hearing~~ shall be recorded by mechanical means, and all recorded testimony and evidence at such hearing upon written request of either party or the **Board** ~~level 4 hearing examiner~~, shall be transcribed and certified by affidavit. Such transcripts of proceedings shall be subject to disclosure by subpoena.

6.5.4. Formal rules of evidence shall not be applied, but parties shall be bound by the rules of privilege recognized by law. No member shall be compelled to testify against himself or herself in a grievance involving disciplinary action. The burden of proof shall rest with the Superintendent in disciplinary matters. **The burden of proof shall rest with the grievant with all other matters.**

6.6.5. The mechanical recording of all testimony and evidence or the transcription thereof, if any; the decision, and any other materials considered in reaching the decision shall be made a part and shall constitute the record of a grievance. ~~The record shall be submitted to any level at which appeal has been made, and the record shall be considered, but the development of such record shall not be limited thereby.~~

6.6. A grievance may be dismissed, in the discretion of the Board, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested. Said dismissal shall be made in writing by the Board.

6.7. Prior to the decisions rendered at levels 3 or 4 **by the Board**, any party may propose findings of fact and conclusions of law which shall be submitted in writing **within 30 days of the receipt of a transcript of the proceedings. Said time frame may only be extended by written Order of the Board.**

6.8. Every decision rendered at levels 3 or 4, pursuant to a hearing, by the Board shall be in writing and transmitted to the parties. shall be accompanied by findings of fact and conclusions of law. Decisions by the Board shall be in writing and shall be issued within 30 days of the date for submission by the parties of findings of fact and conclusions of law. The written decision shall put forth the evidence and reasons for the Board Decision. In matters of Discipline or Termination, the Board shall only decide if the charge against the grievant is sustainable. Severity of the discipline is not a factor to be considered by the Board in reaching its decision unless the discipline is not permitted as provided by the 81 C.S.R. 10

6.9. After the Board issues a final decision in a grievance, the Board retains jurisdiction to amend the decision to correct clerical errors by errata notice during the appeal period.

6.10. The Board will, under no circumstances, issue an advisory opinion, i.e., an opinion on an issue not directly raised before the Board in a grievance.

6.11. A party seeking to prevail by default must file a written claim seeking relief by default with the Board and provide a copy of the claim to the opposing party. After the opposing party receives the written claim for default, The opposing party may file a request for a hearing with the Board. Upon receipt of a claim for relief by default, the Board will place the claim for default on its next available docket and set the claim for hearing. The issues to be decided include whether the opposing party has a statutory or justifiable excuse for not responding within the time required by law or by these rules and/or whether the relief sought is contrary to law or clearly wrong. Once a party files a written claim for relief by default with the Board, all proceedings are automatically stayed until all default matters have been ruled upon.

6.12. The Board, Board Member or other third party, upon agreement of the Parties, may serve as a mediator in an effort to resolve the grievance prior to a hearing. Once mediation is requested, all time frames shall be tolled until the mediation is completed.

' 81-8-7. Enforcement and Reviewability; Costs; Good Faith.

7.1. The decision of the ~~hearing examiner~~ **Board** shall be final upon the parties and shall be enforceable in circuit court. The grievant or Superintendent may appeal to the **Kanawha County Circuit Court** ~~circuit court of the county in which the grievance occurred~~ on the grounds that the ~~hearing examiner's~~ **Board's** decision (1) was contrary to law or a lawfully adopted rule or written policy of the State Police, (2) exceeded the ~~hearing examiner's~~ **Board's** statutory authority, (3) was the result of fraud or deceit, (4) was clearly wrong in view of the reliable, probative and substantial evidence on the whole record, or (5) was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The appeal shall be filed in the circuit court of ~~the county in which the grievance occurred~~ within thirty days of receipt of the ~~hearing examiner's~~ **Board's** decision. The decision of the ~~hearing examiner~~ **Board** shall not be **automatically** stayed; ~~automatically~~, upon the filing of an appeal, but **however** a stay may be granted by the circuit court upon separate motion. In every matter appealed to circuit court, the appealing party shall serve a copy of the appeal petition upon the Board as required by W. Va. Code 29A-5-4(b), and will provide the Board with the civil action number so that the certified record can be properly filed with the circuit court. The party prevailing on the appeal shall furnish the Board with a copy of the final decision of the circuit court and any accompanying order within twenty days of its receipt.

7.2. The court's ruling shall be upon the entire record made before the ~~hearing examiner~~ **Board**, and the

circuit court may hear oral arguments and require written briefs. The circuit court may reverse, vacate or modify the decision of the hearing examiner Board or may remand the grievance to the Superintendent for further proceedings.

~~7.3. Both the State Police and member shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure. The hearing examiner may make a determination of bad faith and in extreme instances allocate the cost of the hearing to the party found to be acting in bad faith.~~

~~'81-8-8. Allocation of Costs.~~

~~8.1. Any expenses incurred relative to the grievance procedure at levels one through three shall be borne by the party incurring such expenses.~~

~~8.2. A grievant has the right to use, free of charge, any State Police copy machine for the purpose of copying grievance documents and the transcript of the employment grievance hearing.~~

'81-8-9.8. Mandamus Proceeding.

9.8.1. Should the State Police either party fail to comply with the provisions of this rule, it may be compelled to do so by mandamus proceeding and the non-complying party shall be liable to any the prevailing party prevailing against the State Police for court costs and reasonable attorney fees, as determined and established by the court.

'81-8-10.9. Grievant's Right to Attorney's Fees and Costs.

10.9.1. If a member shall appeal to a circuit court an adverse decision of a hearing examiner rendered in a grievance proceeding pursuant to provisions of this rule or is required to defend an appeal and such member shall substantially prevail, the State Police shall may be liable to such member upon final judgment or order, for court costs and for reasonable attorney fees to be set by the court for representing the member in all administrative hearings and before the circuit court and the supreme court of appeals and shall be further liable to the member for any court reporter costs incurred during any administrative hearings or court proceedings. In no event shall attorney's fees be awarded in excess of a total of one thousand dollars for the administrative hearings and circuit court proceedings nor an additional one thousand dollars for supreme court proceedings. The requirements of this section shall not be construed to limit the grievant's right to recover reasonable attorney's fees in a mandamus proceeding brought under section nine of this rule.

'81-8-11.10. Application of Rule.

11.10.1. This rule applies to all grievances on or after the effective date of this rule. This rule supersedes W. Va. Code '15-2-6(b) and all previous versions of this rule.