

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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SEP 22 3 58 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia State Police TITLE NUMBER: 81

CITE AUTHORITY W. Va. Code 15-2-6(a)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: VIII

TITLE OF RULE BEING PROPOSED: West Virginia State Police Grievance Procedure

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

9 thousand nine hundred ninety-five, relating to the jail
10 and correctional facility standards commission (West
11 Virginia minimum standards for construction, operation
12 and maintenance of jails, 95CSR1), are authorized.

13 (b) The legislative rules filed in the state register on the
14 thirty-first day of July, one thousand nine hundred
15 ninety-five, authorized under the authority of section
16 nine, article twenty, chapter thirty-one of this code,
17 modified by the jail and correctional facility standards
18 commission to meet the objections of the legislative
19 rule-making review committee and refiled in the state
20 register on the eleventh day of January, one thousand
21 nine hundred ninety-six, relating to the jail and correc-
22 tional facility standards commission (minimum stan-
23 dards for construction, operation and maintenance of
24 correctional facilities, 95CSR2), are authorized.

§64-6-2. State police.

1 (a) The legislative rules filed in the state register on the
2 ninth day of May, one thousand nine hundred ninety-
3 five, authorized under the authority of section twenty-
4 four-a, article two, chapter fifteen of this code, modified
5 by the state police to meet the objections of the legisla-
6 tive rule-making review committee and refiled in the
7 state register on the thirteenth day of June, one thousand
8 nine hundred ninety-five, relating to the state police
9 (West Virginia DNA databank, 81CSR9), are authorized.

10 (b) The legislative rules filed in the state register on the
11 twenty-third day of June, one thousand nine hundred
12 ninety-five, authorized under the authority of section
13 six, article two, chapter fifteen of this code, modified by
14 the state police to meet the objections of the legislative
15 rule-making review committee and refiled in the state
16 register on the twenty-second day of September, one
17 thousand nine hundred ninety-five, relating to the state
18 police (~~state police grievance procedures, 81CSR8~~), are
19 authorized, with the following amendment:

20 "On page four, section 4.6, after the words 'a grievant

21 may', by striking out the words 'have no', and inserting
22 in lieu thereof the words 'not have'".

23 (c) The legislative rules filed in the state register on the
24 twenty-third day of June, one thousand nine hundred
25 ninety-five, authorized under the authority of section
26 twenty-five, article two, chapter fifteen of this code,
27 modified by the state police to meet the objections of the
28 legislative rule-making review committee and refiled in
29 the state register on the twenty-second day of September,
30 one thousand nine hundred ninety-five, relating to
31 the state police (cadet physical qualifications, 81CSR2),
32 are authorized.

33 (d) The legislative rules filed in the state register on the
34 thirty-first day of July, one thousand nine hundred
35 ninety-five, authorized under the authority of section
36 twenty-five, article two, chapter fifteen of this code,
37 modified by the state police to meet the objections of the
38 legislative rule-making review committee and refiled in
39 the state register on the twenty-second day of December,
40 one thousand nine hundred ninety-five, relating to the
41 state police (West Virginia state police professional
42 standards investigations, 81CSR10), are authorized.

§64-6-3. Division of veterans affairs.

1 The legislative rules filed in the state register on the
2 twenty-fourth day of July, one thousand nine hundred
3 ninety-five, under the authority of section three, article
4 two, chapter nine-a of this code, modified by the division
5 of veterans affairs to meet the objections of the legisla-
6 tive rule-making review committee and refiled in the
7 state register on the second day of November, one
8 thousand nine hundred ninety-five, relating to the
9 division of veterans affairs (state home for veterans-
10 fiscal, 86CSR2), are authorized.

§64-6-4. Fire commission.

1 The legislative rules filed in the state register on the
2 eighth day of August, one thousand nine hundred ninety-
3 four, modified by the fire commission to meet the

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia State Police Grievance Procedure
 Type of Rule: Legislative Interpretive Procedural
 Agency West Virginia State Police
 Address 725 Jefferson Road
South Charleston, WV 25309-1698

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 15,450	\$ 11,482	\$ 15,450	\$ 16,500	\$ 17,000
PERSONAL SERVICES		9,282			
CURRENT EXPENSE	15,450	2,200	15,450	16,500	17,000
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

See attached.

3. Objectives of these rules:

To provide a procedure for the equitable and consistent resolution of employment grievances raised by West Virginia State Police non-probationary members.

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Rule Title: West Virginia State Police Grievance Procedure **SEP 22 3 59 PM '95**

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4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date: 9-20-95

Signature of Agency Head or Authorized Representative

Lt. Col. Gary N. Griffith
LIEUTENANT COLONEL GARY N. GRIFFITH

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2. The increased costs are based on the assumption that approximately 15 Level Four grievances will be heard annually, and that outside hearing examiners will be required at a cost of \$480 per hearing, or a total cost of \$7,200. Additionally, the services of a court reporter will also be required for each hearing at an estimated annual cost of \$5,250. Travel expenses related to the grievances are estimated at \$3,000 annually for an overall total cost increase of \$15,450. Decreased costs represent those that will no longer be incurred as a result of dissolving the old grievance procedure. The decrease in Personal Services reflects the fact that uniformed employees will no longer serve on appeal boards. Although this is a cost reduction with regard to the grievance procedure, we will continue to pay the full salaries of those employees who served and actually will not see a reduction of our agency's overall costs in this category. The decrease under Current Expense represents the cost of court reporter services and travel expenses associated with the old grievance procedure. These costs will no longer be incurred.

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
West Virginia State Police
TITLE 81
SERIES VIII

Title: West Virginia State Police Grievance Procedure

Section 1. General

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

1.2 **Authority - West Virginia Code 15-2-6(a).**

1.3 **Filing Date -**

1.4 **Effective Date -**

1.5 **Supersedes West Virginia Code 15-2-6(b).**

Section 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.**

Section 3. Definitions

3.1 **For the purpose of this rule:**

3.1.1 **"Days" means calendar days.**

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 **"Employee organization" means the trade or professional organization which has the largest number of members of the State Police within its membership.**

3.1.4 **"Favoritism" means unfair treatment of a member as demonstrated by preferential, exceptional or advantageous treatment of another or other**

members.

3.1.5 "Grievance" means any claim by one or more affected State Police members alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such members work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of the State Police; and specifically identified incidents of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective job performance or the health and safety of the member. Examples of grievable matters include but are not limited to issues surrounding letters of reprimand, transfers, demotions, suspensions, discharges or semi-annual evaluations, etc. 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. Accordingly, complaints are not grievable under this procedure that involve a failure to be promoted (except where the employee can show established promotional policies or procedures were not followed or applied fairly).

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 "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 "Member" means any non-probationary sworn member employed by the State Police.

3.1.12 "Representative" means the trade or professional organization which has the largest number of members of the State Police within its membership.

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

Section 4. Grievance Procedure Generally

4.1 A grievance must be filed within the times specified in section four 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 whenever a grievant is not working because of accident, sickness, death in the immediate family or other cause necessitating the grievant to take personal leave from his or her employment.

4.2 If the Superintendent or his or her designee intends to assert the application of any statute, policy, rule, regulation or written agreement or submits any written response to the filed grievance at any level, a copy thereof shall be forwarded to the grievant and any representative of the grievant named in the filed grievance. 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.

4.4 A member may withdraw a grievance at any time by notice, in writing, to the level wherein the grievance is then current. The grievance may not be reinstated by the grievant unless reinstatement is granted by the grievance evaluator at the level where the grievance was withdrawn. 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 each lower administrative level.

4.5 Grievances may be consolidated at any level by agreement of all parties.

4.6 A grievant may be represented by an employee organization

representative, as defined, or legal counsel including a fellow member in the preparation or presentation of the grievance. At the request of the grievant, such person or persons may be present, starting at level three and four of the procedure: Provided, That at level 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 level 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 for insubordination.

4.9 Decisions rendered at all levels of the grievance procedure shall be dated, shall be in writing setting forth the decision or decisions and the reasons therefor, and shall be transmitted to the grievant and any representative named in the grievance within the time prescribed, with the exception of the verbal level of step one. If the grievant is denied the relief sought, the decision shall include the name of the individual at the next level to whom appeal may be made.

4.10 Once a grievance has been filed, 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.

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 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 access to State Police equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of such equipment.

4.13 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, 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 No person shall confer or correspond with a hearing examiner regarding the merits of the grievance unless all parties to the grievance are present.

4.15 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 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 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.

4.19 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 by request in writing have removed any record of the grievant's identity from any file kept by the State Police.

4.22 Procedures:

4.22.1 The State Police Professional Standards Unit [hereinafter the "Unit"] shall be responsible for the coordination of grievance procedures. Such coordination shall 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.

4.22.2 The Unit 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 The Unit shall cause an annual analysis of grievances to identify any trend in filed grievances and will recommend any actions that may minimize or correct the causes of future grievances.

4.22.4 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 Unit.

4.22.5 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 Unit. The supervisor administering the grievance procedure shall NOT retain a record of the grievance or the decision.

4.22.6 A record of each member's grievance and the grievance disposition will be filed by the Unit and shall be available for review by the member or his or her representative.

4.23 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 with whom a grievance was filed 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. Such appeal shall follow the procedure regarding appeal provided the grievant in section 5.1 et seq of this rule and provided both parties in section 7.1 of this rule.

Section 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 calendar 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 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 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 the grievant is not satisfied with the action taken by the Superintendent or his or her designee, within fourteen days of the written decision, the grievant 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 who have been selected pursuant to procedures adopted by the State Police, all of whom shall be 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, if the hearing examiner gives reasonable cause, in writing, as to the necessity for such delay.

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.

Section 6. Hearings Generally

6.1 The Superintendent or his or her designee acting as a grievance evaluator or the hearing examiner 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. 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. Level one, level two and level three hearings shall be at a convenient place accessible to the grievant. All such hearings shall be held on State Police premises or on other premises mutually agreeable to the parties and within regular working hours. Hearings may continue beyond normal working hours if agreed to by all parties to the grievance. Level four hearings shall be at a place designated by the hearing examiner.

6.2 The State Police shall produce prior to such hearing any documents, not privileged which are relevant to the subject matter involved in the pending grievance. The grievant shall forward a written request to the Superintendent or his or her designee in order to receive these documents.

6.3 The Superintendent or his or her designee or the hearing examiner 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 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 shall be transcribed and certified by affidavit. The Superintendent shall be responsible for promptly providing a copy of the certified transcript of a level three hearing to any party to that hearing who requests such transcript. The hearing examiner may also request and be provided a transcript upon appeal to level four and allocate the costs therefor as prescribed in section eight of this rule. The Superintendent shall be responsible for promptly providing a copy of the certified transcript of a level four hearing to any party to that hearing who requests such transcript.

6.5 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.

6.6 All materials submitted in accordance with section three of this rule; 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.

6.7 Every decision pursuant to a hearing shall be in writing and shall be accompanied by findings of fact and conclusions of law.

6.8 Prior to the decision any party may propose findings of fact and conclusions of law.

Section 7. Enforcement and Reviewability; Costs; Good Faith

7.1 The decision of the hearing examiner shall be final upon the parties and shall be enforceable in circuit court. Either party may appeal to the circuit court of the county in which the grievance occurred on the grounds that the hearing examiner'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 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 decision. The decision of the hearing examiner shall not be stayed, automatically, upon the filing of an appeal, but a stay may be granted by the circuit court upon separate motion .

7.2 The court's ruling shall be upon the entire record made before the hearing examiner, and the court may hear oral arguments and require written briefs. The court may reverse, vacate or modify the decision of the hearing examiner 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. The allocation of costs shall be based on the relative ability of the party to pay the costs.

Section 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.

Section 9. Mandamus Proceeding

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

Section 10. Grievant's Right to Attorney's Fees and Costs

10.1 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 be liable to such member upon final judgment or order, for court costs, and for reasonable attorney's 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's 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.

Section 11. Application of Rule

11.1 This regulation applies to all grievances on or after the effective date of this rule. This rule supersedes West Virginia Code §15-2-6(b).

